

October 2017

Norfolk County Council Flood and Water Management Enforcement Protocol

1.0 Introduction

This document provides supplemental guidance to Norfolk County Council's Community and Environmental Services (CES) Enforcement Policy, and is provided in the context of specific requirements arising from the Flood and Water Management Act 2010 and the Land Drainage Act 1991.

Norfolk County Council (NCC) is the Lead Local Flood Authority (LLFA) for the county. This role is fulfilled by the Flood and Water Management team.

This Protocol and guidance note has been adapted from best practice identified within local authorities in England. It is intended for use as guidance by Risk Management Authorities, developers and landowners.

2.0 Regulation of Ordinary Watercourses

The Lead Local Flood Authority has powers under the Land Drainage Act 1991 to exercise its regulatory powers in relation to watercourses outside of Internal Drainage Board areas and where they are not Environment Agency designated main rivers.

The Lead Local Flood Authority will take a risk-based and proportionate approach to exercising its regulatory powers under the Land Drainage Act 1991, taking into account the location and nature of any nuisance caused by;

- the failure to repair or maintain watercourses, bridges or drainage works
- un-consented works
- impediments to the proper flow of water

This approach will take into account whether the contraventions have or are likely to increase flood risk and what the consequences of any increase in risk may be. Where works are un-consented the Lead Local Flood Authority would require the landowner, person and/or Risk Management Authority responsible for the works to prove that the un-consented works would not cause a nuisance or increase flood risk.

With regards to the causes of the nuisances described above, the Lead Local Flood Authority has powers under Sections 21, 24 and 25 of the Land Drainage Act 1991 to serve notice on individuals who have caused contraventions.

In issuing a notice the Lead Local Flood Authority may set out the works required to resolve the contravention to an acceptable standard and the date by which the works should be completed.

August 2017

If the works are not completed by the date set out in the notice, the Lead Local Flood Authority may take action to remedy the effect of the contravention or failure and seek to recover the costs incurred, as well as pursue any necessary prosecution.

3.0 Guiding Principles

Enforcement under the Land Drainage Act, 1991 will be carried out using the guiding principles as set out in the CES Enforcement Policy.

4.0 Process

a) Initial response

Where the Lead Local Flood Authority receives a complaint in relation to an ordinary watercourse, we will carry out an initial assessment to establish whether the actual or potential flood risk meets our threshold for intervention. We aim to complete this assessment within 21 days. However, there will be occasions when it is necessary to extend the period of assessment for more complex matters and/or to accommodate exceptional circumstances e.g. weather, flood conditions, etc.. At the outset the complainant will be informed of the case officer who will follow up the enquiry and of the outcome of the assessment.

b) Initial assessment

The threshold for intervention will be based on the Lead Local Flood Authority's [impact criteria](#).

To assess the potential impact the initial assessment will consider the on-site conditions, any available historical data and high level indicators of potential risk, such as Environment Agency (EA) Flood risk maps for surface water flooding and flooding from rivers. It will also consider any other status of land e.g. conservation designations, common land etc.

To substantiate incidents of actual flooding as part of the initial assessment we will need to be provided with one or more of the following types of evidence:

- I. An insurance claim
- II. Records of emergency services and utility companies i.e. fire brigade attending to pump out a property
- III. Dated photos of the event
- IV. Written report from a Risk Management Authority

The evidence supplied will be determined in line with the guiding principles as set out in the CES Enforcement Policy.

The Lead Local Flood Authority may close an enforcement case file, where there is a lack of physical evidence to corroborate the impact of a flood event. If further relevant evidence was to come forward then the Lead Local Flood Authority may re-open the case file and undertake a further investigation.

C) Further Investigation

Where the initial assessment has identified an actual or potential risk of flooding that exceeds the adopted impact criteria, but where a site inspection has failed to identify the primary cause of the problem the authority may;

- consult with other organisations including other local authorities, Highway Authorities, Environment Agency, Natural England as appropriate.
- require or commission appropriate site surveys and inspections.

In deciding whether or not to carry out the above steps the LLFA will consider whether it is in the public interest to do so. Having regard to the actual and potential impacts of the flooding, the costs of carrying out the works and the likelihood of obtaining sufficient evidence to enable enforcement activity. Where the Lead Local Flood Authority is made aware of breaches of other legislation it will advise the appropriate authorities.

