RIGHTS OF WAY

THE HOBHOUSE REPORT 2011

by

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Henry Hobhouse was formerly a Somerset County Councillor and is presently a District Councillor (LibDem) in the County of Somerset.

He is the grandson of Sir Arthur Hobhouse who, after the Second World War, chaired a Committee whose purpose was to open the Countryside for the enjoyment of all citizens. In 1947, his Committee published a Report which established the principle ‘that the heritage of our beautiful countryside should be held in trust for the benefit of the people’.

Henry Hobhouse explains how that ideal never came to fruition, how the process was hijacked and what now requires to be done.

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Section 1.

Introduction

1. When the Second World War came to a close, 80 per cent of the 40 million population of England and Wales lived in towns and cities. Nine tenths of the population occupied less than one tenth of the land. In 1947 a Special Committee published a Report, Footpaths and Access to the Countryside, known as the Hobhouse Report after the Committee Chairman, Sir Arthur Hobhouse.[1] The Committee recommended that a simple Country Code should be prepared and issued with a view to making "an effective contribution…to the health and well being of the nation, and an important step taken towards establishing the principle that the heritage of our beautiful countryside should be held in trust for the benefit of the people". A comprehensive record was to be made of existing rights of way in England and Wales on County Council held Maps and associated Statements.[2] Hobhouse confined his investigation to footpaths, bridleways and driftways, excluding the consideration of vehicular rights. Some of the Hobhouse proposals were given statutory effect in the National Parks and Access to the Countryside Act (NPACA) 1949.

2. What we have instead is an anarchic system, neither fair nor in the spirit of what was intended. What has evolved is a form of nationalisation of private property by ulterior means. The impression so often given of Rights of Way initiatives as being symptomatic of, and dedicated to, the common good is fallacious. Undeniably political, cruelty and intimidation are drawn upon as means to ends. There is an unbroken chain of control running down from DEFRA, through its agency in the Planning Inspectorate, the Countryside Access offices in Strategic Authorities, to reporters and propagandists at grass roots. There has not been a Government scandal of this kind since Crichel Down. We show where we believe it has gone wrong and the workable solutions necessary for the restoration of civilised norms.

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1 Report of the Special Committee. Footpaths and Access to the Countryside. Ministry of Town and Country Planning, p.3 para 7. HMSO Cmd 7207 (London, September 1947).

2 We refer here to County Council as a matter of convenience. The correct reference is to Strategic Authorities which include County, Unitary and Metropolitan Councils.

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Section 2.

Present Procedures

1. The County Council is at the heart of the local decision-taking process. The subject of decision-taking will be seen to be an important consideration in this area of present procedures. From the Secretary of State DEFRA to her Inspectors, who have a shared affinity, to the Access professionals in County Hall, it is evident that all is not as it should be. The role of the Rights of Way Officers as Access professionals is to act as advisors to the elected members, the decision-takers within the County. There is a dichotomy here since it can be said in general that the advisors use all necessary means to assume the decision-taking function for themselves. Cabinet Members are there to ensure this does not happen by overseeing the process. The fact that it does happen is due to the control of the advisors often being lax. It was noted how senior Officers and elected members appeared extremely reluctant to, or just do not criticise Officers. Those elected members in Regulation Committees who found the detail before them beyond their understanding due to lack of interest or comprehension, obliquely aided and abetted the advisors as a consequence of their conceding their own decision-taking authority to the advisors. Confining objectors to 2-3 minutes to present their particular case to the Committee is a contributory factor in the decision-taker's sacrificial act of rendering himself superfluous. This problem and the solution are offered for consideration in Section 4.

2. The County Council is empowered to delegate authority, although guidance must be established to ensure consistency. There is evidence that in its relationship both with District and Parish Councils, the County Council can and does take this relationship beyond pure guidance. The Parish makes useful but strictly local contributions in terms, say, of rearranging a local footpath and reaching local agreements. Quality considerations and interests often conspire to lead to attempts to marginalise or steer the Parish Council. Success or failure depends upon attitudes. Parish Council power is limited.

For example, in the 2011 parish elections, of the 138 parishes in West Dorset only 19 attracted sufficient interest to require elections. In the Bowers Case, an attempt by Bedfordshire County Council's Countryside Access to coerce Maulden Parish Council into co-operative action elicited the following response: "…my Councillors were appalled by threats contained in your letter and that my Council has no intention of backing down". The same Officials made identical moves against the District Councillors and intimidated the elected members to act in accordance with their wishes. This is not a phenomenon reserved for Parish and District Councils but can also be seen for example where the central organisation of the Ramblers' Association (RA) overrules a decision made locally by the local RA representative.

3. A best practice guideline proposed the County Council's Countryside Access Department should also discuss applications with Associations with access interests, of which the main three are the RA (119,000), the Open Spaces Society (OSS) (2,300 in England and Wales) and the British Horse Society (BHS) (a core membership of 71,000). Their perceived authority is therefore disproportionate to the combined strength of their membership, a point to be borne in mind when lobbying begins in earnest. A recent development is the increase in the membership in apolitical walking groups being created to avoid the politics which some see as an undesirable feature of the RA's and OSS's activities. It is evident that Officers of the Countryside Access Department are overwhelmingly receptive to access orientated applications yet appear almost universally hostile to public initiatives which are not. The relationship between County officials and Rights of Way Organisations can reach such levels of propinquity as to lead potentially to the course of justice being perverted.

4. Application for change affecting access is first submitted to a County Council. Legally, this application must have all evidence relied upon attached to the application by the applicant before the application is accepted, in accordance with the prescribed regulations required by the Wildlife and Countryside Act 1981 and as confirmed in law by the Winchester Judgement. In many strategic authorities, this process is not insisted upon. The Rights of Way Officers take it upon themselves under Section 53 of the Wildlife and

Countryside Act 1981 and, in relevant cases, Section 31(1) Highway Act 1980 to set their own staff to undertake this investigation. This means, once the Rights of Way Officers adopt the investigatory role with regard to what is essentially an invalid application, they will invariably empathise with the applicant. Therefore, as so often happens, the case becomes personal rather than impartial and objective.

5. The Officers can operate under delegated powers from the Local Members supported by the Cabinet Member whereby the democratic process can be circumvented. Unless instructed by the Chairman of the Regulation Committee[3] to take the matter to the Committee for decision, the officer will deal with all the application process.

6. Even when an application reaches the Planning and Regulation Committee the defending landowner is seriously disadvantaged due to the procedural constraints in the majority of the Strategic Authorities. This occurs because the Officers can speak as often as they like and as long as they like whereas members of the public are confined to 2-3 minutes. Incorrect information given by an Officer cannot be corrected except by a Member calling a point of Order. Written submissions are invariably permitted at least 48 hours prior to the Committee Date. The problem being that a landowner is unable to brief the Committee where an error has occurred.

7. The Officers will then make an Order if the application has been accepted. Where the application is unsuccessful, there is a right of appeal under Schedule 14 of the Wildlife and Countryside Act 1981. That can be activated by any individual or organisation even if that person is totally disassociated from the application.

8. Caution should be exercised in arguing that the Committee Decision should be final when, under the present arrangement, the Committee is frequently not provided with an unbiased recommendation from their Rights of Way Officers and the legal advice received by Committee Members is not always either correct or impartial.

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[3] The relevant Committee is known in a number of Authorities as the Regulation Committee, The Roads and Rights of Way Committee in others.

9. The European Convention on Human Rights has been directly applicable in English Law under the Human Rights Act 1998 which passed into English Law in 2000 and, as a first impression, appeared encouraging. Article 6(1) recognises each and every citizen is "entitled to a fair and public hearing within a reasonable time by an independent and impartial (legal) tribunal established by law".

10. The year 2000 saw the beginning of a migratory process to remove the Lord Chancellor's Independent Inspectors to be replaced by former Rights of Way Officers. In that way, a triumvirate was created comprising the County's access officials, access organisations and the Planning Inspectorate and its representative Inspectors. There is a reasonable expectation that the authority to effect such a profound change in English Law would be found as an amendment to the original statute or as an appropriate resolution in one or both Houses. There was no trace. It was discovered that Departmental Heads agreed to disband the Lord Chancellor's Independent Panel administratively, without reference to Parliament. In response to the question how this retrograde step was achieved, the Planning Inspectorate misrepresented the intention of the Law Lords by saying: "The disbandment of the Panel was a direct consequence of the House of Lords judgement in respect of R-v-SSETR ex parte Alconbury Development Ltd (a Planning case not a rights of way case) and others (9 May 2001) which found that salaried Inspectors taking decisions – even on proposals made by Government was lawful".

11. Of the present 11 Inspectors who undertake Rights of Way Casework, 9 have previously held junior Rights of Way positions. This development compromised the provisions of Article 6(1) insofar as the Secretary of State for DEFRA has become both policy-maker and decision-taker, an untenable position since it is the Secretary of State's policy that is the issue. There is the right of appeal to the Secretary of State DEFRA under Schedule 14 of the Wildlife and Countryside Act 1981 by those who feel themselves wronged at a County Council Hearing. The reference to 'The Secretary of State' is to overstate the situation. The case is presented to the Inspectorate by a Rights

of Way officer for consideration by a nominated Rights of Way Inspector. This does not represent a valid process of justice.

12. There is no appeal to the Planning Inspectorate with regard to Inspectors' decisions, which can reveal misrepresentations, poor judgement or evidence having been preferentially selected. They steadfastly refuse to answer any questions arising from their Inspector's decision. The only route for redress of grievance other than a statutory appeal is disproportionately and inappropriately by reference to an application for Judicial Review at the High Court where DEFRA will act against the appellant. A function of Judicial Review is to control the unfettered power of the Executive, not to provide the Executive with a further opportunity to pervert the course of justice. There is no equality of arms. The Judiciary takes the view that their Tribune of Fact is entitled by law to come to the conclusions they do. The only Independent CID review of an Inspector at work to date revealed the inherent danger of making such an assumption. In a letter dated 18 October 2007, Dorset CID wrote to an unreceptive Planning Inspectorate. "The Judge would understandably assume that the evidence before him and upon which he made judgement had originated from an independent tribunal and represented a fair, impartial, balanced consideration of the facts. However, the evidence I have seen does not corroborate this". Referring to the Jenkinson case, Mr Bryan Reardon told the Staffordshire Newsletter: "Appealing to the Court did not result in the Inspector's decision being overturned, as the judges stated the Inspector was the one who gathered and reviewed the facts, not them". Inspectors do not give reasons for their decisions. Thus the claimant faces a duopoly; one side providing their own view of the facts and the other entirely focused upon observation of the law. There is no place for the appellant to express an opinion to suggest the Inspector's facts are wrong but also perhaps, that they are demonstrably wrong.

13. Having identified bad procedure, the next step is to consider bad law. Section 130B of the Highways Act 1980 is popular with those who have malicious intent. Individuals quote this body of law in Applications to the Authority, obliging the Authority to remove an obstruction – real or imagined. The Section requires to be restructured in order to level the playing field to the

extent that an equality of arms is achieved. A new solution could usefully be available for aggrieved owners to require their Council to respond to *their* calls for help, thereby breaking the Gordian Knot tying Officers exclusively to access seekers. The Council leadership is often part of the problem, having endorsed the support of their Champion against some hapless homeowner. It would be instructive to hold an independent Inquiry to investigate, among others, Cambridgeshire County Council's role in the Mear Case.

14. There is a wealth of evidence to indicate bias among Inspectors and elements of that same bias is evident within the Planning Inspectorate. It is unrealistic to believe that public servants whose *raison d'être* lies in expanding Access would act otherwise.

