The Planning Inspectorate

Rights of Way Inspectors

TRAINING NOTES SECTION 9

March 2016

CONDUCT OF INQUIRIES

SCOPE OF GUIDANCE

9.1 The guidance in this chapter applies to all forms of inquiry for Rights of Way casework. The guidance has been written to take account of the introduction of the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007. The PINS booklet 'Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England' (published November 2008) outlines the procedures to be followed in ROW inquiries. This guidance provides further elaboration, particularly with regard to the opening announcements and how proceedings should be run.

9.2 Procedure Guidance Note 4 "Conduct of Inquiries" contains the most up-to-date information and practical advice to assist Inspectors when conducting inquiries (this advice was formerly provided in Chapter GP4 of the Inspectors Handbook). The advice in this guidance note may also be relevant for procedures which are not discussed in this Section of the Training Notes.

The Inquiry Procedure Rules 2007

9.3 A main feature of the Rules is the requirement for all evidence to be submitted before a hearing or inquiry opens. This gives all parties who are involved, including the Inspector, the opportunity to see and consider all of the evidence, both in support of and objection to an Order, well in advance. That is, the hearing or inquiry is not primarily the process for gathering evidence, but is the forum for the relevant evidence to be assessed and tested. Clearly, without this requirement in force in Wales, Inspectors can expect, and must accept, evidence being made available only on the day of the inquiry.

9.4 The 2007 Inquiry Procedure Rules apply to inquiries where the decision is transferred to Inspectors and to Secretary of State cases where the Inspector is required to write a report. The Rules seek to make the process more efficient while maintaining the Franks Principles of openness, fairness and impartiality. The key matters are:

- A pre-inquiry meeting will be held for all inquiries which appear likely to run for 8 days or more unless the Inspector considers it unnecessary. The Inspector may hold a pre-inquiry meeting for shorter inquiries if he thinks it necessary (Rule 15);

- Proofs of evidence and summaries are to be received by the Secretary of State no later than 4 weeks before the inquiry unless a timetable specifying a different date has been arranged (Rule 20(5)). Proof of evidence longer than 1500 words must be accompanied by a summary of that proof (Rule 20(4)). In an attempt to move away from the concept of an exchange of proofs, it is now for the Secretary of State to supply the parties with other parties' proofs (Rule 20(3));

- other than where specifically provided in the Rules, the Inspector determines the procedure at an inquiry (Rule 21(1)), and has powers to refuse to permit giving of evidence, cross-examination or the presentation of any matter (Rule 21(7)) and to require disruptive persons to leave (Rule 21(10).

- at the start of the inquiry the Inspector is to state what he or she considers to be the main issues but those entitled to or permitted to appear at the inquiry are not precluded from referring to other issues they consider relevant (Rule 21(2) and (3));

- The normal procedure at inquiry is for the order making authority to present its case first (Rule 21(4)). Neither the Rules nor the Circular say anything about opening statements. However, as a general rule Inspectors should invite the advocates for the main parties to give brief opening statements before they start the presentation of their evidence;

- Where a pre-inquiry meeting has been held the Inspector shall arrange a timetable for the proceedings for the inquiry whether it is expected to run for more than 8 days or a shorter period (Rule 15(6); but Rule 21(1) gives scope for that timetable to be varied as appropriate.

- The Inspector may allow parties to add to their statement of case or evidence (Rule 21(12)), but must allow opposing parties an adequate opportunity to consider such changes (Rule 21(13)).

- Rule 22(2) includes provision for a site inspection to take place during the inquiry. However this provision is likely only to be used rarely – if at all.

- The Inspector may disregard representations received after the inquiry (Rule 24(2)). However the procedure for the few situations where the Inspector proposes to take into account new evidence is set out in Rules 24(3) and 24(4).

9.5 The 2007 Rules identify times by which certain actions are to be taken and the arrangements for getting copies of statements and documents to other parties. The Secretary of State (in practice PINS RoW Section) distributes

copies of proofs and summaries. PINS will hold proofs etc received in advance until the deadline unless both parties' proofs have been received ahead of time, the aim being to despatch them to the parties simultaneously.

9.6 PINS RoW section strictly apply the deadlines by which parties are to submit statements of case and proofs of evidence. They will normally return to the originating party documents that are submitted late. This means that neither the Inspector nor the opposing side will have had opportunity to undertake their pre-inquiry preparation. In all cases where the Inspector has not received proofs prior to the inquiry he or she should adjourn for as long as reasonably necessary to bring themselves up to their normal level of preparedness.

9.7 In practice a party missing a Rules deadline may provide the opposing side with a copy of the proofs in the hope that both sides will be able to prepare prior to the inquiry and any potential costs award may be mitigated. Even if all parties are willing and able to proceed with the inquiry in the normal way, the Inspector should adjourn for as long as necessary to undertake the necessary preparation.

9.8 The late submission of statements and proofs can lead to claims from other parties that their case preparation has been prejudiced. Requests for adjournments or a claim for costs may follow. The circumstances of any adjournment will need to be fully recorded for use in dealing with any consequent cost application. Guidance on issues arising from the timeliness of document submission is given at paragraphs 9.149 - 9.154 below.

9.9 The guidance set out below draws upon the current practice for inquiries held under Section 78 of the Town and Country Planning Act 1990 (The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 - Statutory Instrument 2000 No.1624) and should ensure an open, fair and impartial hearing of all parties who appear before an Inspector. Other relevant guidance is included as links with Procedure Guidance Note 4 on PINSnet.

9.10 Whereas there are (at the time of writing) no inquiry procedure rules in force in Wales, the spirit of the England Rules should apply as far as possible. References to the Secretary of State for the Environment, Food and Rural Affairs should be taken to also mean the Welsh Assembly Government – as appropriate. Inspectors should have their own copies of the RoW Hearings and Inquiries Procedure Rules, together with a copy of the supporting guidance booklet produced by The Planning Inspectorate.

9.11 You may also need to refer to the section of the Training Notes which deals with applications for costs at an inquiry (Section 12).

BEFORE THE INQUIRY

Preparation before the Inquiry

9.12 All relevant files and background material must be carefully studied so that no issue is overlooked and so that advice can be sought when necessary.

9.13 In addition to pre-inquiry reading of the case file and background documents Inspectors should familiarise themselves with relevant policies and Regulations. They should take to the inquiry copies of any Acts, statutory instruments, circulars etc., to which reference is likely to be made.

9.14 All statements of case and proofs of evidence (including any associated summaries) should have been submitted 4 weeks before the inquiry opens. These must be read thoroughly to identify:-

- the principal issues on which to concentrate at the inquiry;
- apparent errors, inconsistencies and illogicalitys in the evidence;
- any matters on which further information is necessary
- inconsistencies between the main proof of evidence and the summary.

9.15 If insufficient time is available for preparation the Inspectors Sub Group Leader (SGL) and/or Group Manager (GM) should be informed and the parties at the inquiry should be told which documents have not been read.