D) Outcome of initial assessment/Further Investigation

Once an initial assessment/further investigation has been carried out the complainant will be informed in writing as to the next course of action and this may include;

- I. Informing relevant party(s) of works that are required to be undertaken within the set timescale OR
- II. No further action by the LLFA and:
 - Providing advice to those affected on referral to the [First Tier Tribunal \(Property Chamber\), Agricultural Land and Drainage \(AL&D\)](#) or other relevant organisation, where appropriate
 - Informing relevant parties of their [riparian responsibilities](#)

Where it is considered that further action needs to be taken by the relevant landowner, person and/or Risk Management Authority responsible this will be explained within the letter that sets out the outcome of the initial assessment/further investigation. This will include the following:

- An explanation of the problem and the remedy required in accordance with the Land Drainage Act 1991.
- Depending on the nature of the problem we aim to ensure that remedial work is carried out within the timeframe specified in the letter (between 7 and 21 days of the date of the letter). However, there will be occasions when it is necessary to extend the period of compliance for more complex matters and/or to accommodate exceptional circumstances e.g. weather, flood conditions, etc. The time allowed will be reasonable in the circumstances. The extent of the work required will be proportionate to the scale of the problem.

- In certain circumstances practicalities may not allow for works to be done within the timeframe specified in the letter. The Lead Local Flood Authority will assess the circumstances with regards to enforcement and whether any works need to be deferred or amended to take into account the impacts of any works on wildlife. Examples where this may occur include:
 - Seasonal farming practices and Environmental Schemes can restrict access or time schedules to carry out works;
 - The nesting season for some birds occurs between the 1 March and 31 August and works might cause disruption if nests are present;
 - Presence of protected species will influence when it is most appropriate to carry out work.

Seeking resolution prior to serving notices

The Lead Local Flood Authority will seek to resolve the situation by means of negotiation with the person responsible and obtain compliance with a request to satisfactorily undertake the work required.

Serving notices under the Land Drainage Act 1991

If a positive response to the Lead Local Flood Authority's letter has not been received within the timescale specified and on inspection no work has been satisfactorily undertaken as required, a notice under the relevant section of the Land Drainage Act 1991 will be served. The notice will include the nature of the work to be carried out, the period within which it is to be carried out and any relevant right of appeal to a magistrates' court within 21 days of service of the notice (where applicable). A Notice under the Land Drainage Act 1991 is a legal document formally requiring specific work to be carried out within a set timescale.

A letter will accompany the notice and inform the responsible person that in the event of their failure to satisfactorily undertake the work, the Lead Local Flood Authority may carry out the work itself and recover from the person responsible the expenses reasonably incurred in doing so which will include recovering the costs of pursuing the case.

Enforcement of notices

Following service of the notice, one of four things will happen:-

- The responsible person will carry out the work to the satisfaction of the council.
- The responsible person may appeal the notice.
- The responsible person will fail to carry out the work to the satisfaction of the Lead Local Flood Authority and the Lead Local Flood Authority will seek to recover their expenses; and /or

- The Lead Local Flood Authority will, where appropriate, decide whether to take a prosecution against the responsible person, in addition to carrying out the work and seeking to recover the costs of that work.

Completion of proceedings

If the responsible person complies with the notice and completes the work to the satisfaction of the Lead Local Flood Authority, the Lead Local Flood Authority will write to the responsible person confirming the closure of the case and the end of the action.

No further action

The Lead Local Flood Authority may take no action where:

- there is no actual or potential risk to properties or infrastructure; and/or
- that the matter complained of is not the cause of the drainage problem; and/or
- the matter is trivial in nature

If this is the case, the complainant will be advised accordingly and a written communication will be sent to the complainant explaining the reason why no action is to be taken. The complainant will also be referred, where appropriate, to the [First Tier Tribunal \(Property Chamber\), Agricultural Land and Drainage \(AL&D\)](#) or other relevant organisation. The riparian owner will also be informed, as appropriate.

Examples of matters not requiring action may include minimal silting of the watercourse, slight vegetation overgrowth, the accumulation of a small quantity of debris etc

Advice

The Lead Local Flood Authority will provide basic information and advice to individuals of their riparian ownership responsibilities and of the route for appeal against other riparian owners where appropriate. The Lead Local Flood Authority may suggest that independent legal and/or technical advice is sought, where appropriate.

Further Information

Please consult the Glossary of terms document which supports this protocol.