15. The four principles variously seen to have been employed by Officers and Inspectors to achieve a positive result against owners are:

    a. The practice of identifying, steering and following one or more Champions or kindred spirits (frequently a close neighbour of the victim) to where *they* want to go.
    b. The drawing out of procedures and responses over time, intending to physically and mentally exhaust homeowners to disconnect their supporters through the impression of a dead horse being flogged.
    c. The impoverishment of homeowners by the appalling costs arising through their enforced defence of their property in the Courts.
    d. The ready availability of Council Funds, the Charitable Funds of Access related Organisations, experience, and organisation assembled in an environment of virtual impunity and unaccountability and targeted against the intended victim who will invariably have none of these advantages.

16. It is appropriate to point out the different application of law between that to be found at the Land Tribunal and the Rights of Way Local Public Inquiry.

    a. At the Land Tribunal, all witnesses give evidence on oath, which is not the case at the Local Inquiry.
    b. Late or new evidence cannot be accepted unless exceptionally agreed by the Judge.

c. The Tribunal site visit is held prior to the Hearing, all parties are welcome and issues are discussed *ab initio* on the ground.

17. Central to the 20 Year Rule contrivance, by which a group of citizens may claim a pathway on the grounds of their continuous use over that period, is the Public Way Evidence Form, devoid of any warning of the consequences of perjury or requirement for a statement of truth. It is striking when observing Rights of Way Law in action to note the prevalence of untested and dubious user evidence. This can lead to Officers operating in a zero accountability environment. It is recommended that Public Way Evidence Forms must include the compulsory completion of a declaration of truth. Similarly, evidence given before a Local Public Inquiry must be given on oath. It is generally true that only a small proportion of those who submit the forms in accordance with Section 31 of the Highways Act 1980 present themselves at Inquiries. In a witness complaint to Cumbria County Council, we can read: "I realise now that the only evidence you need to create a bridleway is for a few horse riders to say they have ridden along this path for 20 years, without proof or evidence to show their statements are truthful".[4] For example, of the eleven applicants for the adoption of Widness Drove, North Curry, Somerset as a bridleway, only two of the claimants had not been previously discredited.

18. At the same Inquiry, on the opening day, the activists delivered 14 new User Evidence Forms to the Inspector. A high proportion indicated that they were not willing to be present at the Inquiry: none of the 14 attended. "Not willing does not mean unwilling", said the Inspector. This response reveals an erroneous, semantic response so often adopted; demonstrably a definite partiality which has impacted very considerably on the need for fairness. He confirmed the Order, meaning that one more case is to be added to the long list of Decisions awaiting reversal. The above indicates that justice does not function within the present Local Public Inquiry format and that some members of the bureaucracy are not averse to manipulating the law.

[4] Patrick Lowe to Cumbria County Council's Margaret Longworth, 21 September 2010.

19. The landowner's ignorance of his path being used by the public is considered irrelevant. It is here that there is a breakdown of logic. He cannot prevent public use of a path he is unaware is being used.

20. Section 31 of the Highways Act 1980 – Dedication of way as highway presumed after public use for 20 years – states in subsection (1) 'Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it'. Local Public Inquiries chaired by Government Inspectors drawn predominantly from the members of an interest group are not proper places in which to assess the sufficiency of evidence. That is the function of a court or tribunal. An argument that such matters are subject to confirmation by lawyers in the Inspectors' Bristol HQ fails because they are too remote and they represent neither a court nor a tribunal. It can be seen that Sections 31 and 32 of the Act are interactive. Section 32 discusses evidence of dedication and in so doing, makes perfectly clear the belief that the fora in which such evidence should be assessed are 'A court or other tribunal'. A Rights of Way Local Public Inquiry is neither a court nor a tribunal.

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Section 3.

The Changing Needs of Society

1. The Hobhouse Report[5] states: "We have accordingly approached our Inquiry with the double object of increasing the value of footpaths to individual users and of simplifying the law and procedure whereby footpaths are established, preserved, diverted or declared redundant…..most Rights of Way in the past were established informally to meet purely local needs and, in the days prior to the invention of the bicycle and development of the bus, they usually provided the shortest and quickest route to the village or the church (and the school). Changes of habit and circumstances during this century (the twentieth) have caused footpaths to fall into disuse".[6] This change has continued and the new requirement is for paths associated with recreation and local tourism.

2. The Rights of Way Organisations are fuelled by individuals' funds to achieve the maximum help and cooperation by corporate power within the Strategic Authorities. This had not been the original intention of the Hobhouse Report which recognised the changing needs of society, particularly the need for flexibility.

3. In 1950 work began in earnest across the country to make Definitive Maps for each County, supported by Definitive Statements. The original understanding of the Hobhouse Report was that the historical background for developing the maps had largely been fulfilled. There was no justification for historical evidence to be recycled as a reason for the change of detail on the maps. The Counties had been tasked to draw up their own Definitive Maps of existing Rights of Way; *definitive* means final. Once completed, there was no expectation of revisiting the subject. A number of Counties took an inordinate amount of time to do as asked. Somerset took 22 years to complete their Definitive Map.

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5 The Hobhouse Report, p.2, Section 3.

6 Ibid., p.6, Section 21.

4. Nationwide, Counties were advised that if any doubt should arise they should claim a path as a Right of Way with a view, if necessary, to making adjustments later. When land and home owners discovered what had happened unbeknown to them, they discovered the authorities were often not amenable to making adjustments. The authorities excused their arbitrary behaviour with the riposte that they had no statutory obligation to consult with landowners. Note also the process outlined at Annexe B to this Report. Maperton (near Wincanton) Parish Minutes dated 4 December 1950 revealed the Clerk to the Rural District Council supported by the District Surveyor instructing the Parish Councillors to decide: "which public footpaths which are marked on the Ordnance map were to be kept as permanent Rights of Way". The Ordnance Survey Map does show some footpaths, the status of which is not defined. There is a footnote printed on all OS maps: "The representation on this plan of a road, track or path is no evidence of the existence of a right of way". This means that the Maperton interpretation, to the effect that footpaths shown on the Ordnance Survey Map are synonymous with existing Rights of Way, applied to the whole of Wincanton Rural District Council and possibly to the County and beyond.

5. In the County Hall, Taunton, nearly 500 paths were simply transferred to the Definitive Map as Rights of Way. A number of existing paths were extended. Once the map had been produced and recorded, in its further life it ceased to be a definitive map but became a Rights of Way Map, a record of where people could go. The National Parks and Access to the Countryside Act (NPACA) 1949 legislation provided for a "quinquennial" review of the Definitive Maps but this was implemented by only a very few County Councils. For instance, again in Somerset, despite the completion of the Definitive Map in 1972 it was never subjected to a five-yearly review. Then, inexplicably, by way of Section 53 of the Wildlife and Countryside Act 1981 gave highway authorities the task of keeping 'Definitive Maps under continuous review'. This is a non sequitur except in circumstances where errors or wrongful additions require correction. Authorities had no flexibility in how they could deal with any application to amend their definitive map and statement, unless the initiative came from the same authority who consistently

appear to have had no difficulty in how they deal with these applications. The call to close the Definitive Map is heard frequently, yet the Definitive Maps and Statements prepared by Counties have been closed for decades. The so-called Definitive Map opened in 1950 for a once only exercise and now, through the intervention of the Countryside and Rights of Way Act 2000, is intended to remain 'open' until 2026.

6. It was intended that landowners would have four possible grounds for seeking Diversion orders of paths across their land and the land of other farmers over whose farm the path(s) in question crossed:

   a. For securing the efficient use of the land.
   b. For securing the efficient use of other land held therewith.
   c. For providing a shorter path.
   d. For providing a more commodious path.[7]

   These proposals were never implemented.

7. The reason a new Countryside Bill is recommended is to bring the myriad Acts and add-on initiatives under one cover, having first deleted the outdated and irrelevant on the way. One such candidate would be the embryonic paper on Unrecorded Public Rights of Way by the 'Stakeholder Working Group' for Natural England of Sheffield, Yorkshire. The 'stakeholders' are substantially a Lobby Group from one side of the fence. The 'contentious issue' which they have addressed is the provision for 'unrecorded pre-1949 public Rights of Way' to be sought, identified and claimed prior to the cut-off date of 2026. There appears to be an absence of compelling evidence of the existence of unclaimed pre-1949 public Rights of Way except for that entirely dependent upon intervention, bad law and poor judgement. We see paths which at the time were not Rights of Way, claimed as such on an industrial scale. Natural England has unreservedly commended their Group's report to Government, recommending the door be left open for acquisition until 2026. It cannot be justified. There is no reason why a measure of such insidious construct should have life beyond 2012. That is a recommendation.

[7] National Archives MT 95/9. Ministry of Housing and Local Government Circular 20/53 dated 26 March 1953. Section 42(1) National Parks and Access to the Countryside Act, 1949.

8. The Hobhouse Report therefore acknowledged the requirement for a statutory Rights of Way map and we recognised that in most cases it is substantially complete. The existing procedure of making alterations to the Rights of Way Map by legal and historical means is no longer required. Section 31 of the Highways Act 1980 is the principal instrument of abuse. Claiming rights immediately after the inception of the twenty-year rule had validity, yet today it has become a licence to cheat. The initial preparation of the Rights of Way Maps accommodated all historical issues (Tithe maps, Inclosure awards, old Ordnance Survey Maps, Parish Records). The present procedures are all legalistic in character. The time and money wasted in carrying out these procedures is enormous. "In the areas of boroughs and urban districts it should in most cases be relatively easy for respective councils to provide the necessary particulars for the Survey without the need for detailed investigation by the County authority. Rural District Councils, or the County Council itself, should consult with Parish Councils or, where these do not exist, with parish meetings or knowledgeable inhabitants in each parish."[8]

9. The correct preparation of an application can take two to three years of investigation of the historical records. In Strategic Authorities where the proper validation check is rarely carried out, most costs are met from the public purse. The ability of an individual to question the decision of the Strategic Authority is through the process of taking the matter to Local Public Inquiry, funded out of the public purse (less private lawyers). The only method of recourse against unfair decisions is by application for Judicial Review to the High Court which dramatically increases costs. There is no flexibility, the individual finds himself completely locked into the system. The few beneficiaries that there are would not favour change.

10. In contemporary society, the issues of privacy, land use, security and safety should be the principal considerations but for the moment, this is prevented by legislation. Responsibility for the surface of a *metalled* highway is vested in the Highway Authority Road Maintenance Team whereas the *unmetalled* Right of Way is maintained by the Maintenance Team of the Rights of Way Department, both maintainable at public expense. The right of passage over

[8] Hobhouse Report, pp 7-8, Section 27.

someone else's land should not be subject to establishment by un-sworn witnesses giving unproven evidence. Untested evidence is too often accepted during the process and equally, a presumption is accepted unsupported by evidence. In the attempt to reveal which course best represents natural justice, centralised democracy v. localism, the options are:

a. An Inspector who is unelected, unqualified in law, who has been removed from having been under the oversight of the Lord Chancellor, has been imbued in one side of the Rights of Way argument and is not independent as required by law, who chairs a local, public Inquiry which is not a tribunal, or

b. A board of elected, independent representatives of the people, acting as arbitrators on a District or County Council Committee, their activities overseen by a person qualified in law?

Centralism has subordinated localism by breaking the law, introducing new Inspectors drawn from one side of the argument, who are demonstrably not independent. Their decisions have no legality. Legality rests more completely with the local decision since the single adjudicator has no authority to overrule the Council's decision. There is a residual problem with this option. Those who approach Council Committees have limited freedom of speech. They will be permitted 2-3 minutes while the Officials are unrestricted. The Human Rights Act 1998 entitles citizens to a fair, impartial, independent *tribunal*. A meeting wherein justice is sought but where the appellant is not permitted to speak is no tribunal. The recommended solution must include the creation of a valid tribunal.

11. Legislation has given Strategic Authorities the responsibility to be judge, jury and executioner. The fact that none of these roles have been separated means that on occasions the Officers do not behave in an equitable manner. Elected members normally sit for four years. The importance of Rights of Way in County Halls compared to Adult Social Care, Education, Child Welfare and Highways is relatively minute. That accounts to some degree for the seriously inadequate control of Rights of Way Officers, the advisors, by the elected members, the decision-makers.

