

1. **New Matrices**
2. **Schedule 14 application for Costs – non statutory inquiry**
3. **Summons – validity of when issued by another party**
4. **Powell and Irani**
5. **Slip rule**

1. The pilot of the new Rights of Way matrices is now complete. Overall, the new matrices appear to more accurately reflect the difficulty of the cases and bring rights of way casework more in line with other casework of the same grade. However, a couple of amendments have been made following the feedback received on the forms and after seeking further clarification and comments. They are as follows:

All Orders

The 'legal issues' section has removed and explanatory text has been inserted against 'Formal Legal Submissions'.

Under 'Type of case' the points for a Re-determination have been reduced from 4 to 2 and 'one grade up' has been removed - this brings it into line with other casework types.

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Under 'Type of case' 'Combined Order' has been inserted with 2 points. It has been made clear that for points to be awarded for a 'landowner objection' – the landowner should be 'affected' and the objection must be relevant.

The new matrices will be introduced from Monday 16 February; however feedback will still be important in case further refinement is required. An amended version of the Return Form will be added to all case files and will include an area for you to make your comments. A copy of the new matrices is attached.

2. Following Defra's change in policy and the introduction of non-statutory inquiries for schedule 14 appeals a party interested in the process raised a query about applying for costs at such an inquiry. Following PINS obtaining advice, Defra subsequently confirmed that there is no specific provision for an Inspector to make a decision for costs in the event that a costs application is made by any of the parties at a schedule 14 non-statutory inquiry. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Solicitors acting for an objector on a DMMO hoped to call a witness, however the authority were calling him as a witness themselves. Therefore, they had Swansea County Court issue a summons which required the witnesses' attendance at the inquiry to give evidence and answer questions. The question therefore arose whether the summons was valid. Legal confirmed it was not and that the Inspector should be advised to reiterate that only he has the power to issue a summons. Defra's reasoning is as follows:

Part 34 of the Civil Procedure Guidance governs the practice of the county Courts

34.3

(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.

(2) The court which issued the witness summons under this rule may set it aside.

(3) In this rule, 'inferior court or tribunal' means any court or tribunal that does not have power to issue a witness summons in relation to proceedings before it.

So if it is the case that the Inspector has the power to issue a witness summons (i.e. if the power in s250(2) Local Government Act 1972 applies), the County Court shouldn't have issued the summons. I can see that the power is applied to cases to which Schedule 15 WCA 1981 applies. If so the person against whom the summons was issued could apply to the Court to set it aside on the basis that it shouldn't have been made as the 'Tribunal' concerned had the power to issue a summons. The Inspector should be advised to reiterate that only he has the power to issue a summons. He should have no regard to the summons produced by X.

4. Please find attached a copy of the judgment which was issued on 5 December 2014. The application was dismissed.
5. At the sub group meeting it was agreed we would ask Defra about the slip rule, it seems it was not possible to include the slip rule in the Deregulation Bill. The provision which has been included is that decisions could be quashed rather than Orders.

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



Rights of Way Section Manager

Date: 12 February 2015

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