

1. **Powell and Irani judgement – feedback from Defra on request for advice**
2. **Revised versions of Section 4 and 12 of the Consistency Guidelines**
3. **Rights of Way Guidance Index**
4. **Revised Guidance Booklet**
5. **Procedure Team contact list**

1. On 16 February [REDACTED] prepared a request for advice on the implication of the Powell and Irani judgment in relation to use of a way erroneously shown on the definitive map and statement as a right of way. This paper was forwarded to Defra along with further comments from Inspectors.

I have now received a response from [REDACTED]. It is as follows:

I've noted that the impact of this case will need to be considered whilst we review Circular 1.09. Our guidance is based of legal advice and our policy view. However it is for the courts to give a definitive view on some issues, as has happened with Powell & Irani.

[REDACTED]

However, I do see that para 4.35 will need to be reviewed to relay the Powell & Irani judgment that there is no 'reasonable landowner' test. These papers and comments are very useful for this review, so I'm grateful for the Inspectors' work and am keeping these comments on file.

To respond to some of the questions/comments which have come up –

- I would be grateful if advice could be provided on whether or not the guidance in Circular 1/09 needs revision (again) in respect of use of paths shown on the definitive map and statement in error. [REDACTED]
- Defra's interpretation in the 2009 Circular also precludes the recognition of an express dedication taking place after the wrongful recording of a public path on the definitive map.

- Part of the problem is that neither Defra or PINS has published the legal basis for the Circular.
Defra doesn't publish legal advice – whether it is advice to others or advice we have received. We base our guidance on legal advice, however it is for the courts to take a definitive view, as they have done in Powell & Irani. As a result we are now looking at how this impacts on our guidance as part of the review of Circular 1/09.

So my question is do you feel that something is needed in the meantime to support Inspector's decision-making? My suggestions would be either an advice note or a letter to PINS from Defra?

Could Inspectors please let me have their view regarding these suggestions by **5 June 2015**?

2. Further to ROW Note 3/2015, please find attached amended versions of Sections 4 and 12 of the Consistency Guidelines which have been cleared for publication by Defra.
3. Please find attached the latest update to the Guidance Index which has been prepared by [REDACTED]. All amendments have been highlighted in red for ease of reference.
4. The guidance booklet has been updated so that the information regarding legal submissions is consistent with Advice Note 3. The arrangement of Section 6 has been altered so that the criteria for Wildlife and Countryside Act 1980 cases appears first (rather than sandwiched between Highways Act and TCPA). Section 9 on complaints has also been updated.
5. Finally, please find attached a current contact list for the section.

If you have any questions with regard to this RoW Note please contact me in the first instance.

[REDACTED]

Rights of Way Section
Date: 19 May 2015

Distribution All ROW Inspectors [REDACTED] [REDACTED], SGL All ROW staff Recreation and Access Team, Defra Knowledge Centre [REDACTED], Costs [REDACTED], QAU Library Mailbox	[REDACTED], Wales [REDACTED], Wales [REDACTED], Wales [REDACTED] Inspector Wales [REDACTED], Inspector
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