12. In only one of the Strategic Authorities surveyed is the Rights of Way Department run as intended in the Acts. In this case, only ten correct applications are received a year. As there is no research requirement, the applications arrive in front of the Regulation Committee within two months. The cost to the Public Purse is minimised and miscarriages of justice seem not to arise. This example may not represent the sole pocket of virtue in England and Wales. Landowners and homeowners who have encountered kindness, fairness and impartiality in their dealings with Strategic Authorities are requested to register the details with us; as are those for whom what is described in this document is an all too familiar, painful experience.

13. This Report's suggested solution, revealed later in this document, has removed all requirement for historical evidence and the majority of legalities. It has removed from the Strategic Authority the burden of all responsibility except for map-updating, co-ordination of applications and enforcement of maintenance. It has taken the commencement of the decision-making process down to the level of the Parish Councils and local people in line with Government Policy on Localism. It will economise on cost by the removal of three tiers of administration:

    a. The Strategic Authorities' involvement in investigation.
    b. The Planning Inspectorate tier which deals with Inquiries, complaints and all relevant paperwork. These and the remaining responsibilities to be transferred to a new Agency formed upon the Land Tribunal.
    c. The Government office which deals with statutory Schedule 14 (Wildlife and Countryside Act, 1981) Appeals.

12. The experience is, the greater the legislation the worse the business becomes. The fact that the Government has recognised that things have gone 'adrift' since 1949 is revealed in the number of Acts and legal enactments which now serve to complicate matters even further. This reiterates the urgent requirement for a new Countryside Bill to rationalise and subsume all that has gone before. That is a recommendation to arise from this Report.

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Section 4.

The Solution – Process for Change

1. The concept expressed by Lord Justice Scott, Senior Legal Advisor to the Hobhouse Committee on 16 May 1945 relating to Government Inspectors "…in order to ensure confidence in their impartiality and so avoid frequent appeals, it might be desirable that they should be appointed, not by the Commission but by some independent authority such as the Lord Chancellor". It was a serious mistake of opponents to interfere with a concept in which an honest broker had sought to establish a system incorporating fairness and impartiality. In attracting attention to what had been done, there followed a review of the Inspectors' activities from which there flowed the conclusion that they were superfluous. The implication of such a conclusion would involve the recommendation of creating a new generation of legally qualified Inspectors under the Lord Chancellor available to act as Arbitration Panel Chairmen with Authorities. The implementation of two particular recommendations will assist in the administration of the New Order:

    a. Walking/Riding Organisations are to pay Councils the full costs arising from their applications. Typically, £1500 for a validation check, £4500-£6000 for the full report. This is not a valid charge on the public.[9] The implementation of full costs will have the effect of regulating the volume of applications.
    b. The closure of the 20-year loophole presently available within Section 31 of the Highways Act 1980 (para 11) will serve to reduce both demand and serious abuse of the system.

2. Rights of Way should not be thought of as *highways.* The surface of every Right of Way has an owner and is not transferred to be vested in the Authority, as is the case with a legitimate highway. "The right of the public on a footpath (and bridleway) is merely a right of passage over the surface of the land, and the soil over which the right of way runs remains in the same

[9] A DEFRA consultation document reveals a move in this direction. In order to deter vexatious and speculative applications for Town and Village Greens, it is proposed to levy a fixed fee of £1000.

ownership as the adjoining land."[10] There is scope within the Rights of Way Improvement Plan for benefit to flow both to users and farmers. There is no merit in clinging limpet-like to a pattern of countryside paths relevant in the nineteenth and early twentieth centuries as ways taken by an agrarian workforce to proceed to and from work. An Improvement is not designed simply as a means of increasing the stock of footpaths which today are almost exclusively dedicated to recreational use. The real meaning lies in the noun – *improvement* – and that will embrace footpaths already recorded on the Rights of Way Map. Some will justify closure, others could be extended, while there are benefits available to be accrued from re-routing paths to satisfy current needs.

3. We revisit that word *flexibility*. There is no reason for walkers' and riders' representatives to exist in a state of perpetual antagonism, determined to concede nothing. It is time for the New Order, to share and not to engage in a state of constant confrontation. Precedents do exist where farmers have been permitted the right to rationalise the paths crossing their property, under the guidance of Parish and District Councils. For example, entirely new initiatives are being taken in the area of Equality Rights.

4. Intimidation is not to be condoned. Citizens have the right to express objections but not if the right to object is politically motivated. The tormented should learn to become proactive – claim costs for unreasonable behaviour. The proposed top-down reform of the Government structure will serve to remove the partisan support Rights of Way Organisations have enjoyed in the past. The aim is to introduce strong elements of fairness and common decency into a business which has been comprehensively hijacked.

5. As part of the process for change, we envisage two types of Rights of Way; Parish Paths and longer paths of 10 miles or more. Under the new system, submission of applications will be simple, employing a single application form/map countersigned by the Chairman or Clerk to the Parish Council concerned, indication that the application has been seen in the Parish. The application is sent to the Strategic Authority Rights of Way Officer via the

[10] Report of the Special Committee. Footpaths and Access to the Countryside. Ministry of Town and Country Planning. HMSO Cmd 7207 (London, September 1947) p.3, para 7.

Parish Council. The Officer registers the application before returning it to the District and Parish Council for consultation. The Officer also has the details of the Application published ideally in two local papers, the cost of which is taken from the applicant's fee. The Parish and District Council consultations are to be completed within 3 months of the date of receipt of the papers. All objections are to be received by the Rights of Way Officer over the same period.

6. Objections will only be entertained from objectors living within 3 miles of the boundaries of those Parishes through which the way passes and within the Authority/ies in the case of long paths. Ultimately, the decision vis-à-vis length will rest with the Councils. Allowance should be made where, for example, a field is criss-crossed by multiple paths or where there is cogent and compelling evidence of a wrongful designation. Future applications will be able to take account of farming practices, privacy, security, wildlife and safety. There is already provision for an important duty for Councils under Section 17 of the Crime and Disorder Reduction Act 1998 to:

> "Exercise its various functions with due regard to the likely effect of the exercise of those functions upon, and the need to do all that it reasonably can to prevent crime and disorder in its area."

This requirement appears largely ignored.

7. County Hall is an administrative centre. It has no facility for independent judicial consideration of legal disputes. Our recommendation will rectify that shortcoming. In the event of an objection, the application will proceed to an arbitration panel comprising three people:

   a. The Arbitration Panel Chairman will be legally qualified, a barrister or solicitor, independent of DEFRA and appointed by the Lord Chancellor.
   b. The local member of the Authority.
   c. Another member of the Authority.

Both members of the Authority are to have been trained in Rights of Way matters by independent and impartial instructors. All members of Tribunals must be fully conversant with Rights of Way matters and kept up to date. All

Regulation Board or Roads and Rights of Way Committee members must have an interest and depth of knowledge of Rights of Way. The Panel will sit in the Parish where the Rights of Way Officer will outline the proposed changes. The applicant(s) and objectors will then address the panel, on oath, along the lines of their case details lodged earlier. They will be granted sufficient time for the presentation of their cases. An early walking of the course is an essential component of the process. The Panel will then retire to consider the Application in private before explaining their decision and reasons to the meeting. The Rights of Way Officer will then register the findings of the Panel. Change to Rights of Way cannot be revisited for ten years.

8. In the event of either party being dissatisfied with the Decision of the Panel, the dispute may be referred to a Land Tribunal adjudicator with Appeals to the County Court.

9. It is recommended that the route to be taken for Rights of Way disputes is initially, as was originally intended, the County Court not the High Court. The High Court is not there to provide answers. At the moment Judges willingly accept as truth the most improbable statements of Inspectors. There need not be concern with regard to the relative experience of Crown Court and High Court Judges. Judges gain experience through choice, out of interest. Far better that a case be heard at the County Court on first principles rather than before a High Court Judge. The Court of Appeal's writ is too narrow to deal with cases fairly. Focus upon the law alone renders the Judge too dependent upon the facts presented by Inspectors whose experience is gained from one side of the fence. There must be a facility for reviewing fact at Appeal as is the case in Land Tribunal Appeals. The example referred to here represents one manner in which a claim under s.31(1) should be determined[11] in a Tribunal format. It is recommended that formal recognition now be given to the illegality of Local Public Inquiries and Hearings chaired on behalf of the Secretary of State DEFRA from 2002-2003 to the present. The new generation of Inspectors associated with the Rights of Way Fraternity failed to comply with the legal requirements of Article 6(1) of the Human Rights Act,

[11] The Adjudicator to HM Land Registry 2009/1013 dated 4 July 2011.

1998 in respect of the delivery of one or more aspects of fairness, impartiality or independence of the Local Public Inquiry. It is further recommended that decisions are reversed in those cases where Local Authorities agreed to make Orders that were subsequently and illegally overturned by individual nominees of the Secretary of State. That action need not be delayed while other reform measures are being researched and enacted. There is a natural justice understanding that a possession illegally removed from its owner must be restored. Those to whom this situation applies should register their interest with the Chairman of the County Regulation Committee or Rights of Way Committee.

10. It is recommended DEFRA appoints as its agent HM Land Registry in association with the Lord Chancellor in lieu of the Planning Inspectorate on the grounds:

    a. It is apolitical. (It is not possible to emphasise adequately the extent to which the political dimension is mistrusted and deplored.)
    b. It exercises a regime of equality of arms.
    c. Its evidence management is superior.
    d. Adjudication is open to the consideration of both fact and law rather than to just the law as in Appeal cases. The introduction of an Adjudicator into the process in lieu of Inspectors represents an emphatic separation away from Planning and its Inspectorate.

11. The matter of addressing two instruments of bad law bears repetition. Section 31(1) of the Highways Act, the 20 year rule, whereby individuals who can claim 20 years' use of an owner's property can secure permanent use without having made a declaration of truth or having been warned of the consequences of perjury. Section 31 is responsible for most of the present claims for additions made to the 'Definitive' Map and yet the purpose for which it was intended has passed into history. And, Section 130B whereby a citizen may demand of the Authority the removal of an alleged obstruction, requires additional safeguards.

THE HOBHOUSE REPORT 2011

Section 5.

Examples and Summaries

1. Two distinct groups feature in this Report, landowners and the Fraternity. Among the 'landowners' are the Just family who farm 190 acres in Derbyshire. Their case is among a number of *Samplers* to be investigated by independent persons with a view to providing weight and support to the Case Study at Annexe B. The belief is that the review should establish the virtue of localism over centralism and the extent of abuse.

2. In 1997 the British Horse Society (BHS) resurrected an unsuccessful application from the 1970s to claim a bridleway through the Justs' front garden. Mrs Just's account tells of multiple submissions until the BHS encountered an Inspector prepared to say 'yes'. Mrs Just recounted the procedure. "Parish Council supported us. Derbyshire County Council investigated this case – Officers recommended rejection (which the County Council did). BHS appealed. We had a consultative meeting 'around the table' with us, the BHS and Councillors. The BHS application was rejected. BHS appealed. The case went to the Local Government Office of the East Midlands where it was rejected. BHS appealed. The Local Government Office for the East Midlands again rejected it. (This Office no longer exists.) BHS appealed. Case went to one man at DEFRA in the North East – Mr Peter Millman – who approved the BHS application." What had been the cost? How much did BHS pay? "Throughout this fiasco we had the support of our Parish Council, our previous MP, Ms Liz Blackman (Lab), our current MP, Mrs Pauline Lathan (Cons), our County Councillors, Lab and Cons, our Borough Councillors and we have lots of statements from local people who state they know this claim to be false." The Justs await a Local Public Inquiry which they cannot afford, nor does Anne Just, fighting cancer, have the energy. The continuous threat to her father-in-law's home was more than he could bear. He took his own life. Also classed as 'landowners' are Somerset's Peppard siblings, smallholders who, in the same way as other victims, living as they do in their two-bedroom cottage, do not fit the

stereotype of the landowning toff. Archie Peppard died aged 86 on 8 February 2011.