9.16 Inspectors should prepare:

- Their opening announcements;
- An indication of the main issues upon which the parties should concentrate, together with an indication of the material considerations which you need to be informed about;
- A list of the questions which must be answered so that proper investigation of the relevant matters can be carried out.

Preliminary Site Inspection

9.17 Wherever possible the Inspector should visit the site informally before the inquiry. Such a visit must be confined to public viewpoints (unless prior arrangements have been made for access over private property with permission) and the Inspector must avoid conversation with any person during it. In opening the inquiry the Inspector should announce that the site has been seen in order to reduce the need for descriptive material to be read out. If the Inspector happens to have met anybody connected with the inquiry at the time of his or her unaccompanied site visit, and to have been unavoidably involved in any brief conversation, this should be

mentioned in the opening announcements, with an assurance that the Inspector avoided discussing the subject matter of the inquiry.

Inspecting the Inquiry Venue

9.18 Inspectors are advised to find the inquiry venue at the earliest opportunity. This can be done conveniently either before or following the pre-inquiry site visit. However, Inspectors should not attempt to enter the venue at this preliminary visit, or to engage in conversation with anyone connected with the venue. Such behaviour could be easily misinterpreted if spotted by one of the parties to the inquiry, and could lead to a challenge at the opening of the inquiry.

9.19 The inquiry room should be inspected as soon as practicable on the first morning of the inquiry. The venue should be accessible to the public without the need to pass through elaborate security measures, which may act to deter some people from attending. It should make appropriate provision for people with special needs. Steps should be taken to ensure that appropriate arrangements are made. Inspectors can check what is provided against The Planning Inspectorate's Facility Note for Inquiries and Hearings, a copy of which is at Annex 9.2. It is available online at [redacted] This has been sent to all the order making authorities in England and Wales and sets out the locational and size requirements for an inquiry venue and the facilities which need to be provided. The Planning Inspectorate should be contacted for the provision of any other special requirements. The desirability of having the use of a retiring room should not be overlooked.

9.20 If the arrangements are unsatisfactory, it may be possible to put things right by liaising with the staff directly responsible for the accommodation. They should be asked to move furniture, if this is necessary; Inspectors should not do this themselves. On occasion, conditions can be so bad that it is necessary to seek alternative accommodation e.g. because of noise which cannot be stopped, lack of adequate heating or overcrowding. If there is to be a change of venue the Inspector should open the inquiry in the original venue if practicable and then adjourn to the new one. In any case the Inspector must ensure that everyone attending the inquiry is given clear directions to the new venue, that all (except late-comers) are able to get there before the proceedings resume, and that a notice is displayed at the advertised venue throughout the inquiry indicating the revised venue.

9.21 There are dangers in being in the premises before the inquiry opens, particularly if no retiring room is available. As soon as Inspectors are satisfied with the layout of the inquiry room, have prepared their papers and placed their Inspector's name plate on the inquiry table, they should withdraw until just before the inquiry opens. Inspectors should not accept invitations into the office of one of the parties, e.g. the order making authority's chief executive or solicitor etc, nor hold conversations with either side before the inquiry opens.

Arrival at Inquiry

9.22 Inspectors should enter the inquiry room in a positive and confident manner about two minutes before the appointed time. If necessary they should ask everyone to settle down immediately before the appointed time so that they can open the inquiry promptly.

CONTROL OF THE INQUIRY

Controlling the Proceedings

9.23 A public inquiry is a formal occasion for the examination of objections made to an Order. It is not a public meeting where anyone and everyone attending can interrupt protest or remonstrate with other participants. It is an occasion which is structured and runs according to published procedure Rules and generally accepted conventions of conduct, with specific protocols about who can speak, at what time and to whom. Having said that, the Rules allow everyone who has a genuine interest in the case the opportunity to speak and to ask questions, according to the standing of the various participants.

9.24 Inspectors must be seen to be positively in control of the proceedings throughout. Success depends on alertness, discretion, unfailing courtesy and good timing, but above all else on adequate preparation. The rights of the parties must be scrupulously observed. The fairness of the proceedings must be apparent to everyone, and no one should be prevented from presenting their case fully. It is, however, important that the parties should not be left to take the lead. The Inspector should be seen to be in control of the proceedings, indicating politely but clearly when each party is to make an address and calling or dismissing a witness at the right time. This calls for alertness and good timing on the Inspector's part. Similarly, arrangements for adjournments and for site inspections should be seen to be in the Inspector's hands. At any adjournment, the Inspector must state a specific time for resumption and in due course formally resume the inquiry. The Inspector should not appear to be preoccupied in note taking or to be dilatory in searching through the files or plans. This slackens the tempo of the inquiry and can lead to loss of control; it can almost always be avoided by efficient preparation and foresight.

9.25 As well as following the Inquiry procedure Rules, the inquiry should also be run in accordance with the common law rules of natural justice, that is, in a manner which is fair.

9.26 It is necessary to strike the right balance between the need to focus the proceedings on the essential issues and the need to satisfy all parties that they had a full and fair hearing. No party must be left feeling that they have been prevented from making their case by the Inspector.

9.27 In rare cases an Inspector may be allocated a non-transferred inquiry. Any attempt to concentrate the proceedings on essential issues should have regard to the difference between inquiries into cases transferred to Inspectors, in which the opinion of an Inspector as to what is important is likely to be accepted more readily, and those to be decided by the Secretary of State. In the latter, the Secretary of State may need to be informed on a wider range of issues than might appear to the Inspector to be central. It is therefore appropriate to allow greater latitude at inquiries into such cases.

9.28 Inspectors should be ready to help any who have chosen to conduct their own case, but the help must be given without conveying any impression of siding with them.

9.29 All inquiries must be characterised by openness, fairness and impartiality. Inquiries are semi-privileged occasions and statements made in good faith, not maliciously, are protected against proceedings for slander. There is an implication that anyone attending an inquiry does so to help the Inspector and the Secretary of State and this is discharging a public duty.

Inspector's Demeanour

9.30 The Inspector must be seen to be taking effective control at the outset and maintaining it throughout the proceedings. Inspectors should be authoritative without being domineering, showing dignity without arrogance and friendliness without familiarity. Their bearing and manner should command respect and inspire confidence. The Inspector should be dressed smartly but soberly.

9.31 The atmosphere in which an inquiry is conducted is largely shaped by the actions of the Inspector who must always appear totally impartial and open. The rights of way community is relatively small, and it is possible that, on arriving at the inquiry the Inspector realises that one of the participants is an acquaintance, ex-colleague or even a Non-Salaried Inspector acting in another capacity. In which case, this should be announced with the proviso that such familiarity will not affect the decision or recommendation made. The parties should be advised that if they object to the Inspector continuing with the inquiry under such circumstances, they should make this clear at the earliest opportunity. However it is important to reassure participants of the Inspector's impartiality so that unfounded suspicions are not raised and to ensure that anyone seeking the least excuse to upset the proceedings is not given the opportunity to do so without good grounds. If objections are raised, or in the unlikely event of a close friend or relative appearing unexpectedly, the Inspector might have to adjourn the inquiry so that it can be conducted by another Inspector. In such a case the SGL's or GMs advice should be sought. If the parties or the public leave the inquiry feeling dissatisfied with any aspect of the running of the inquiry then it must be regarded as a failure however correct the procedure may have been.

