

ANALYSING USER EVIDENCE FORMS

Introduction

1. Further information on User Evidence Forms (UEFs) can be found in section 5 of the Consistency Guidelines. Here we will look more closely at a typical UEF. Unfortunately there is no standard form and some local authorities have much better forms than others. The example used here is better than most and covers just about everything that is necessary, but there are others that you will come across that simply fail to ask the right questions.

The value of UEFs

2. A selection of UEFs may well form the backbone of an applicant's case for a modification order. They may have been gathered over the years, some may even be 10 or more years old and they will usually be in support of a claim of 20 years uninterrupted use, though they may alternatively seek to support a Common Law claim.
3. Clearly the evidence contained in such forms will usually be most important, certainly to the applicant. Frequently the bulk of the forms will not be supported by witnesses who can be questioned, therefore the Inspector has to accept them at face value. However, he should not do this without first analysing them himself.
4. Usually UEFs will be on the file that is sent to the Inspector from Bristol; in many cases they will bulk out the file. Sometimes UEFs are assumed to be valid evidence in support of usage when they have not been properly analysed by interested parties, thus you may have a case where it is claimed that there are 50 people who say that they have used the path over a period of 20 years or more. On analysis you might well find that a large number of these are invalid for one reason or another.

ANALYSIS OF UEFs

5. Upon receiving a file containing UEFs you need to analyse them and decide which are valid, which are questionable and which are invalid, and prepare a list of questions for whoever is relying upon the forms to substantiate a case. A good way to analyse them is to obtain some A3 sized account sheets with 20 columns (or more) across the sheet and 40 or so lines; in the first column before the numbering starts go the names and addresses of those who have filled in the forms. In the first numbered column insert the year in which the right to use the path was first called in question and then number backwards for each of the 20 years. Against each name draw a line through each year of claimed use. When completed, any gaps or weak areas in the 20 year period will stand out. A weak area is one where perhaps only one or two users claim to have walked the path – you then have to decide whether or not you think that there has been use by the public, uninterrupted, over a period of 20 years or more.

SCRUTINISING THE CONTENTS OF UEFS

6. Attached to this précis is a blank UEF. If all the questions were clearly answered, then the Inspector's job would be an easy one. However, they seldom are and it is essential that Inspectors scrutinise in detail each and every form to ensure that the vital questions have been clearly and accurately answered; this does not matter so much if the author of the form is appearing as a witness, for he or she can be questioned, but where there is no opportunity for questioning, the form must be clear and unequivocal if you are going to attach great weight to what it purports to say.
7. Frequently UEFs are completed by an applicant for an order, not by the actual user, so many may be in the same handwriting but signed by different individuals. Occasionally it occurs that a form is completed and signed, but the alleged signatory denies all knowledge of it! Whilst this is rare, it is less rare for opponents of an applicant to question the validity of forms because they are all in the same handwriting and it might be alleged that the details are not authentic. It will be for the Inspector to make a judgement based on the circumstances.

Comments on the attached form follow:

Age

This is often left blank, but can be useful in confirming periods of a claim.

Occupation

Again, often left blank, but might be useful in ascertaining private rights, as in this case where a farm worker might have had such rights. Be prepared for the argument where a farm worker used the path at weekends when he was off duty, and was therefore exercising public rights as opposed to the private rights he enjoyed as a worker when working!

Description

This is often very sketchy. Try to be sure that it is sufficient for you to be satisfied that it does refer to the path in question.

Status

This is frequently left blank when the forms are filled in individually, simply because the average person does not understand the difference. Believing the way to be public is not evidence of use, but if the belief is based on something more concrete than this example, it helps to build up your confidence in the validity of the form. However, you will often get responses similar to this example.

Have you used the above way?

This is the meat of the form. This is where you are looking for unequivocal answers – but often do not get them. It is common for age to be omitted at the top of the form, and *all my life* to be inserted here. With that sort of information you cannot draw a line on your account sheet and therefore the form has to be invalid.

The number of times during the year is of less importance. Can you say how often you use a footpath during a year? A batch of forms which clearly cover the 20 year period, but where only *several* is put down, should be regarded as valid.

The start and finish points, if completed, should tie up with the description. You need to be satisfied that the same path is being referred to.

The purpose of use is important insofar as it can be consistent with occupation and belief of the status, or can demonstrate private right, albeit unintentionally. It is more of a verifying factor.

The means of use needs careful scrutiny. If the claim is for a BOAT and the witness has merely claimed use on foot, then the form is of no value. You must ensure that this is consistent with the claim being made by the applicant. Quite often it is not.

Obstructions

Stiles – The presence of stiles would tend to suggest that only a footpath exists.

Gates – If there is evidence that a gate or gates have been kept locked, this would suggest that no right of way exists or else there is an obstruction which has not been removed. It can be important with regard to proving the lack of intention to dedicate.

Notices – These can be very important, particularly what they say. It has been argued at inquiry that a notice which stated *Private No Through Road Access to Frontages Only – No Parking or Turning – Beware of Ramps* with a number 15 in the middle indicating a speed limit, applied only to vehicles and did not show a lack of intention by the residents to dedicate the said road. Whatever the signs say, there will always be scope for argument.

Other Obstructions – These are usually fallen trees or sometimes a deliberate obstruction placed across a track by a landowner calling into question the right of the public to use it. If there is a natural obstruction like a tree, it can be important if it has made the way impossible for use by the method claimed in the order. If, for example, a tree prevented any possibility of use by a vehicle for a number of years, though the way could still be used by foot or on horseback, it might be evidence inconsistent with a claim for a BOAT. Such evidence can be innocently slipped in and remain unnoticed until the Inspector has scrutinised the form and asked the embarrassing question which would result.

Did the signatory work for the landowner?

If the answer is yes, then almost certainly he would have a permissive right and the UEF could not count towards the 20 year period.

Have you been a tenant or owned any of the land?

This is usually a simple one. Often the answer is no, or the question remains unanswered. The person gathering UEFs is unlikely to obtain one from the landowner or tenant!

Are you related to the landowner?

Again, more often than not left blank, but nonetheless important. Clearly, unless they are very unusual circumstances, which would have to be justified, it must be assumed that 'family' have permissive rights.

Permission

If the signatory has obtained permission, then the UEF is not going to support 20 years of use. Often this is answered by *"Didn't think I needed it"*.

Stopped or turned back

This is often blank, but it is important if filled in as it would be evidence of no intention to dedicate and might be used to establish the later date of the 20 year period.

Did you enjoy a private right?

Usually there are mixed answers to this question, very often because the signatory does not understand the differences between a public and private right.

Route and additional information

The question on route and diversion can be important in ensuring that the correct path has been properly described, but more often than not this question and the last are not completed.

Signature and Date

These are both important. If the form is not signed, it is not valid. If the form is not dated it could still be valid, depending on how accurately the rest of the form had been completed. If no date throws doubt on the accuracy of the other information, particularly dates, then you should be careful as to the amount of weight you place on the form.

Summary

8. At a meeting between the CSS and PINS Rights of Way Section, the question was asked:

"How many user evidence forms were required to warrant confirming an Order?"

The PINS answer was:

"It was not the number of forms but the quality of the evidence contained in the form that would be taken into account by the Inspector. PINS cannot advise on the number of forms to be submitted."

That says it all!

Please use the following link to access an example of a User Evidence Form from Derbyshire County Council:

https://www.derbyshire.gov.uk/images/User%20Evidence%20Form_tcm44-21467.pdf