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Obituaries

Brave veteran of dispute over rights of way

Archie Peppard

A High Ham man who fought Somerset County Council in a rights of way dispute for 37 years has died, but supporters have vowed to keep on fighting for his cause.

Archie Peppard, 86, of Turn Hill Farm in High Ham, near Langport, died on Tuesday, February 8, after a heart attack.

He and his sister Ivy had been involved in a legal fight with the county council for nearly four decades after the couple started seeing people walking up to their house in 1973. The cottage has been in their family for 160 years and the couple believed there must have been a mapping mistake.

Despite losing legal battles in 1997, 1998, 1999 and 1997 to keep a gate to the Turn Hill smallholding closed, the couple, helped by their agent, Marlene Masters, believe they uncovered new historical mapping evidence which proves a mistake was made.

Despite this, county councillors last year rejected a Definitive Map Modification Order to remove the footpath from maps last year.

Mrs Masters, who has championed the couple's cause for 16 years, has vowed to continue the fight in an appeal to the Secretary of State.

She said: "What Mr Peppard and his sister have had to endure over the last 40 years is nothing short of shameful.

"This deaf and elderly man has faced deteriorating health and the county council has

Ivy and Archie Peppard outside their home near High Ham which they claim was blighted by a public footpath they fought 37 years to remove

kept this fight on because it can't admit making a mistake.

"Mr Peppard has been handcuffed, arrested and summoned to court over this. What he has been put through is outrageous. I've had his sister screaming down the phone to me because police have turned up to arrest Archie."

Because the county council has registered the track running alongside the cottage as a public footpath, Archie and Ivy faced a number of restrictions to stop them obstructing a right of way.

This included tying up their dog while walkers' pets could let theirs run freely.

Mrs Masters said in recent months motorbikes had been using the path and causing disturbance.

She said her case had been supported by a London barrister and continued: "What happened to their human rights? This is the biggest miscarriage of justice I have seen."

A Somerset County Council spokesperson said: "The council has rejected the application to delete the footpath. However the applicant has appealed to the Secretary of State against the decision."

Mr Peppard was cremated after a service on Tuesday.

3. The homeowner, with his home situated in his garden, is also collectively known and grouped among *landowners.* The class warrior is observed as being particularly bilious towards landowners.

4. The Fraternity manages the Rights of Way Industry. Their presence is observed in the Planning Inspectorate's bureaucracy, among Access officials in Strategic Authorities, in access-related Organisations and with representation in Districts, Parishes and at grass roots. The Industry's appetite is insatiable. Demands for access are proportionate to the large numbers still employed in the industry despite the number of paths available to be claimed legitimately having been taken into account long ago. Counties responded to the original Hobhouse Report by drawing up their Definitive Maps which included existing paths and in many cases, much more. So extensive had been the gerrymandering that when the Definitive Maps were eventually concluded, they were the most unsafe, legally conclusive set of documents available to be found anywhere in the kingdom. Since then, the abuse of the twenty-year rule has been grossly overdone and condoned in the frequently referred-to Cheats' Charter, Section 31(1) of the Highways Act 1980. There is interest in the identification of the contributor of the original draft Section 53 in the Wildlife and Countryside Act 1981. This is a requirement for Authorities to keep the Rights of Way Map, described as the Definitive Map, under continuous review. It is strange that legislation introduced to protect wildlife should also embrace Highway Law. A public highway is a matter of fact and is not conditional, as is the case in the Wildlife and Countryside Act 1981 by the use of loose terms such as "reasonable allegation" or 'balance of probabilities". What Section 53 has done is to encourage opportunism and acquisition with no apparent sign of the intended quinquennial review of acts claimed to have been wrongful.

5. It should not be necessary for an outsider to recognise and report that the law is unequal, strongly favouring one side. Practitioners in the field cannot have failed to notice the existence of disproportionality and dispensation of favour. A legal opinion has noted that there appear to be many examples of pathways in which decisions and enquiries have been flawed and unsatisfactory.

6. The obligatory path to the High Court denies citizens justice on two counts. Subject to the victims being able to overcome the problem of almost prohibitive cost, they encounter a judicial regime drawing from Government Inspectors their version of the facts, upon which the judge superimposes the law. The length of journey to Court must be shortened, the County Court being the Court of choice. Judges must decide all cases on *prima facie* evidence, not on papers or digests submitted by Rights of Way Officers or Inspectors. The poverty of source evidence introduced at Local Public Inquiries can be rectified by insisting upon the quality of evidence to the same standard as that required at a Land Tribunal. This observation forms part of a broader recommendation.

7. The Human Rights Act of 1998's notoriety masks the reality that this body of law adopted into English Law in 2000 does embody a number of good and useful measures. Article 6(1) for example, guarantees citizens a fair, impartial and independent tribunal. No sooner had the Government set out those guarantees relative to Access than they negated the promises. The Independent Inspectors on the Lord Chancellor's Panel were replaced by what were almost entirely former Rights of Way Officers. Given mindsets developed over careers spent within Country Access Departments, the prospect of impartiality did not appear propitious whereas, having now come under the responsibility of Secretary of State DEFRA, meaning she became policy maker and decision taker, the Inspectors could not be described as Independent as required by Law. Therefore, the prospect of a fair trial is an impossibility. A legal opinion described this allegation of lawbreaking as "persuasive". That is to say, Local Public Inquiries post 2002-2003 to date have been illegal. The question arises, what is to be done in the case of those Inquiries where an unqualified official has overturned the Order of democratically elected officials? The only sensible answer to repair this wanton damage is to uphold the earlier decisions of the Council Committees. This is a matter of doing what is right: it is within the gift of the Secretary of State, uninfluenced by political interests within the Department. That is a strong recommendation. As is evident from the Case Study, the testing of that application at County had been an extreme test.

8. There are administrative problems. A more desirable equilibrium might be achieved if all Councillors and Senior Executives worked at the same level of intensity and commitment as the Rights of Way Officers. The Officers are advisers yet find the welcome requirement to act as Decision-makers thrust upon them by Councillors often due to their inability to grasp the intricacies of what they are being asked, a condition fostered in part by limiting the objectors to 2-3 minutes to present their case to the Council. The public deserves to see evidence of control, leadership and moral courage in the relationship between senior Management and Elected Members over their Officials.

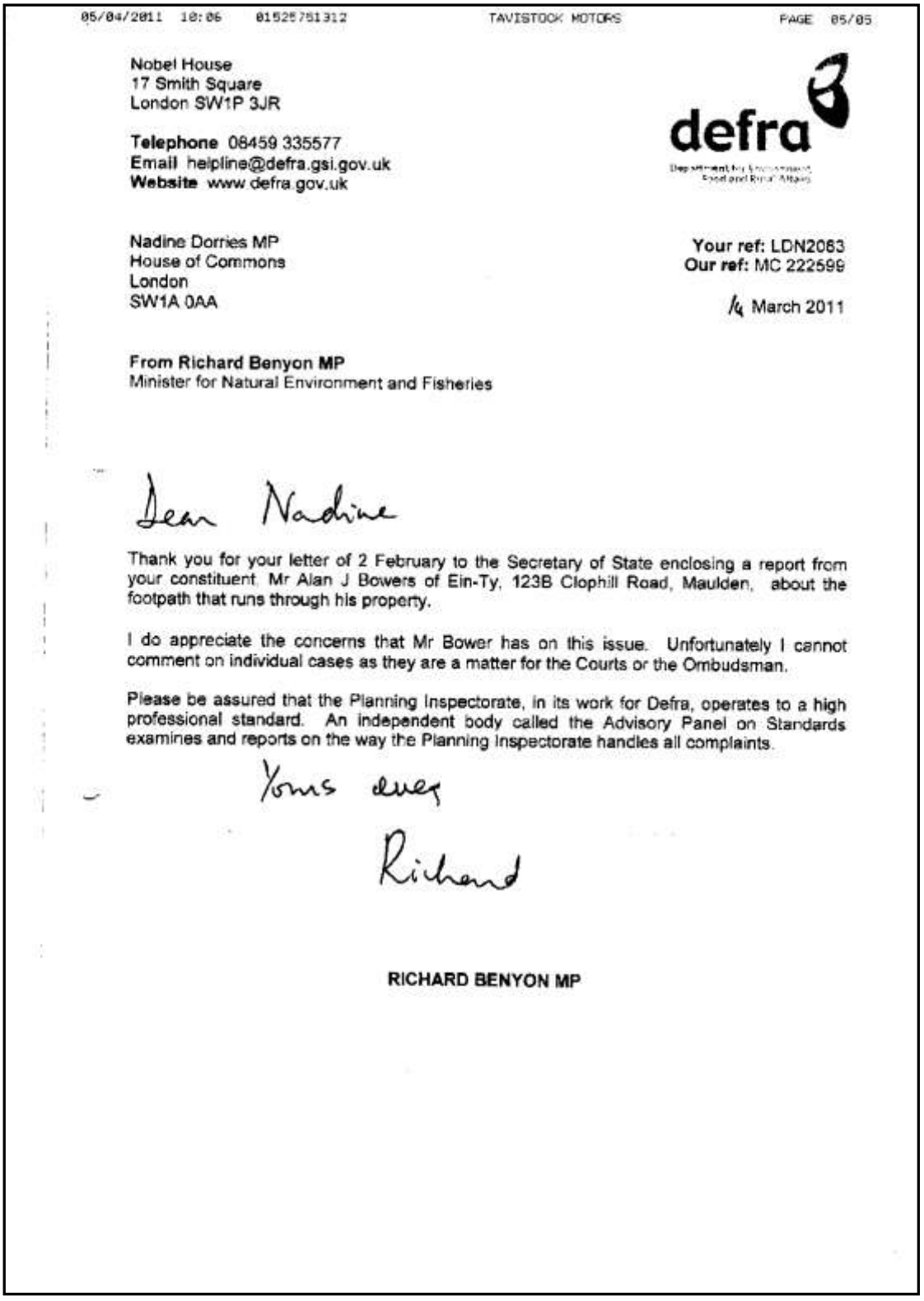
9. Economies of scale are achievable. Three tiers of economy are identified, particularly in the poorly performing Rights of Way Department within the Planning Inspectorate.

10. The final conclusion considers next steps, investigating those cases we describe collectively as *Samplers*, essential corroboration. They will serve to bolster the Case Study and this Report, a consequence of which will see the oxygen of publicity generating responses exposing the true extent of this scandal. The Jenkinson Case of Staffordshire promises to examine not only the conduct of Officials but also to provide an answer why Jenkinson, a scrap metal merchant, failed in Court when the evidence suggested a different result. As a consequence, he lost his lifetime's savings. The purpose in examining Cumbria's twin bridleway case is to draw out lessons of process and procedure. The Mear case concerns an access dispute between two neighbours. Cambridgeshire County Council championed the cause of the Mears' neighbour, expending what is thought to have been (and subject to confirmation) a sum of public money in the region of £345,000. Finding themselves forced to defend their property, notably its value, the Mear family became drawn into costs in excess of £500,000. They lost. The publicity had rendered their home unsaleable. They face bankruptcy but since they cannot sell their home to discharge their debt, principally to lawyers, they find themselves in an impossible position. This case demands review.