9.32 At all times, the Inspector and others taking part must speak clearly and audibly. All present must hear everything and whispered talks with any of the parties, or consultations at the Inspector's table even on the most innocent topics, must be avoided. If any statement made in evidence is not understood by the Inspector, it should be questioned. Frequent interruptions should be avoided, but obvious mistakes or contradictions should be questioned.

9.33 Inspectors should not be seen to speak to or be in the presence of any one party at any time without one of the opposing parties being present before, during or after the inquiry or at the site visit.

Behaviour of Others

General

9.34 Whether advocates should sit or stand at inquiries is a matter for the Inspector to determine having regard to the particular circumstances of the inquiry. Where the inquiry is in a relatively small venue with the principal parties seated round a table, and a relatively limited number of interested third parties, the proceedings should be conducted entirely seated - provided all the interested parties can hear and see what is going on. That includes opening addresses as well as cross-examination.

9.35 In council chambers or similar situations where there is moderate public interest, a judgement will need to be made taking into account the nature and size of the room, the number of people present and any special personal circumstances.

9.36 In inquiries where there is a great deal of public interest, it may be very difficult for interested people to see what is going on, or to identify who is speaking. In such situations it may improve the legibility of the proceedings for the advocates to stand up to make their opening and closing addresses and to stand up for cross-examination and re-examination.

9.37 To avoid confusion at the inquiry, it is usually better if the same procedure is adopted throughout the inquiry. That means that opening, closing, examination-in-chief, cross-examination and re-examination should all be carried out standing, or should all be carried out seated. A judgement will need to be made at the outset and the issue raised during your opening announcement.

9.38 Witnesses and interested persons generally should be directed to sit at the witness table where there is one available.

9.39 Participants should always address the Inspector except when asking or answering questions in the formal examination of a witness. In other circumstances, parties attempting to address each other should generally be stopped immediately. However, an Inspector may choose to overlook an occasional, very brief, comment or simple question on an uncontentious

matter if the atmosphere is relaxed and there is no possibility of its being seen as disrespectful to the Inspector.

Control of Advocacy

9.40 Inspectors should exercise tight control over advocacy and cross-examination, to exclude repetitious or irrelevant evidence and curtail excessive or aggressive cross-examination. At most inquiries, Inspectors have little difficulty in exercising the requisite degree of control. Generally advocates fulfil their professional duty to assist the Inspector and the great majority of advocates are co-operative. However, sometimes advocates persist in unacceptable behaviour despite clear reminders about their duty. In such rare situations, Inspectors should not hesitate to take firm action. Advocates should be asked directly to behave properly. They should be reminded that the Inspector has the authority to forbid irrelevant or repetitious cross-examination or submissions and to require disruptive persons to leave the inquiry.

9.41 Unrepresented or individual persons may have difficulty in understanding the procedure of cross-examination; they may not properly understand to whom they can address questions or at what stage of the proceedings. Also, they may fail to realise the difference between the appropriate time to put questions to witnesses and the time to make their own statement. It is up to the Inspector to guide unrepresented persons through the procedure and to advise them what point of the proceedings has been reached. If it helps the progress of the inquiry, the Inspector can help such persons phrase their questions, or even put them to a witness on their behalf. Whereas the Inspector has considerable discretion over the conduct of an inquiry, significant departure from the usual protocols may lead to a complaint or even a High Court challenge in serious cases.

9.42 Inspectors should not forget that they may also impose conditions on any person's return to an inquiry, or to proceed with the inquiry in the absence of any person entitled to appear at it. Rule 21(10) empowers an Inspector to ask someone who is behaving disruptively to leave the inquiry and, if appropriate to refuse to allow them to return to the inquiry, or to impose conditions on their return. If such a person is excluded from the inquiry they must be allowed to submit their evidence, or any other matter, in writing to the Inspector before the inquiry closes (Rule 21(11)). These sanctions apply to all participants at an inquiry, including advocates. However, the decision to take such action must be taken very carefully, and only after due warning has been given (at least two verbal warnings) - see also paragraph 9.51 below.

9.43 On rare occasions when it is necessary to give a formal warning to an advocate this must be systematically recorded. Therefore it is essential that Inspectors send as soon as possible a written account of any such incident to their SGL and GM. The details should include the file reference, participating parties, date and venue, name and client of advocate (including the instructing solicitor or consultant in the case of counsel), and

summaries of both the unacceptable behaviour and the reaction by the advocate to the Inspector's formal action.

9.44 The SGL, in consultation with the relevant GM, will consider whether to lodge complaints with the professions concerned. In relation to solicitors, there is now an independent Office for the Supervision of Solicitors to which complaints can be made. As for barristers, an agreement on complaints procedure has been made with the Planning and Environmental Bar Association (PEBA). PEBA is eager for the agreement to be implemented effectively, thus reinforcing the importance of all Inspectors co-operating in fulfilling these arrangements.

9.45 Nevertheless the primary responsibility for the proper conduct of an inquiry rests with the Inspector, and there is no intention to inhibit advocates from representing their client's legitimate interests in a robust but fair manner. Some advocates do step over the mark from time to time, but are reined back by timely and effective intervention. Formal measures will be necessary only rarely, in cases of persistent and blatantly unacceptable conduct.

9.46 Advocates' conduct warranting formal action and report could include persistently and blatantly:-

- asking questions or making assertions which are merely scandalous or calculated to insult or annoy, or which are continually repetitious or irrelevant;
- cross-examining in an over-aggressive, badgering or discourteous manner;
- impugning a witness who has not been given an opportunity to answer the allegation;
- withholding or delaying evidence in order to gain an advantage;
- communicating without the Inspector's consent with a witness for the advocate's client after the witness's cross-examination has begun and before the witness's evidence has ended;
- following a pattern of conduct which wastes inquiry time or otherwise results in incurring unnecessary expense;
- refusing expressly or by implication to accept the Inspector's rulings or otherwise displaying gross discourtesy towards the Inspector.

Contact with Witnesses

9.47 PEBA and The Law Society have advised that it is permissible for an advocate to discuss evidence with a witness up to the point that cross-examination of that witness starts. However, once cross-examination has

begun the advocate should not discuss evidence with that witness until after re-examination of the witness has ended. Often a lunch or overnight adjournment is needed during these phases of a witness' evidence. This also applies to contact between the witness and any other member of their team or any other party who is supporting their case. At such times the witness and/or supporting team should be reminded of the importance of not communicating with the advocate during the adjournment. An advocate may, as an exception to this rule, seek the Inspector's consent, or that of the representative of the opposing side, to communicate with his or her witness during this period. However if such consent is sought the Inspector will need to consider how it would affect the standing of the witness and the evidence given.