11. Mr Bowers of Bedfordshire, the owner of a small garage, suffered that same experience when he took legal action to defend his home against parties who had applied the notorious 20-year rule with a Section 130B trigger to put a Right of Way through his garden. They did this through collusion and malpractice. Mr Bowers lost not only his life savings but in addition, his passive defence of his home resulted in his emergence with a criminal record. He kept a record of the abuse he encountered and which fell within Secretary of State DEFRA's area of responsibility. He arranged for his dossier to be handed to the Secretary of State by his MP, Nadine Dorries MP. At DEFRA, the dossier was passed to Richard Benyon MP, a junior Minister. Bowers' precautions were to no avail. A bureaucrat did prepare the 'nonsensical' draft letter which the Minister duly signed. Bowers wrote to the Minister[12] lest he believed the odd letter which he had signed bore any relationship to the truth. "I particularly asked Ms Dorries to contact the Secretary of State directly due to the reputation of your Rights of Way bureaucrats to be pro-access and biased. I did not want the correspondence intercepted and subject to a nonsensical response." He sent his letter to the MP's office in the House of Commons. Bowers added a number of questions for good measure. He did not have the benefit of a reply. The conclusion to flow from this experience has already been established in a comment made earlier in this Report by a good and honest public servant: "In all this, there is something wrong. The evidence clearly shows this to be so, yet I find difficulty in getting those in authority to either listen or respond. Officers and officials are not inviolate and must be called to account, otherwise the course of justice is perverted". The truth is that in real life, *Yes Minister* is not at all funny.

12. It would be appropriate to give an example of a 'nonsensical' letter. The purpose of Ms Dorries writing directly to the Secretary of State had been to avoid the interference of a partisan bureaucracy. The Bowers dossier told of bad law being manipulated, bad governance and malpractice. The Minister claimed he could not comment on allegations which revealed his Department to have acted improperly. This is not, as claimed, a matter for Courts which are unequal or Ombudsmen whose Terms of Reference are inadequate. It is

[12] Letter Bowers to Benyon dated 9 April 2011.



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defra
Department for Environment, Food and Rural Affairs

Nadine Dorries MP
House of Commons
London
SW1A 0AA

Your ref: LDN2063
Our ref: MC 222599

4 March 2011

From Richard Benyon MP
Minister for Natural Environment and Fisheries

Dear Nadine

Thank you for your letter of 2 February to the Secretary of State enclosing a report from your constituent Mr Alan J Bowers of Ein-Ty, 123B Clophill Road, Maulden, about the footpath that runs through his property.

I do appreciate the concerns that Mr Bower has on this issue. Unfortunately I cannot comment on individual cases as they are a matter for the Courts or the Ombudsman.

Please be assured that the Planning Inspectorate, in its work for Defra, operates to a high professional standard. An independent body called the Advisory Panel on Standards examines and reports on the way the Planning Inspectorate handles all complaints.

Yours ever

Richard

RICHARD BENYON MP

unclear whether there was any part of the Bowers dossier the Minister understood. To tell the MP that the Planning Inspectorate "in its work for DEFRAoperates to a high professional standard" reveals an unawareness of the fullness of the truth. The Minister had been comprehensively duped.

DEFRA's Officials should leave the Department's politics in the care of salaried politicians.

13. It is believed that the Minister is guilty of gravely misleading Ms Dorries and betraying Mr Bowers in suggesting that "an independent body called the Advisory Panel on Standards (sic) examines and reports on the way the Planning Inspectorate handles *all* complaints". Statistics are hard to come by. Mr Bowers queried the Minister's assertions, asking for recent figures. A House of Commons Report on the Planning Inspectorate and Public Inquiries 2000, revealed the Committee had seen 75 out of 1900 complaints.[13] There is evidence from Wiltshire of an Inspector's colleague not processing a serious complaint against the Inspector. The Case Study within this Report revealed how 'Quality Assurance' put a protective ring around their colleague, also an Inspector, unbelievably rejecting multiple complaints against her. The Committee does not see *all* complaints. Dorset CID expressed an opinion that the Inspectorate's management of complaints had been found to be unsatisfactory: *"Whilst complaints have been made about the Inspector's Decision, there appears to have been no independent review of this decision within DEFRA. It seems clear to me that there are unanswered questions concerning the conduct of an internal enquiry. Surely this cannot be right and I feel as though a Government Department should be more open and receptive to questions and complaints from members of the public."* [14] The Planning Inspectorate responded to the signatory, a Detective Sergeant: "Should you wish to pursue the issue of how we deal with complaints, it would assist me if you could write to the Inspectorate in your capacity as a private citizen". It is recommended, in the Public Interest, that DEFRA's Minister requires the Planning Inspectorate to reveal evidence of its 'high professional standard' by responding to the question how, precisely, do they deal with complaints. "We have not found any evidence to support claims that the Inspector's Report was flawed or biased in any way",[15] they told Dorset CID. There were multiple, specific complaints, heavy with evidence

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13 House of Commons Session 1999-2000. Environment, Transport and Regional Affairs Committee. Thirteenth Report Minutes of Evidence , 28 March-18 April 2000, para 370, p.42.

14 Broadhurst to Ashley K. Gray, The Planning Inspectorate, 18 October 2007.

15 The Planning Inspectorate's Shelton to Broadhurst, 15 November 2007.

to the contrary, submitted by observers present at the Inquiry, whereas the colleagues of the Inspector were not. We wish to see in details the process by which this Decision was reached. In addition, we wish to see the Report of the Advisory Panel on Standards relating to this case.

14. Behind virtually every recorded instance of obstruction, misrepresentation, bullying and intimidation, there is a government employee. This abuse must be stopped. Doing nothing is not an option. Lord Carlile recently expressed an opinion that the British have a tradition of righting wrong. That opinion is at variance with a view of us prevalent in continental Europe, that we have a habit of grumbling among ourselves, rarely directing our complaints to authority. There should be no doubt at all that the Hobhouse Report 2011 is unequivocably directed at authority.

THE HOBHOUSE REPORT 2011

Section 6.

Summary of Main Recommendations

The immediate reaction of those who work in this area is near unanimity in agreeing that change, as proposed here, will never happen. Circumstances do suggest to the contrary, that the time is right to accept our recommendations and have them included in the Coalition's Policy Programme. The reason for believing this is based upon Transparency International's (TI) 2011 Public Perceptions of UK Corruption.[16] *TI asked a random sample of 2014 respondents how corrupt they perceived specific sectors to be, using a score of 1 (not at all corrupt) to 5 (extremely corrupt). According to the percentage of respondents scoring 4 or 5 in each case, top of the list came Political Parties with 65.5% and 3rd, Parliament with 55.7%. These are historic values relating to sectors which should now be on the way to complete rehabilitation. We need to consider those sectors uninvolved in the political turmoil. The 4th most corrupt sector was deemed to be Local Government and 6th, Public Officials/Civil Servants. What is good for Parliamentarians is also good for Public Servants. Here is the opportunity for Parliamentarians to show a British public entirely reliant upon those they trust the least that lessons have been learned, that they are not more concerned with their own status and gratification than doing what is right. The Hobhouse Report 2011 offers constructive ideas for change, notably in those sectors where public servant corruption is endemic. Let the politicians' message to them be* tu quoque, *now it is your turn.*

1. The creation of a new Countryside Bill by an Independent Committee is recommended, retaining that which is good and rejecting that which is bad. An example of that which is bad is formulated around the myth of the existence of unclaimed pre-1949 public Rights of Way. The Countryside and Rights of Way Act 2000 introduced the idea of maintaining the right to such claims until 2026. The idea is supported by a lobby group, alias The Stakeholder Working Group. The argument is unpersuasive. It is recommended that such a concept be set aside immediately.

2. We recommend the introduction of two types of Rights of Way: Parish Paths and longer paths of ten miles or more. The application process is to be simplified. Objections will only be entertained from objectors living within three miles of the boundaries of those Parishes through which the Way passes and within the Authority/ies in the case of long paths.

3. The injustice and illegality of Government Inspectors presiding over Local Public Inquiries will continue for as long as they are permitted to remain in place. It is recommended that they make way immediately for Adjudicators qualified in law from HM Land Registry, to preside over a proper Tribunal as specified by law.

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16 Citywire, 20-24 June 2011.

4. There is the matter of parties who were beneficiaries of an Order made on their behalf by County Committees, only to have that Decision overturned by a single Inspector unqualified to do so. It is recommended a new statute be prepared for Parliament to overturn these illegal decisions in favour of the earlier Decisions made locally at County level, if that is the expressed wish of the injured parties on a case by case basis.

5. Economies are recommended in three tiers of administration by the removal of:

    a. The Government office which deals with statutory Schedule 14 (Wildlife and Countryside Act, 1981) Appeals.
    b. The Planning Inspectorate tier – which deals with Inquiries, complaints and all relevant paperwork – should go, its remaining responsibilities transferred to a new Agency formed upon the Land Tribunal.
    c. The Strategic Authorities' involvement in investigation.

6. It is a requirement that each Strategic Authority should have a clear idea who their representative decision-takers are, who their advisors are, and exercise effective separation between the two through good control, good management and effective subordination. Emphasise responsibilities, not rights.

7. It is recommended that the composition of what are often unwieldy, politically divided Roads and Rights of Way Committees, also known as Regulation Committees, should change. The Panel would in effect become a Tribunal, its Chairman a barrister or solicitor independent of DEFRA, the Chairman appointed by the Lord Chancellor. Overdue reform will ensure that the volume of work appearing before the Committee will reduce sharply. The Chairman is seen as being supported by the relevant local member of the Strategic Authority and a further elected member of the Authority. All locally-elected members are to be trained in Rights of Way matters. Evidence is to be given on oath. Unresolved disputes are to be referred to a Land Tribunal Adjudicator from HM Land Registry and, if not resolved there, to the County Court. These measures introduce an essential element of proportionality to the system. The High Court and Court of Appeal need play no part in this process.

8. There are two instruments of bad law within The Highway Act, 1980 requiring attention. It is recommended that Section 31 should be revoked. Individuals are presently claiming 20 years' use of a given way, with a view to achieving unlimited control without necessarily attending the Inquiry or giving evidence on oath, without making a declaration of truth or having been warned of the consequences of perjury. Section 31(1) has become known as the Cheat's Charter. It is the misuse of this Section which is responsible for the overwhelming number of applications for the recognition of formerly 'unrecognised' Rights of Way. Section 130B, by which a citizen may demand of their Authority the removal of an alleged obstruction, requires additional safeguards.

9. 'Definitive' means final. County Councils' Definitive Map preparation ran, for some, what was an extended course yet they did finalise the task set by Hobhouse. The requirement in Section 53 of The Wildlife and Countryside Act, 1981, to keep the Definitive Map under continuous review, is both a contradiction and confusing. We recommend the requirement be removed.

10. We recommend Ombudsmen's Terms of Reference be reviewed with a view to achieving greater utility.

11. It is recommended Walking/Riding Organisations pay Councils the full costs arising from their access aspirations.

12. There are two sides to an Access dispute, one side of which will face inequality. It seems predictable that in such a contest, one side will be favoured at the expense of the other, from the bureaucracy in DEFRA, through the Planning Inspectorate to Access professionals in Strategic Authorities, often with lateral connections to Access Organisations, down to their representative activists at grass roots. Such a state of affairs reflects weak, not good, government. The recommendation flowing from this, the last item, is taken from the Bartlett letter to Henry Hobhouse. "It is to be hoped that those who have power to alter things also have the courage to resist the ingrained prejudice of the present administrators and see that there has to be change." That means systems, personnel and the law.

THE HOBHOUSE REPORT 2011

Section 7.

Conclusion

1. We have shown categorically that the present arrangement is both unjust and unfair and fails to meet local requirements for recreation, leisure and tourism. In addition, it is unable to take into account privacy, security, health and safety, and local people's wishes. All that can be taken into account is historical evidence, the 20-year rule and legal events. The Inspectorate is neither fair nor impartial. Inspectors are not Independent. Their removal has been recommended. Inquiries do not take place on oath, nor is the prevailing understanding of evidence in a Court of Law adhered to. Finally, the sides in a legal dispute are entirely mismatched in circumstances where the Authority can be seen expending public money to the benefit of one party in a dispute.

2. To address these issues, we recommend:

    a. Decisions should be taken at the lowest level practicable.

    b. In the event of a dispute, an Independent Panel should be convened. This Panel would sit locally. It would consist of an independent, legally trained barrister or solicitor Chairman from the Lord Chancellor's Panel and two members from the Strategic Authority, one of whom is the local member. All elected members of the Strategic Authority are to be trained in the full details of Rights of Way.

    c. In the event of the Independent Panel failing to resolve the issue due to an abstention or one of the parties making a legal protest, the matter shall be put before an adjudicator of HM Land Registry. If objections still remain after that appeal, the matter should be heard in the County Court. The involvement of public money expended upon the preferred candidate is to cease.

    d. When applied to Rights of Way, the maxim that a highway is always a highway is fallacious because no ownership is transferred. Therefore Rights of Way consideration should take into account matters such as privacy, security, health and safety and local people's wishes whether for a temporary or permanent diversion.

Government Inspectors – Wrongful Appointment

This Annexe has been written as a stand-alone document. It will be seen to repeat a number of points made in the main body.

1. The Hobhouse Committee decided that the proper Court for the hearing of disputes should be the Quarter Sessions – the County Court. The Quarter Sessions were favoured ahead of the High Court in order to protect appellants from the high costs of the Higher Court. The ultimate decision favoured the High Court. There is a note of a discussion on footpaths dated 16 May 1945[17] in which Lord Justice Scott, the senior legal advisor, indicated his preference for a panel of arbitrators at the lower level to be set up whose function would be the investigation of disputes referred to them. A single arbitrator would make a binding decision on disputed cases. "The questions involved being essentially legal, the membership of the panel should be limited to barristers of not less than seven years standing or other persons specially familiar with the law of highways; and in order to ensure confidence in their impartiality and so avoid frequent appeals, it might be desirable that they should be appointed, not by the Commission but by some independent authority such as the Lord Chancellor."

2. As the system became finessed, a Lord Chancellor's Panel was established and manned mostly by retired professional people. What had been achieved was the desirable separation of the policy-making Ministry of Town and Country Planning, a forerunner of the Department for the Environment, Food and Rural Affairs (DEFRA) from the decision-taking Lord Chancellor's office. In that manner, the members of the Lord Chancellor's Panel were seen to be both independent and impartial and the unqualified statement made to the effect that the Policy Maker is not, in addition, the Decision Taker.

3. Inspectors had originally been placed under the Lord Chancellor's 'independent authority' in order to 'ensure confidence in their impartiality'.

[17] National Archives MAF 48/666 111930.

Two words describe the replacement of the Lord Chancellor's Independent Inspectors at the time of the promulgation of the Human Rights Act 1998, senseless and illegal. Senseless because, in a landmark measure, the Government had concurrently promised its citizens access to impartial and independent tribunals. It was illegal therefore, for not only did Rights of Way Officers acting as Inspectors appear not to be impartial to those they opposed, they were emphatically not independent. No convincing statutory authority has been identified to justify the change yet that remains academic until such time as the promise of an impartial and independent tribunal is expunged from Article 6(1) of the Human Rights Act 1998. There is therefore the unavoidable conclusion that since 2002-2003, Local Public Inquiries conducted by the new generation of Rights of Way Officers to the present time were illegal. The longer this generation of Inspectors is permitted to remain in place, the longer the injustice and illegality will continue. It is recommended that they step down immediately.

4. Inspectors must be independent of other groups – e.g. the Rights of Way interests and the Executive as represented by the Secretary of State. An Independent individual is not dependent upon, or subject to the control, power or authority of another: they are not subordinate. There must never be room for suspicion that the manner of an Inspector's handling of a case had been plotted within the Planning Inspectorate. The Inspectorate cannot be Independent for it has no standing jurisdiction of its own.

5. There is merit in examining the *locus classicus,* Bryan v UK [1995] 21EHRR342. There are two points:

    (a) It is given in Planning Inspectorate's Advice Note 19, referring to the Bryan case, that an Inspector is independent and impartial for the purposes of Article 6(1). "There is nothing to suggest that, in finding the primary facts and drawing conclusions and inferences from those facts, an Inspector acts anything other than independently." The Bryan Case, 1995, occurred when the Independent Inspectors within the Lord Chancellor's Panel were still in place, prior to the politicisation of the Inspectorate brought about as a consequence of the introduction of former Rights of Way Officers as Inspectors. The

case's focus was upon two buildings erected without planning permission: it was not a rights of way case, despite the reviewing body acknowledging the Inspector's decision had been carefully reasoned. The European Court was not satisfied that the Inspector was an independent and impartial tribunal, on the grounds that he could be overruled by the Executive. They believed however that these defects could be overcome if the Inspector were subject to the supervision of a judicial body that had full jurisdiction and itself satisfied the requirements of Article 6. The Court believed that the right to appeal to the High Court and the grounds of review being wide enough to provide the necessary safeguards, an Inspector could be deemed to be an independent and impartial tribunal.

(b) Professor Malcolm Grant contested the point which suggests if the lack of independence were a problem, there was an appeal process to fall back upon. He disagreed. "If the initial hearing was, by definition, conducted by a tribunal which lacked the requisite independence from the Executive, it is impossible to understand how that defect can be corrected by a right to appeal to a body which does not have the power to re-hear the matter afresh… If the threat to the Inspector's independence stems, as the Court found, from his or her proximity to the Secretary of State, then appeal to the High Court on a point of law offers no escape from the violation."[18]

6. There is a more fundamental reason for believing the European Court's ultimate conclusion to be unacceptably infected by unreality. The Study is replete with examples of citizens being prevented from proceeding to the High Court to protect their property due to the enormous cost involved. There is a difference between the *right* to appeal and an *ability* to appeal. No such affordability restriction applies to their opponent, DEFRA, given their access to unlimited public funds.

7. In logic and law, the loop appeared satisfactorily closed. Responding to a request for a legal opinion to the proposition that the Secretary of State's

[18] Professor Malcolm Grant to the Select Committee on Environment, Transport and Regional Affairs. 21 May 2006.

appointment of the cohort of Rights of Way Officers as her Inspectors was illegal; an eminent QC described such a proposition as 'persuasive'. The Rt Hon Oliver Letwin MP, associated with the Case Study from the outset, asked the House of Commons Library for details of the Statute which authorised the replacement of the Independent Inspectors of the Lord Chancellor's Panel by former Rights of Way Officers under what is presently the Secretary of State DEFRA. The reply identified Section 8 of the Countryside Rights of Way Act 2000, the CRoW Act, (recognised as embodying the right to roam over two million acres of open country) as the Statute which gave the Secretary of State the power to delegate appeals to appointed persons. This revelation has not previously appeared in DEFRA's exploitation or argument. What the CroW Act *did* do was to deny walkers rights of passage through people's homes. An unbroken thread of common interest had been created, stretching down from DEFRA, through their agency in the Planning Inspectorate to Access Officers in every Strategic Authority in England and Wales – undiluted Mao.

8. Historians begin their examination of the facts of statutory change at the point of origin. This is the aforementioned comment on 16 May 1945 of Lord Justice Scott, the senior legal adviser to the Hobhouse Committee. Addressing the topic of impartiality of Inspectors, he wrote: "…..in order to ensure confidence in their *impartiality* and so avoid frequent appeals, it might be desirable that they should be appointed, not by the Commission but by some *independent* authority such as the Lord Chancellor".[19]

9. The concurrent promulgation of two complicated bodies of law can, and do, reveal left hand/right hand issues. The granting of the power to the Secretary of State DEFRA to delegate appeals to appointed persons is incompatible with Article 6(1) of the Human Rights Act which entitles every citizen to a fair, impartial and independent tribunal. Impartiality issues were bound to arise in circumstances where, within an intensely political environment, a cohort of Rights of Way Inspectors with the same mindset would, not unnaturally, be instinctively opposed to those on the other side of the fence whose intentions were not seen as being in harmony with the ideals of Countryside Access.

[19] National Archives MAF 48/666111930.

What came to pass was precisely what the astute Lord Justice Scott predicted. Appellants appear to have no confidence in the impartiality of the Secretary of State's appointed Inspectors. A contributory factor is the unreceptiveness of colleagues within the bureaucracy, mismanaging a dysfunctional complaints process. Their abhorrent conduct described in the Case Study – one of many – is not what is expected of a mature and just Government.

10. No one insists that the Lord Chancellor's Inspectors were infallible. No one can insist they were neither impartial nor independent. The idea that we now have an impartial Inspectorate is not borne out by the facts. By the same token, as explained earlier, it is not possible to make a case that the present Inspectors are Independent as required by law. The loop remains closed. All Local Public Inquiries post 2002-2003 until the present, at which the Secretary of State DEFRA's appointed Inspectors have presided, have been illegal. There are no fees to be generated in contesting the facts in law. It comes down to common sense. The abuse must end. It is irresponsible to permit the matter to drift on for want of a responsible person to take charge.

The Problem – A Case Study

Before recommending reform of the present Rights of Way system, it is essential that the meaning of Localism and Centralism (Centralised Democracy) is understood in context with a view to deciding what works and what does not. The boundary between the two functions runs between the County Council and the Planning Inspectorate. The Wallhayes case study as illustrated here is not fundamentally different from many similar cases of abuse seen throughout the country. The advantage it enjoys is the depth and relevance of its documentation and the recorded experience of a home-coming soldier and his family. The bullying, intimidation and misrepresentation encountered was not the British way as they knew it.

The failure here to find any sense of natural justice, an equality of arms, is carefully explained in simple terms, as is the means required to bring an end to this line of injustice. This is a chronological account of the activism faced by the family from 1998 to the present day. The Chairman of a County Roads and Rights of Way Committee said: "This is a most telling exemplar for the present bad situation".

1. Wallhayes is a Dorset family home, part of a former dairy which included the next door farmhouse. The cattle stalls lay between the two buildings in what is now the Wallhayes vegetable patch. The cows came and went through the farm gate on the south side of the property, through which there runs a stand-alone, domestic path to the railway station 500m away. The path is shown on the OS map with only one open end, meaning it could not have been a Right of Way. 60m from the southern gate, through the enclosed property, stands the northern gate providing the homeowners with access to the village lane.

2. When the time came to compile the Definitive Map, it appears to have been in the mind of the drafters to connect the stand-alone path to the road by inserting two additional lengths of path running northward on either side of the farm, to make junction with the lane. One of the forks ran through the landowner's property; the other came through Wallhayes. The landowner objected to the extension proposed to run over his land because there had not been a path there previously. It was removed. The Wallhayes homeowner was unaware

of the aspiration to take a public way through her home. Local people did not go through neighbours' homes unless invited. There was no statutory obligation for the Authority to tell the homeowner what they had done. Understandably, the homeowner did not take action to dedicate the extended length of pathway for public use. What the Authority had done remained a virtual secret for over a decade.

3. When the sleight of hand was revealed, it had virtually no impact. Few knew what had been done and it still remained a fact that villagers did not go through people's homes uninvited.

4. The catalyst transpired to be an article in *Dorset* Magazine dated December 1997. A member of the Open Spaces Society created a pub walk which included passage through the Wallhayes garden. This form of colonialism is not untypical of that Society although it is quite foreign to the original intentions of Sir Arthur Hobhouse. There are alternative, uncontroversial paths on either side of the route selected. There is no more certain way of ruining walkers' recreation than confronting them along the way with a gate to someone's home to open, someone no different than themselves.

5. The owners reacted to restore pre-existing levels of security and privacy by guiding the stream of outsiders around rather than through their home. Liaison and discussion with the landowner, Parish and Ramblers' Association epitomised a state of Localism at work as it should be. The solution offered something for both sides: it was an example of the flexibility Hobhouse had intended. A local agreement was reached. There was a problem with the Parish Council which was faced by two similar applications for diversion, fast-tracked one and opposed the other in accordance with the recommendation passed down by the Officers in County Hall. As a safeguard, the appellant put his case informally before what was then a practising Inspector on the Lord Chancellor's Panel. The Inspector encouraged the appellant to go ahead with the proposal since he had found nothing in the documents likely to cause problems at a Local Public Inquiry. There was nothing that could forestall the intervention of external politics. The landowner came under pressure to reverse his agreement to co-operate; the local Ramblers officer was told by her superiors that her agreement had been "the wrong answer".