Disruption

9.48 Whispering, applauding and other minor disturbance should be stopped at once. It is important to be aware of the possibility that some lapses of behaviour are symptoms of genuine frustration, in which case an Inspector should attempt to remedy the situation. For instance, a witness who cannot be heard clearly could, as well as being asked to speak up, be repositioned, or the public could be asked to occupy seats nearer the front. Sometimes people with strong feelings about the proposal will give non-verbal indications of their frustration at having to wait a long time before being able to express their views. Usually it is enough for Inspectors to make it clear that they understand their feelings, to ask for their patience and to assure them that they will all be able to speak in due course. However, when feelings run high, it can be advisable, subject to the views of the parties affected, to amend the programme so that such contributions are brought forward.

9.49 If the Inspector shows an understanding for others, it is reasonable to expect some consideration in return. Advocates have a specific professional duty to assist an Inspector and a more general duty may also be invoked in the case of other professions. Unrepresented parties normally see helping the Inspector as being in their own best interests; if they do not appear to recognise this, they should be gently but firmly reminded that disruptive behaviour does not help their case. See also paragraphs 9.42 above.

9.50 An accusation of racism is a serious matter and may be upsetting for the Inspector concerned. If, at an inquiry, hearing, or site visit, an Inspector is accused of behaving in a racist manner the person making the accusation should be informed that they may make a complaint to PINS' Quality Assurance Unit either by post (1/23 Hawk Wing, TQH) or online via the Planning Portal. If they are dissatisfied with the response they receive and feel there has been a breach of race relations law they may, if they wish, complain to the Commission for Racial Equality. If, having been informed of these possible courses of action, they continue with the accusation they should be told that any further comments they make that are not relevant to the inquiry, hearing, or site visit will not be taken into account in

reaching a decision. If an Inspector feels that persistent accusations are disruptive they may, of course, require the person to leave the inquiry, hearing, or site visit.

9.51 When serious disruption appears to be imminent, more drastic action is required. The stages at which the following advice should be implemented will depend on the circumstances and the Inspector's personality and firmness. Disruption going beyond the first stage below is very rare.

- First, if there are one or two persons who are not necessarily determined to halt the inquiry but want to make a general fuss, they should be asked to behave properly or leave. The person concerned should be told that he / she may submit any evidence or other matter in writing before the close of the inquiry.

- Second, it may be necessary to repeat the request. If this does not succeed the Inspector should adjourn the inquiry for a few minutes to allow a cooling-off period.

- If the disruption persists and is preventing the parties being fairly heard, the Inspector may, as a last resort, have to adjourn again having announced that the police will be summoned. As senior a police officer as possible should be asked to attend. The situation should be discussed with the police during the adjournment, and outside the inquiry room. It is for the police to decide what action they will take; an Inspector cannot give them orders. It should be pointed out that the inquiry is a statutory one held under the auspices of the Secretary of State, that the disrupters are preventing other people from putting their views and that this could lead to a breach of the peace. Subject to this decision the inquiry should then be resumed in the presence of the police. If the disruption recurs the police action will depend on their assessment of whether there is, or is likely to be, a breach of the peace. They may confine their action to showing a presence; they may wish to address those present, or speak to individual protestors; they are likely to decide to remove persons only if these tactics are unsuccessful in restoring order.

9.52 The inquiry should not continue in the face of serious disruption. As a last resort, the Inspector should adjourn the inquiry and report the circumstances to their SGL and GM forthwith. The period of adjournment should be sufficient for the Planning Inspectorate to make the arrangements with the police referred to below - possibly 7 to 10 days - and the Inspector should announce the date of resumption. However provoking the situation may be, Inspectors must preserve their equanimity and their behaviour must be above reproach.

9.53 It may be known in advance of an inquiry that intensive disruption is likely, possibly organised by a particular group of objectors. In such a case the Inspectorate will consult with the police before the inquiry opens and discuss the advisability of their being present when the inquiry opens, or standing by to await a call from the Inspector. Additionally the Inspector

may be assisted by a steward or stewards. The view of the Secretary of State is that persons who cause disruption are not there for the lawful purposes of the inquiry and that if they refuse to leave when ordered to do so they become trespassers.

Recording of the Inquiry, Radio, Television Cameras and Photographers

9.54 In order to meet Ministerial expectations of more open access to public events revised guidance has been issued to all Inspectors in PINS Note 21/2013(r2) regarding filming of Hearings and Inquiries. Revised guidance has also been issued to the public via the Planning Portal on this subject.

9.55 Hearings and Inquiries are open to journalists and the wider public, as well as interested people. Provided that it does not disrupt proceedings, anyone will be allowed to report, record and film proceedings including the use of digital and social media. Inspectors will advise people present at the start of the event that the proceedings may be recorded and/or filmed, and that anyone using social media during or after the end of the proceedings should do so responsibly. Inspectors should add a line to their opening script along the lines of "please let me know if there will be any filming/recording of the event" and then decide if anything further needs to be said.

9.56 If anyone wants to film the event on equipment larger than a smart phone, tablet, compact camera or similar, especially if it is likely to involve moving around the venue to record or film from different angles they should contact PINS and the local planning authority in advance to discuss arrangements. The press office is frequently contacted by the media regarding filming or recording of inquiries or hearings. The advice given by the press office will reflect the advice in PINS Note 21/2013(r2) and they will endeavour to contact the office/the Inspector concerned so that they are aware of the likely media presence. If the RoW team are notified of likely media presence they will place a file note on the file or contact the Inspector concerned if the file is with them.

9.57 If you are asked by any party to an Order about the filming/recording of a hearing or inquiry your advice should be the same as above. If you are aware of likely media filming/recording of the event then you should add appropriate comments to your opening statement and consult the parties present to ensure that they are happy with the arrangements. You should also advise those attending that the Inspector, and not the cameras, should be addressed.

9.58 Inspectors should not themselves give interviews to the media, but may find it useful to introduce the media to representatives of the parties so that the latter may give interviews.

SEQUENCE OF EVENTS

9.59 The following guidance expands on the basic procedure established by the 2007 Inquiries Procedure Rules. The general principles of openness, fairness and impartiality and the rules of natural justice which are the basis for all the various Inquiry Procedure Rules apply equally to Rights of Way inquiries and should be scrupulously observed at all times.

9.60 If, in any particular case, there is a sound reason for departure from the order described here then the sequence to be followed may be adapted as appropriate.

(a) the Inspector formally opens the inquiry, notes those wishing to speak and deals with other preliminaries including the identification of the likely main issues, the position on the receipt of proofs of evidence.

(b) it is helpful to all involved, even at short (one or two day) inquiries, for the Inspector to attempt to plot out some sort of timetable for the inquiry – taking into account how long it is likely for the participants to put their cases and to conduct their cross-examination. In this way those present can consider if they wish to be heard out of the usual sequence, or if they are unable to stay for the whole event, when it would most sensible for them to come back.