6. The County Solicitor assigned to Rights of Way admitted Wallhayes had a case but that the application would be blocked for fear of creating a precedent. A written account reveals the only circumstances under which the Officials were prepared to accept the application was where "the public are net gainers". There is no such legal requirement. The County's Officers made the District and Parish Councils aware of what was expected of them. The County Council had delegated powers to hear diversion applications to District Councils.

7. On 27 November 2000 the County's Principal Solicitor wrote to West Dorset District Council's Head of Legal Services whose members, on 28 November 2000, allegedly intended to make the necessary Order to approve the Diversion. "The County Rights of Way Officer has instructed me to object to the proposed order because it is clear that the diversion would result in a path which is substantially less convenient to the public." On 22 October 1998 the County Council had established certain parameters applicable to the routing of the path, from which it is clear the County's Rights of Way Officer misled the Principal Solicitor.

8. Eventually, on 30 April 2001, the District Council Committee assembled to hear the diversion application. One local objector persuaded the Council to accept anonymous objections, of which there were seven from local sources. The Council's Vice-Chairman warned the Members that some of the evidence they had heard was unreliable. Some time after the application had been lost 6-5, a review discovered that three of the seven local objections had been written by one person, the individual who asked for anonymity and who would become identified as the Champion opposed to the appellants. The application went to Judicial Review, from where it was returned to the Authority. The appellants successfully applied to the County Council for the case to be heard at County Hall.

9. The Officials' obstruction of the application has been fully documented. The County Council had never undertaken maintenance of the footpath. An application for sight of the relevant Survey Report was rebuffed due to its 'unavailability'. The essential Definitive Statement carried no Statement. A dossier of local evidence provided by established residents revealed the

Officers' claims to be without substance. The County Council's elected members, the decision-makers, assembled on 13 May 2004 for the first part of a two-part Committee process. They voted 5-1 in favour of making the Order, the details of which the Officials took seven months to publish. There was a filibuster at work. Not until 14 July 2005, fourteen months after the Roads and Rights of Way Committee instructed the Order be made, did consideration of the Confirmation phase begin. The Leader of the Council attended the Committee Meeting. He reported his unease to the CEO regarding the information the Officers were presenting to the Committee. The CEO instructed the Principal Solicitor to investigate. It appears nothing was done.

10. The elected members responsible for Rights of Way at West Dorset District Council overturned their earlier decision, voting 7-1 in favour of the diversion. Fifty-six months had passed since the County's Principal Solicitor effectively prevented the District Council from coming to the decision now reached by the County Council with all the inherent stress and massive cost. It was this senior solicitor who came forward to defend Wallhayes – it being the County Council's responsibility. At the Inquiry, counsel for the appellants reminded the Inspector that 85% of the County's and District's eligible, elected members had approved the diversion. "I am not interested in that."

11. The appellants endured eight years of siege before securing the virtually unanimous support of the elected members of the District and County Committees. This eventual victory for local democracy had been achieved over the calculated obstruction and objections of the advisors. It did not last: the losers became winners. Only one objection is required to overturn the decision-makers' decision. The Secretary of State's appointee had been associated with Rights of Way Officers. She was a former Officer herself and a Member of the Institute of Public Rights of Way Officers (IPROW). It appears to have occurred to no one but the defence that this appointment was inappropriate. If she were not to confirm the Order, the Inspector was obliged to show that the proposed diversion was more detrimental to the public than it was advantageous to the homeowners. At the outset, the Inspector ruled that the matter of the original wrongful designation was not to be broached.

Analysis of the Inspector's Decision revealed evidence of poor judgement and such an unbalanced selection of evidence as to have perverted the course of justice.

12. The Independent representative of Dorset CID walked the course, carrying as a guide the Inspector's Decision. The Detective Sergeant told how he had approached the task "with an open mind. My personal opinion is that the proposed diversion seemed to make perfect sense, if anything making it easier by not having to cross a ploughed field….. From the evidence I have seen and read, I would certainly not agree that the effect upon the public would be more detrimental than the effect on the applicant of her diverting the path".

13. The first negativity can be traced in two documents wrongfully amended by County Officials which transpired to be in sympathy with the Inspector's conclusions. These amendments were made before the Inquiry had assembled. *The Farming News,* 1 February 2001, revealed such activity to be common, quoting "misrepresentation of evidence, taking of witness statements in private and surreptitious altering of maps and other documents in County Councils' keeping as well as other misdemeanours". The Council is the custodian of documents but is often found reticent in making them available to defendants. See, for example, the Bowers case. The burden of proof resides with the defendant not the prosecutor.

14. In October 2010, the County Councillor of the Ward concerned, handed to the CEO, the senior Official, an analysis of wrongdoing and malfeasance attributed to his Officials. The minimum that might have been expected would have been to discipline the individuals concerned, to set the standard, introducing overdue controls to the Countryside Access Department and to apologise to those discriminated against. It appears nothing was done; in effect sending to those involved an unequivocal message of inertia, that they could continue as before.

15. The active components of the Parish Council who had leant heavily upon friends and relatives for support, declined the opportunity to make public statements at the Inquiry. They could not be cross-examined. Some weighting should be made against politically inspired protest, notably the

politics of envy. The senior of the RA representatives at the Inquiry took exception to the local policeman's observation that the appellants had been subjected to an orchestrated campaign. He required evidence. The Inspector's notes reveal the policeman's reply. "I formed an opinion that inaccurate points were being repeated by the objectors. Some seemed to stretch credibility and deviate from the facts. It smacked of collusion….. I believe that those who believe passionately about something can stretch facts." It was during the course of the Inquiry that a former Bridport police Inspector accused the Chairman and Clerk of being "too close". Both resigned their positions shortly after the end of the Inquiry. The Clerk had been one of two close neighbours to Wallhayes whose level of activism could be described as obsessive.

16. Not until the opening of the Local Public Inquiry did the appellants discover that the Officials had altered the map submitted with their application without permission. Earlier, the Officials removed an inconvenient truth contained within the report of their Consultant. The two amendments were such as to support and accommodate the Inspector's Decision. It was therefore possible to suggest that before the Inquiry began, the Officers were aware of the mechanics of the Decision the Inspector would reach after the Inquiry. The appellants wrote to the County Council for answers to the two questions arising – who altered the map and why? The Council responded but made no attempt to answer the questions.

17. The three individuals who emerged as prosecutors at the Local Public Inquiry were two representatives of the Ramblers' Association and a near neighbour who appeared to empathise with the Inspector. One of the two Ramblers authorised to speak on behalf of the Association had taken part in the early liaison which determined there to be no grounds for objection. Opinions change and can be changed. This individual had earlier told the same Inspector that Ramblers did not enjoy going through people's gardens.

18. The first person called to give evidence was Mrs Ramage, the near neighbour identified as the Inspector's Champion. "Your purpose is to ensure this Application fails", said the Inspector, Mrs Eden. On 11 November 2006, PC T.J. Poole, who lives in Nettlecombe, complained to the Inspectorate. He

noted that the Inspector had "chosen to use Mrs Ramage as one of her main witnesses" and that it appeared "the Inspector was working to a personal predetermined end, or had been so instructed by DEFRA". Reference here to the possibility of the Inspector working under instructions from DEFRA would have been a non sequitur had the Inspector been Independent as required by law. His was among a number of complaints to be ignored by the Inspectorate.

19. The Champion's admitted 'unintentional' lapse in truth-telling – "I did not mean to lie" – served to infect her whole body of evidence. The Ramages had only become neighbours through the generosity of those in Wallhayes. "If they don't like it", Mrs Ramage told the Inquiry, "they should go!".

20. There is a small Committee, notionally independent, which attempts to exercise a quality control over the complaints process but it is only able to review a miniscule number of complaints. Complaints raised against Inspectors appear to enter an arena of denial where the apparent intention is focused upon the preservation of the reputation of the Organisation and the Inspector. Eight complaints were raised as a consequence of the Decision made at the Wallhayes Inquiry. There was one separate apology arising from the Inspector's bad behaviour in a public place. The Fraternity have a common interest to avoid the creation of precedents. Those complaints which the Quality Assurance Unit (QAU) are there to answer were dismissed without reason. Numbered among those who cried foul to no effect were a former police inspector, a detective sergeant and the policeman living within the community. The remainder were ignored. Accordingly, a consolidated complaint was drawn up by the appellant in order to stir the cognitive processes of the QAU. The response was hostile. The compiler was informed that if he wrote again, the correspondence would be filed without response. Equally, standard procedures can be identified throughout the country. The Quality Assurance Unit put-down was repeated word perfectly by Cambridgeshire County Council in response to questions intended to assess the scale of damage caused to the Mear case by their apparently unlimited support of the Mears' opponents. Somewhere, the idea of the role and function of the public servant has been lost. This degree of protectionism is

unwarranted, unreasonable and not how the civilised behave. The more the Rights of Way Section of the Planning Inspectorate is examined, the greater is the conviction of unacceptable bias.

21. The deliberate mismanagement of complaints is symptomatic of the behaviour of an anarchic bureaucracy. Malcolm Read, farmer, of West Grimstead, Salisbury, complained to the Planning Inspectorate regarding the conduct of their Inspector Millman. I make the not unreasonable request for an account of the process, progress and disposal of this complaint which, like so many of its kind appears to have disappeared. Left to its own devices, said Read, "the Planning Inspectorate seems to lack integrity". Mr Millman featured in complaints arising from the Just and Mear cases. Mr Read won his case (to prevent a footpath being opened to all traffic) by proxy, a case in which an active Champion was evidently hard at work. Read and friends won the case at great expense - £75,000, very little of which was recovered. Authorities are poor losers and often respond by drawing upon County coffers or funds readily supplied by sympathetic Organisations to move the goalposts and re-enter the fray against members of the public they had managed to bankrupt in the earlier encounter. On this occasion, on their own initiative, Wiltshire Council contemplated the upgrade of the footpath to a restricted byway. Who is there prepared to defend such behaviour? The Government should consider the Terms of Reference of the Parliamentary and Administrative Ombudsman. Refusing to help on the grounds that the party had gone to court is irksome when the journey to court was an involuntary act within a discredited process.

22. A small number of Inspectors did not come through Rights of Way Departments. An opportunity to observe whether there was any fundamental difference between them and their Rights of Way colleagues arose serendipitously during a review of the Inspectorate's monitoring regime. Cumbria County Council proposed the creation of a new bridleway and the downgrading of an existing bridleway to a footpath. Under his Order FPS/H0900/7/60 dated 3 September 2010, the Inspector authorised twin bridleways. An effective, neutral monitoring service would have referred

such a decision back to its point of origin for reappraisal rather than inflict such a decision upon the landowner.

23. The Wallhayes case had been one of two to arise in West Dorset over a short period. The Chairman of the District Council formed a small delegation to discuss with the Secretary of State the manner in which justice was being perverted within his area of responsibility. Agreeable at first, the Secretary of State cancelled the meeting at the last moment. The Rt Hon Oliver Letwin MP recorded: "He appears to have been assured by his officials that there was no need for such action".

24. The most painful lesson for the homecoming soldier was the myth of equality under the law. An Instructor and writer on the subject of Decision Making, he read the Inspector's decision in a state of disbelief. He put questions to the Inspectorate which they refused to answer, claiming they did not have the authority to question their appointee. He was accordingly advised and sent on the prohibitively expensive route to apply for Judicial Review. There, he found himself prosecuted by DEFRA. His Member of Parliament sent a letter to the Planning Inspectorate and to the High Court, telling of the representations he had received from his constituency, insisting that the Decision was flawed. "Under circumstances in which not only a respected County Councillor but also other members of the public with knowledge of the local area who attended the Inquiry have raised severe misgivings about the impartiality of the Inquiry, I believe it is only through the process of Judicial Review that these misgivings can either be allayed or validated – and public confidence in the system of Inquiry therefore be re-established." The Judge found in favour of DEFRA on one single issue. Their appointee, the judge's Tribune of Fact, was entitled in law to come to the conclusions she did. Wallhayes' Counsel asked the judge whether he had read the evidence. He said he had. He had come to *his* decision based on evidence upon which he could not – should not – have relied.