(c) Rule 21(4) specifies that the order making authority is to begin (unless the Inspector otherwise determines). The advocates for order making authority should be invited to make a brief opening statement explaining the nature of the order under consideration and in "headline" form the main arguments for and against it. In most cases around 5-10 minutes should be enough for such a statement, and 15 minutes should be enough in the most complex cases. After the opening statement the order making authority begins the presentation of its evidence. The purpose of the authority giving their evidence first is to focus proceedings on the precise nature of the order.

(d) the order making authority calls their witnesses in turn to give evidence-in-chief;

(e) at the end of each examination-in-chief the witness is cross-examined by the statutory objectors. They may then be cross-examined by any other parties opposing the order where the Inspector allows this;

(f) The witnesses are then re-examined by the advocate who called them, but this must be strictly confined to matters raised in cross-examination

(g) the Inspector may then ask questions to obtain relevant information. If matters that are either new or potentially prejudicial

to that party's case are opened up by the answer to these questions, additional re-examination should be allowed.

(h) the same procedure, i.e. examination-in-chief, cross-examination, re-examination, and Inspector's questions is followed for each witness in turn;

(i) following the order making authority's evidence, it is the turn of any supporters of the order, with the same procedure of opening (if relevant), evidence, cross-examination and re-examination.

(j) the whole of this process is then repeated for the objector(s) with the advocate for the objectors being invited to make a short opening statement and then calling their own witnesses. The order making authority and any statutory party supporting the order being entitled to cross-examine. In addition the Inspector should allow cross-examination by interested persons who have already stated they wish to speak. He or she must also, as a matter of natural justice, allow an interested person to ask questions of a witness (whether on the same side or not) on any evidence which is contrary to that person's case. Nevertheless, the Inspector should not permit irrelevant or repetitious questions;

(k) other parties who have a statutory right to be heard present their evidence after the statutory objector(s). The same procedure (stages d-g) is followed, with the principal party most clearly opposed to the case being invited to cross-examine first;

(l) the views of any other third parties are then normally heard, although they may be taken earlier (see paragraph 9.69 below). Representatives of Government Departments may also be heard earlier than this;

(m) having heard evidence from all persons whose names were recorded at the beginning of the inquiry the Inspector should ask again if anyone else wishes to make representations and hear them. (See paragraph 9.220 below.)

(n) it is usual to hear closing submissions, broadly in reverse order, immediately prior to the end of the inquiry beginning with the last such party to be heard, but ending with the order making authority, who retains the right of final reply. It is usually reasonable to permit those parties entitled to appear at the inquiry to make closing submissions if they so wish, and also any represented third parties presenting substantial cases. If it is more convenient for one of the parties to make their closing submissions immediately they have completed giving their evidence, there is normally no reason why this should not be acceptable. Sometimes the respondents (or objectors) wish to speak again after their cases have been completed and their final submissions made, because of something that has been said since then. They should not be barred from doing so, but the

Inspector must require them to confine themselves to clarifying new points raised;

(o) the Inspector asks for the attendance list and checks that he or she has received all documents etc, involving any additional information he or she has requested;

(p) the Inspector effectively gives the parties the opportunity to make an application for costs (for a suggested form of words see section 12.42 of the training notes)

(q) arrangements for the site visit should then be made (see paragraph 9.226 below.)

(r) the Inspector then formally closes the inquiry.

9.61 A suggested form of words for opening of rights of way inquiries is included at Annex 9.3. The example need not be followed slavishly: the various elements can be covered in an order which suits either yourself or the circumstances of the inquiry. However, all of the matters listed in the example should always be included, with modification where appropriate. The blank spaces should be completed beforehand with the exact title of the order, the Act and section under which it was made, the effect the order will have if confirmed without modification and the relevant criteria to be taken into account (see Annex 9.4). Reminding participants of the relevant criteria at the beginning of the inquiry will enable the Inspector to curtail irrelevant evidence and submissions and so focus the inquiry on the essentials and speed up the process. After the opening announcements the inquiry can proceed.

9.62 Inspectors should strenuously discourage the submission of documents after the close of the inquiry, especially if there is any likelihood that this will result in protracted correspondence. In such circumstances, where the information is material to the decision, an adjournment would be preferable.

PRELIMINARY STAGES

Opening of Inquiry

9.63 Inspectors should open the proceedings by speaking in a clear voice and at an even pace. They should do this on time, insisting on complete silence and the attention of everyone present. Inspectors should announce the subject of the inquiry, indicating whether they or the Secretary of State will be making the decision on the order. Inspectors should give their name and qualifications, explaining, if relevant, that they are taking the inquiry in place of the Inspector advertised. Inspectors should ask all those present to either switch off their mobile phones or set them to silent. There are a number of procedural points to be covered and recorded before the hearing of opening statements and evidence from the parties. This is likely

to take about 15-20 minutes and should be conducted in a business-like manner, but not so briskly that people cannot hear or cannot follow what is being covered.

9.64 The pace of this opening is vital as it tends to set the pace for the whole inquiry. It should be firm, brisk and business like - neither rushed nor slow. Inspectors should check at an early stage in their opening that they can be clearly heard throughout the room. If there appear to be difficulties members of the public should be encouraged to move forward and participants should be reminded of the need to keep their voices up at all times. Inspectors should then remember to remain alert to difficulties in hearing the proceedings and be prepared to intervene in order to reinforce the need to speak up. They must not shrink from telling advocates - however eminent - that they cannot be heard.

9.65 In the unlikely event of any objections being made to the Inspector's appointment, they should be received and noted, allowing the opposing party(ies) an opportunity to give their views on the points raised, with the objector being allowed the opportunity for a final word. The inquiry should then proceed. If necessary, a short adjournment might be taken to allow the Inspector to consider the points made and to prepare a script of a ruling on the points (to be used as the basis of a record of the exchanges and ruling). The Inspector should report the objections in a minute to their SGL and GM at the earliest opportunity. See paragraphs 9.104 - 9.109 below for further advice on rulings.

Taking the Appearances

9.66 The Inspector then takes the appearances, i.e. the names and addresses (including postcodes) of the representative of the OMA and the statutory objectors who wish to address the inquiry, or their representative, and the names of their witnesses. If Counsel are appearing, the names and addresses of their instructing solicitors, but not their own addresses, should be obtained. It is not necessary to get the specific qualifications of witnesses at this stage as these are given when the witness is called and often appear on proofs of evidence, but it is advisable to ask in what capacity they are appearing (e.g. rights of way officer, secretary of interest group etc.). Where more than one witness is to be called the advocates should be asked for the order in which they are to appear.

9.67 The Inspector should then call for the names and addresses of other interested parties who wish to speak. The latter should be asked to identify their interests (including whether they are landowners, and whether they support or oppose the order).

9.68 The Inspector should ask at this point, and again when those concerned are about to speak, whether the unrepresented parties are willing to submit to questions. Since the objector, OMA and any statutory parties have the right to cross-examine those opposed to them, the statements of those not prepared to answer questions from these parties can attract no more weight than written representations.