25. Dorset CID had been the only independent organisation to investigate the Wallhayes case. On 18 October 2007, between the High Court Hearing and the Appeal, they wrote to the Planning Inspectorate with a view to avoiding a miscarriage of justice. The police told the Planning Inspectorate that the

Inspector seemed identifiable with one side of the argument. The investigating officer told the Inspectorate that he had read their Inspector's "document in depth, relating its claims to what could be seen on the ground and am concerned that it does not give a true representation of the facts pertaining to this case… It seems biased and some issues that I have been made aware of do not appear to have been given due gravitas". The reply to a serious allegation such as this should have been signed off at Director level. In fact, the Inspectorate's absurd letter in response was returned to Dorset CID without any signature. Dorset CID's letter to the Planning Inspectorate, included in the bundle put before the Appeal Judge, told how they had walked the course and believed the High Court Judge's reason for denying a Judicial Review was unsustainable (para 12). Nothing was done and in the Court of Appeal, the miscarriage of justice occurred. The Court of Appeal's function is to ensure the High Court's Judge had acted in accordance with the law, not with fact. The Inspector supplied the facts.

26. A short, factual article appeared in the *Sunday Telegraph* on 1 June 2008. It gave a basic account of the Wallhayes saga. Two members of the public wrote to the Editor in support, telling him of their sense of *déjà vu*. They had had similar experiences. The Planning Inspectorate's reaction was to lodge a formal complaint with the Press Complaints Commission (PCC) under Clause 1 (Accuracy) of their Code of Conduct. The purpose of the Inspectorate's complaint was to remove the online version of the article. There was no attempt to show how the article in question was inaccurate.

27. There was a second party who also submitted a complaint relating to the article, also under Clause 1. This person insisted upon her right to anonymity. She had made the same claim before. She was the Wallhayes neighbour identified earlier as Mrs Eden's Champion, a claim which irritated the Inspectorate. "She was treated no differently than anyone else." They could not have known, they were not there. If the complaints had been read, the Inspectorate would have recognised the contrary to be true. The newspaper gave the objector freedom to write her own article which they published. It was not directly related to the fact which appeared in the earlier article but

dwelt upon the decision of the Inspector and the wiles and ways of other objectors.

28. The PCC did not rule on either complaint. The *Sunday Telegraph* removed the online version of the article which had deservedly embarrassed the Planning Inspectorate. Power resides with the big battalions, with a little help from their friends. Bad Government is as undesirable as bad law.

29. Dorset CID investigated the Inspector's alleged Misconduct in Public Office and on 15 October 2008 sent their full advice file to the Crown Prosecution Service (CPS). Nothing was heard for 5½ months, when the appellant received a letter from CPS dated 2 April 2009. An immediate dichotomy became apparent. The CPS introduced the test template for such alleged misdemeanours, the Attorney General's Ruling (number 3 of 2003). A comparison of the four components of the ruling set against the events was unequivocal in proving there to be a case to answer. The text of the Prosecutor's letter revealed the contrary, not least a lack of comprehension of the issues. CPS agreed that certain elements had been made out but "I am not satisfied that her conduct was *serious* misconduct as required by this offence". The officer was handed a résumé written by County Councillor Coatsworth, councillor for the Ward. He had sat through the four day Inquiry. He deconstructed the Prosecutor's assessment, particularly his insistence that this was not an example of serious misconduct. Of the Government's Inspector, barred from operating further in the County of Dorset, he wrote: "I have never seen any public proceedings to match these in terms of spiteful repression of one side and favouring of the other".

30. Dorset CID arranged a meeting on 14 April 2009 between CPS and the appellant at Weymouth. The appellant progressively disabused the Prosecutor of his conclusions and, as a result, the CPS Prosecutor agreed to review the evidence. At that meeting, the Prosecutor said, as an aside, that he had had a discussion with those representing the Inspector's interests – i.e. the Planning Inspectorate. They had "given an undertaking that she would chair no further meetings, would retire, and was unwell". This was evidence of a quintessential plea bargain by the Inspectorate on behalf of their colleague.

The appellant wrote to the Inspector's solicitor desiring to know who, in the Inspectorate, had set down the terms. There was no reply.

31. On 27 May 2009, with no apparent progress made with the promised review, the appellant, worried by the details revealed by the arrangement, wrote to the Prosecutor expressing an opinion that the Inspector did not deserve a dignified exit. "To permit this leaves her victims exposed and perpetuates the widely held impression that (she) and peers are untouchable and unaccountable." The Prosecutor was asked directly whether the Inspector had already been told she would not face criminal proceedings. He did not reply.

32. It was left to the Planning Inspectorate to announce: "The Crown Prosecution Service has decided the Inspector has no case to answer in respect of your allegation of misconduct". The Inspectorate said they had been so advised on 3 April – eleven days before the CPS had agreed to review the evidence. The Prosecutor in Bournemouth, Dorset, did send the files for review to the Complex Casework Unit in Eastleigh, Hampshire. They arrived there on 29 July 2009, more than three months after CPS had promised to have the evidence reviewed. On 10 September 2009, a colleague upheld the decisions of the Prosecutor, confirming they satisfied the Code for Crown Prosecutors. The CPS Review Team said they did not intend to examine the Inspector's decision, effectively establishing the scene of the crime as a no-go area.

33. The argument that this was an unique case, that it was understandable that the Planning Inspectorate and CPS would regard the formal charging of the Inspector as not being in the public interest, can never excuse the perversion of the course of justice or apparent collusion. Early retirement must not be allowed to become an escape route for the avoidance of being called to account. If the behaviour here of the CPS complies with the Code for Crown Prosecutors, sympathy must be expressed to those parties obliged to work with them on a regular basis.

34. The anatomy of an unfathomable Decision by an Inspector acknowledged by the Planning Inspectorate to be one of their best has been laid out for

inspection.[20] It is such a Decision which the Judiciary regards as an opinion emanating from the impeccable source of one of their respected Tribunes of Fact. Mention has been made of the MP's and Dorset CID's warnings that the decision was flawed. A delegation from West Dorset with an appointment to discuss with the Secretary of State DEFRA the perverting of the course of justice within his sphere of responsibility was stopped. Then there is the matter of what appears to have been an accommodation between the Inspectorate and CPS to allow the Inspector a dignified exit. Throughout this process, no one appears to have paused for thought of the impact these corrupt practices had upon the appellant in terms of time, stress and cost – as was evident from the Inspectorate's dealing with the Press. It was simply an undignified and unworthy example of turf protection.

35. We are presented with a picture of collusive association stretching from the office of the Secretary of State to the Planning Inspectorate, to Local Public Inquiries and Officers in Council Local Access Departments. The connectivity is seamless, the aim political verging upon the manic where empowered state employees abuse their authority unchecked, spreading misery and stress to the extent that sometimes, those whom they bully and intimidate give up the unequal struggle and take their own lives. Disputes put before the Secretary of State DEFRA are in reality prepared by Rights of Way Officers for consideration by Inspectors, invariably former Rights of Way Officers. The Rights of Way Office in the Inspectorate does not enjoy a reputation for fairness, being a mirror image of those ensconced in positions of authority above and below. The Inspectorate's Rights of Way Office must be closed. The fear of a hiatus is overstated. The 'Definitive Map' has had the benefit of artificial respiration, becoming a huge, expensive meal ticket. Alternatively, Inspectors who should be fair, impartial and independent chair Inquiries as single arbiters with licence to reject the decisions of the elected members of local people. There is often evidence of unhealthy association with fellow-traveller Organisations. That association is also evident within County Councils. It is Dorset County Council's

[20] Richard Connaughton. Section 7, The Fraternity. A Report of Malfeasance in Public Office (www.connaughton.org.uk)

malpractice which has been the point of focus here but that Council is not the worst practitioner in the South West. Misconduct in Public Office is a criminal offence.

36. The Wallhayes case used here for illustrative purposes is one of many. The warning marker has been put down on the CPS which should assist local CID in their investigations of other cases with the expectation of a fair result. It is the tip of an iceberg which includes the sample cases of the Justs of Dale Abbey, Derbyshire, the Peppard siblings of Somerset, the Jenkinsons of Staffordshire, the twin bridleway case from Cumbria c/o Patrick Lowe, the Mear family of Waresley, Bedfordshire (under the jurisdiction of Cambridgeshire County Council) and the Bowers of Maulden, Bedfordshire. It had been the hope that the Government would initiate the investigation of these cases with a view to corroborating the theme of the Case Study before opening the topic to opposing parties including 'consultants' and 'stakeholders'. That is not their intention. The alternative is for injured parties to invite the media to do that at which they excel, to investigate cases of wrongdoing and report.

MINISTRY OF TOWN AND COUNTRY PLANNING

Footpaths and Access to the Countryside

REPORT OF

THE SPECIAL COMMITTEE

(ENGLAND AND WALES)

Presented by the Minister of Town and Country Planning to Parliament by Command of His Majesty
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Dear Henry,

I have been reading with much interest your 'Rights of Way Report'. At last someone has had the courage to record what a complete disaster the administration of Rights of Way by Local Authorities has been for far too long and the effect their over zealousness and in many cases complete incompetence has had on the lives of so many people.

During my whole Farming life, (I had the misfortune of having all my land crossed by a series of mostly redundant footpaths and bridleways) I was subjected to a incessant bombardment of threats and what I can only describe of as abuse from the District and County Council officials prompted by a whole host of organisations purporting to represent the interests of the Countryside and footpath users in particular. Whilst I always tried my best to accommodate many of the demands made, I often felt that I was very much a target for officialdom and that discussion rather than ultimatums would have been a better solution to what were fairly petty complaints.

Unfortunately, I was a witness to the same sort of treatment handed out to a very dear Farming friend who was subjected to a particularly brutal onslaught by a County Council official over a number of years. The worry it caused him was eventually to be a contributory factor in his eventual suicide.

As the Somerset representative of the National Farmers Union's Legal Assistance Scheme, I have had the opportunity to have sight of many Rights of Way cases in Somerset. What has struck me is that in many cases the first thing the Farmer or Landowner knows about an intended prosecution or imposition of a Right of Way is when a letter arrives out of the blue informing him without any previous discussion or warning. They then find themselves involved in legal proceedings, which in many cases, ends up costing many thousands of pounds to defend something which again with prior knowledge and discussion could have been avoided with the right approach from the powers that be.

I agree wholeheartedly with the findings of your report and I congratulate you on the detail and the thoroughness of your research. Your idea of a Tribunal to replace the Inspectorate is I think a good one. However I believe it is most important that it should be seen to be impartial and apart from any Local Government involvement. I realise this could be quite difficult but the choice of the right Chairman with the necessary legal background and knowledge of Rights of Way matters could simplify things. The other two members could then be drawn again from outside. I have been a member of the Agricultural Lands Tribunal for many years and can say that it works extremely effectively. There is a legally trained Chairman and the two other Tribunal members go for training at least twice per year.

Anyone reading your report cannot but be saddened not only by the misery the administration of Rights of Way has caused over such a long time, but by the complete misunderstanding and lack of compassion by officialdom. The reader can also take heart in the knowledge that although you have been critical of the present set-up you also offer quite simple answers for the way forward. It is to be hoped that those who have the power to alter things also have the courage to resist the ingrained prejudice of the present administrators and can see that there has to be change.

I wish you well.

Kindest regards

(signed) Alan Bartlett