9.69 As members of the public often find difficulty in attending the whole inquiry the Inspector should check to see if any of the interested persons would be seriously inconvenienced if they were not heard in the usual order of proceedings. If there is such inconvenience it may be possible (with the consent of the other parties) to give those concerned an opportunity to appear out of turn and at a specified time preferably at the beginning of a session in order to minimise the disruption to other cases. The Inspector may have to return to this point once he has an idea of when each of the main parties is likely to come to present their cases (see Timetable below, paras 9.86 to 9.89).

9.70 In Wales it is a requirement to ask if anyone wishes to speak in Welsh, or would have difficulty following the proceedings if conducted in English. If someone does wish to speak in Welsh they have a right to participate on an equal basis with English and every opportunity must be given for them to do so. Welsh local authorities are usually aware when an inquiry may need the services of a translator, but it is possible for someone to arrive with an unexpected need for translation services. If so, you should ask the council what arrangements can be made for a translator to be present and, if necessary, you should adjourn until that person arrives.

Press

9.71 If the press are present the Inspector should ensure they add their details to the attendance form. They will not be sent a copy of the decision unless they specifically request one (like other interested parties they can view the decision via the Planning Portal). If a request is made, the Inspector must flag the request for the case officer when the file is returned to the office.

Attendance Sheet

9.72 The Inspector should ensure that an attendance sheet is being circulated and ask all present to sign it. All Councils have been issued with a standard 'Record of Attendance' sheet (available via the Planning Portal) which bears the Planning Inspectorate's logo and includes advice on how the information provided is used. If this sheet is not being used, the Inspector should ask the Council to do so, even if this means everyone having to complete it again (Inspectors will be issued with spare copies for this purpose). For multi-day inquiries, a new attendance sheet should be circulated at the start of each day and the bundle handed to the Inspector at the end of the inquiry. The attendance list asks for the name and full address (including the postcode) of all persons present. PINS no longer asks those attending if they wish to receive a copy of the decision. Instead the form used simply states that decisions will be published on the Planning Portal. Copies of decisions will still be sent to the parties to an order, those who appeared at an inquiry/hearing and to anyone else who requests one. Inspectors should attach a minute to the file drawing the

case officer's attention to any persons who have made a request for a copy of the decision to be sent to them.

Notification of Inquiry: Letters

9.73 The Inquiry Rules positively discourage the submission of late correspondence. However, letters from interested persons (not statutory parties) addressed to the OMA and received by them at a late stage may be handed to the Inspector at the start of the inquiry. These should be accepted (unless the writer objects to disclosure) but the parties asked whether they need an adjournment to allow them to deal with the contents.

9.74 It is essential to ensure that the Inspector and all of the participating parties have copies of the same letters and that their number is established. It may well save time if Inspectors hand their bundle of letters to the parties for them to check that they have identical sets. It is also desirable to distinguish those letters (if any) which favour the proposal from those which are in opposition. The Inspector should say that all letters received (and accepted, if that is relevant) will be taken into account.

9.75 The Inspector should not accept letters which appear to be potentially libellous. The author may be invited to resubmit a substitute letter making their material points but omitting libellous references. Also, no account should be taken of letters which ask to be treated as confidential. This is contrary to the principle of openness. Such letters would normally be returned to the sender by the office and not placed on the file. However, if such a letter is found on the file it should be announced at the opening of the inquiry and stated that the Inspector will not take it into account. It may be that the author of the letter is present and they can be asked if they still wish it to be regarded as confidential. (See paragraph 9.159 below on matters which may be accepted as being confidential).

Letters from MPs

9.76 If a Member of Parliament writes directly to the Inspectorate or the Inspector, with an observation about the merits of an order, the PINS RoW procedure staff will arrange for the correspondence to be copied to the parties and the Inspector. The correspondence will be placed on the file in a red jacket. Such a letter should be made available to the parties at the inquiry and the Inspector should give them the opportunity to comment on it. Any letter from an MP received in the Planning Inspectorate which states it is not to be disclosed to the parties will be removed from the case file before the file is despatched to the Inspector.

Checking Receipt of Documents, Statements etc Submitted prior to the Inquiry

9.77 Inspectors should check whether the parties have each received all the documents – statements of case, proofs of evidence and any summaries,

where appropriate - which have been distributed. They should also indicate whether they, themselves, have been able to read all the documents or indicate those elements which they have not read.

9.78 Where proofs of evidence or documents have not been distributed and another party contends that his or her case preparation has thereby been prejudiced, Inspectors should acknowledge the point, explain whether he or she has also not seen the late proofs, and say that submissions on the matter will be heard at the end of the inquiry opening announcement.

9.79 The Inspector will have to give very careful consideration as to whether the interests of any of the parties to the inquiry will be significantly prejudiced by continuing without an adjournment. Any request for an adjournment made by a party disadvantaged in this way should usually be acceded to. Even in the event that the parties are content to proceed without an adjournment he or she should ensure that his or her own preparation is not prejudiced, and may wish to adjourn for the time necessary for proper preparation (see also 9.110 - 9.120 below). The circumstances of any adjournment will need to be fully recorded for use in dealing with any consequent cost application.

9.80 Where proofs have been submitted in advance and the other parties have had a chance to read them, and the proofs exceed 1500 words in length, it is appropriate for only summaries of the proofs to be read, rather than the proofs themselves, unless the Inspector requires otherwise. As a guide, a summary should be no more than 10% of the length of the main proof. As an alternative to reading a summary, it may be sufficient to have only the conclusions of the proof read at the inquiry. However, even if only a summary has been read at the inquiry, the witness will be open to cross examination on all of the proof and its supporting material.

9.81 Even if the Inspector and the parties have received all the proofs before the inquiry, there may be difficulties with other (non-statutory) parties who wish to speak. Inspectors should endeavour to ensure that those wishing to speak at the inquiry have access to proofs and documents. Any spare copies may then be distributed to members of the public. In a multi-day inquiry a "library" of all proofs and documents should be set up for reference by interested parties. This should be placed under the control of the programme officer if there is one. Alternatively, a table should be set out at the back of the inquiry room as a sort of reference library for documents, from which documents may be borrowed – and returned - during the course of the inquiry.

9.82 Pre-inquiry meetings (PIM) are rarely held in Rights of Way cases, but they can be especially helpful where there are contentious issues which are to be argued by reference to substantial evidence and supported by a number of expert witnesses. Rule 15(2) establishes 14 days' notice must be given for a PIM. They are usually – but not exclusively - called when the inquiry is likely to last more than 8 days. A balance has to be struck between whether the time spent preparing for, conducting and reporting on a PIM will save time overall at an inquiry. It is recommended that the Inspector

contacts the Sub-Group Leader for further advice and guidance once it is known that a PIM is to be held.

9.83 Rule 21(12) allows any person to alter or add to his statement of case or his proof of evidence or summary "so far as may be necessary for the purposes of the inquiry". Because the Rules require the prior submission of evidence, the main parties should not be attempting to present significant new evidence after the 4 week cut-off date. Supplementary proofs submitted late could lead to a request for an adjournment. However, it may not be unreasonable to expect, and accept, a short rebuttal proof, which could only have been prepared once the opposing party had seen the other party's main proof. Inspectors should be careful to spot that such a proof only deals with rebuttal evidence, and does not introduce passages of entirely new material – which would merit an adjournment to consider. Where a supplementary proof is clearly the best way of communicating amendments to a party's case to the others involved there should normally be no objection. However, any unnecessary supplementary proof could attract an application for costs. Supplementary proofs of 1500 words or more should also be summarised. (See also paragraph 9.154 below).

Outlining the Procedure

9.84 The Inspector should then outline in simple terms the procedure to be followed and the order in which the parties will be heard. The aim should be to ensure that everyone knows the stage at which they will be called upon to speak. This is particularly important for anyone not represented by a professional advocate. It is obviously useful to let interested persons hear the main cases before they are asked to speak, but see 9.69 for advice on letting them speak out of turn. Inspectors should indicate that only the objector, the OMA and any statutory party have the right to cross-examine those opposing their case. However, cross-examination by advocates representing an interested person presenting a full case should usually be permitted, as should cross-examination by other parties provided it is relevant.

9.85 It will be helpful to those present if Inspectors indicate when they will adjourn for lunch, and, if it is clear that more than one day will be required, when they will adjourn at the end of the day. They should also indicate their intention of inspecting the site during or after the inquiry saying who may accompany them and explaining its purpose; and if they have had a preliminary look at the site, this provides an opportunity for them to tell the inquiry that they have done so. It should not be necessary to say that there will be no smoking during the inquiry. Other matters which should be covered in the opening include a request that mobile telephones should be switched off or put on silent and, if not immediately obvious to all in the venue, a request for a clear explanation of what procedure should be followed in the event of an emergency (e.g. fire alarm).

Timetable

9.86 Even for short (one or two day) inquiries, it is useful for all attending if the Inspector makes an attempt to sketch out a programme or timetable for the event by asking the principal participants how long they are likely to need to give their opening statements, present evidence and cross-examine the witnesses of the opposing party(ies). With the prior submission of evidence, the parties should have had a reasonable opportunity to come to some sort of an estimate of time needed. A timetable such as this will then give those who can only attend at certain times an idea of when they ought to return, or for the Inspector to agree (in consultation with the main parties) that they should appear out of the usual sequence.

9.87 A pre-inquiry meeting will have been held for most inquiries expected to run more than 8 days, and obtaining information necessary to prepare a timetable will be an important task for the pre-inquiry meeting. Rule 15 deals with pre-inquiry meetings.

9.88 If an inquiry, expected to last 8 days or more, is not preceded by a pre-inquiry meeting, it will certainly be necessary for the Inspector to establish the timetable on the opening day of the inquiry. Dealing with this amount of information and reconciling the availability of individuals may take up a considerable part of the opening day of a long inquiry. It may be best to ask the parties to consult between themselves during the first lunch adjournment and bring their suggestions to the Inspector early in the afternoon, in order to save inquiry time.

9.89 Once the timetable has been established the Inspector should ensure the parties adhere to it as far as possible. At all inquiries, irrespective of whether a timetable has been prepared, Inspectors should ask the parties on a daily basis for an estimate of the time required for each stage of their case i.e. the expected duration of examination-in-chief, cross-examination, re-examination and submissions. In addition to getting a broad brush feel of the day's programme at the start of the day, it can be useful to ask advocates to estimate the time they expect to need for examination-in-chief and cross-examination etc at the start of each phase or after any mid-session or luncheon adjournment. It may also be fruitful to ask advocates as they start cross-examination to outline the topics which they propose to cover. The reason for lines of proposed questioning which do not appear to address the identified issues should be queried.

Costs

9.90 The Inspector should remind the parties that if they wish to apply for costs, they should do so before the close of the inquiry (see Section 12 of the Training Notes).

Resolving Doubt about the Nature of an Order

9.91 The Inspector should ask the parties to confirm that the plans he / she has are the correct ones and that he / she has all of the relevant plans. Order plans should be distinguished from other plans. Any date or reference number which appears on a plan should be quoted; this is particularly important when a plan has clearly been subject to a series of amendments. It may be necessary to ensure that a set of plans is displayed in the inquiry room. If there is any doubt about the nature of the order or about the statutory position, the Inspector should resolve it at this stage.

Identification of the Statutory Criteria and the Main Issues

9.92 At the start of the inquiry the Inspector should always read out the relevant statutory criteria (see Annex 9.4). He or she must also give an indication of his or her preliminary view of the issues upon which it seems that the decision in the case is likely to turn and the material considerations stemming from these (Rule 21(2)), but care must be taken not to appear dogmatic or to have already decided to outcome. He or she should make it clear that it is open to the parties to indicate if they consider other issues to be relevant (Rule 21(3)). The aim of this exchange is to identify a list of those topics on which the inquiry should concentrate. It will include matters which are at issue between the parties and, subject to any other issues which may emerge at a later stage of the inquiry, should include those matters likely to form the basis for the issues defined in the decision or report. Even where there is a consensus at the start of the inquiry the parties should be reminded of the possibility of the issues evolving further consequent upon the hearing of the evidence, the outcome of cross-examination and the submissions by advocates. It should anyway be borne in mind that any person appearing at the inquiry might refer to any issue he or she considers relevant to the decision. The Inspector may, of course, take a different view over the significance of other views.

Other Matters

9.93 In addition to giving the inquiry a preliminary indication of the likely issues it is always helpful for the Inspector to draw attention at the beginning of the inquiry to any matters on which clarification or additional information is needed. These matters might include topics which are agreed between the parties but on which the Inspector requires clarification. Similarly the Inspector may wish to indicate areas covered in the evidence on which detailed cross-examination would not be of assistance.

9.94 Although the Inspector is free to make an unaccompanied inspection of the site before or during the inquiry without giving notice of his or her intention to do so, the possibility should be mentioned in the inquiry opening.

9.95 At multi-day inquiries, particularly those expected to last for more than about 4 days, the Inspector should ask the advocates for the parties to submit written copies of their closing submissions. For cases where the Inspector is reporting to the Secretary of State, advocates should be asked to prepare them in a form capable of being adapted for inclusion in the

report. To have an electronic copy (i.e. on disk) as well as on paper can be very helpful for the Inspector in this respect. Advocates may be willing to provide submissions in writing for shorter inquiries but it is usually impracticable at inquiries lasting less than about 4 days. Information submitted on disk should be sent to the Connect Service Desk for virus checking before being used in an Inspector's machine.

9.96 In the opening announcement the Inspector should mention that copies of the decision will be sent to those who speak at the inquiry and to anyone else who has specifically requested one at the inquiry or has already done so in writing. The Inspector should inform those attending that all decisions will be published on the Planning Portal and so be available to all those attending. If anyone does request a copy of the decision a clear note of the name, address and post code should be taken and eventually attached to the file before it is submitted to the office.

OTHER MATTERS WHICH MAY ARISE FOLLOWING THE OPENING OF THE INQUIRY

Absence of a Crucial Party

9.97 If a party is unable to attend the inquiry, it would be reasonable to expect that a representative should have been sent with a request for an adjournment. The decision on whether an adjournment is appropriate is made at the discretion of the Inspector.

9.98 If one of the crucial parties should fail to appear at an inquiry, the Inspector must judge very carefully whether to proceed.

9.99 Sometimes the absence of a crucial party is due to no fault of their own. They will have a genuine grievance if the issue is dealt with behind their back, especially if the public are present, or if the press happen to print a one-sided account of the proceedings.

9.100 It is proper to hear the comments of the OMA in the absence of an objector, always provided that the absent objector has been informed of the inquiry. However, in cases where there is a sole objector or the Inspector has reason to believe that an objector intended to be present or be represented the guidance in paragraph 9.101 below should be followed.

9.101 The cases in which these circumstances arise are exceptionally rare, and it is not possible to specify precisely how the Inspector should act, but the following outline procedures will probably meet the majority of instances:

- The Inspector formally opens the inquiry at the appropriate time and takes the appearances

- If neither the objector nor their representative is present the Inspector should adjourn the inquiry for 15 minutes or so while the OMA try to contact the objector by telephone or messenger.

- If the Inspector has reason to believe that the objector has behaved irresponsibly, the case of the OMA and those of other parties present may be heard, as may any applications for costs. The inquiry should then be closed and an unaccompanied site inspection made (unless it is clear that any unaccompanied visit would not suffice). On such an inspection particular care should be taken not to get into conversation with any person near or at the site or to trespass on private property.

- If there is no reason to believe that the objector has behaved irresponsibly the Inspector should not listen to any representations on the merits of the case, but should:-

    - hear what the authority has to say about the situation (e.g. as to their efforts to contact the objector);

    - announce that it is not proposed to hear one party in the absence of the other; that the site will be inspected (unless it is clear that an unaccompanied visit would not suffice); invite the views of those present on whether it might be possible to come to a decision (or recommendation) by written representations, including any from interested persons;

    - hear, but not invite, any application for costs;

    - Adjourn the inquiry, unless the authority objects to an adjournment. If practicable to do so, a date for reconvening the inquiry should be fixed. In cases where there is no one from the objector's side present, a date will have to be set by PINS after consulting the parties. If the authority opposes adjourning the inquiry, it should be closed.

    - After returning home, inform the ROW Section Manager of what happened and what action you took and on what further action may be necessary.

    - Where an application for costs is made see Section 12 of these Training Notes.

Withdrawal of Objections to an Order

9.102 In the case where the Inspector is told that a sole or sole-outstanding objection has been withdrawn, the inquiry should be opened in the usual way, bearing in mind that the inquiry is into the order itself and not merely the objection and that the inquiry has been advertised and that other non-statutory objectors may wish to be heard. The extent to which evidence needs to be given in support of the case stated by the Council is a matter for the Inspector's discretion in the light of the particular case. A decision upon the order will be submitted in the usual way.

9.103 When an inquiry is concerned with more than one order and a withdrawal does not lead to the closing of the inquiry, written confirmation is not necessary provided the objector or their representative announces the withdrawal in public before the Inspector.

Requests for Rulings

9.104 The Inspector may be asked at any stage of the inquiry to give a ruling following an objection to the procedure; for instance, the need for an adjournment, the order in which parties are to be heard or the admissibility of evidence.

9.105 Precipitate rulings can be avoided by following the proper sequence in dealing with the request. The party seeking the ruling should be heard without interruption after which those opposing the ruling should reply, again without interruption. Following a response from the party seeking the ruling, Inspectors should ask any questions they might have before giving their ruling. An adjournment may be helpful to allow the arguments to be fully considered and to prepare a ruling. Putting a ruling in writing is valuable (and advisable in contentious circumstances) but all must be considered carefully before being announced.

9.106 When considering a ruling, the Inspector should bear in mind the following principles:-

- natural justice; the ruling should not put any party at a significant disadvantage;

- the Inspector's own interest; provided there is no breach of natural justice, a point may best be resolved on the basis of how the Inspector may best be helped;

- a simple common-sense ruling is more likely to be appropriate than one which is complex, or is based on complicated reasoning;

- Where a ruling is sought the Inspector must give clear guidance to the parties. It is essential that all concerned understand any ruling given even if they are unhappy about its implications.

9.107 The Inspector must of course, be keenly aware of the precise terms of the legislation relevant to the issue. Advocates should in any event be invited to address the Inspector on the relevant provisions of the legislation. The Inspector has great discretion over the procedure and conduct of the inquiry (Rule 21(1)), but that discretion must be exercised responsibly and sensibly, taking into account the views of the participants and the conventions of natural justice.

9.108 When a ruling has to be given, a fair and common-sense solution will usually be accepted. If one party persists in objecting, the Inspector should proceed with the inquiry and announce that the objection will be recorded in the report (in Secretary of State cases) or decision. It is open

to objectors to challenge Inspectors' rulings through the normal channels of complaint after the inquiry.

9.109 The Inspector should never say or even imply that a ruling has been based on instructions from the office. The Inspector alone is in control of the inquiry proceedings, and makes all rulings.

Adjournments

9.110 Substantial adjournments are always a matter of importance as they may lead to claims for costs. Inspectors should always ascertain the reasons for any request from the party seeking the adjournment, the answer of the other side, and finally any further response from the first party, if any, before considering the request, if necessary during a short adjournment. Before agreeing to an adjournment Inspectors must satisfy themselves that it is absolutely necessary and that the matter cannot be dealt with by written representations, or by re-arranging the inquiry programme. Adjournments should never be granted lightly. The reasons for the request and your ruling should be recorded in the body of the decision or report, particularly if they are the subject of dispute.

9.111 Inspectors should be cautious when considering a request for an adjournment based on the plea that a party has had insufficient time to prepare a case. The 2007 Inquiry Procedure Rules are very clear and are aimed at giving all parties an even-handed opportunity to participate in the process. The Rules include adequate time for evidence to be prepared and submitted. In any event, it should not be unduly difficult for the parties to marshal their thoughts – the OMA should not have embarked upon making an Order unless substantial evidence has been discovered or assembled to justify making the order in the first place, and objectors should have been able to point to cogent evidence to substantiate their objection. That is, by the time an order comes to the Secretary of State for confirmation both parties should already have a body of evidence to support their views.

9.112 The Planning Inspectorate usually resists requests for postponements that are made before the inquiry, unless there is a good reason. A party to an inquiry might request a short adjournment to consider, for example, new items of evidence which have been produced at the start of or during the inquiry. It is sensible to agree to a reasonable short adjournment in those circumstances, because you will probably want time to consider the new material yourself. But a request for a substantial adjournment running into weeks should normally be refused. People have arranged to be present at the inquiry on the day fixed for it, and it should not lightly be put off. Late submission of evidence will also place that party at risk of an application being made for an award of costs against them where this requires an adjournment to consider that evidence.

9.113 Whenever an adjournment is requested, seek views from the other parties, and let the person who made the request respond to those views before making your mind up. Be prepared to adjourn briefly to allow yourself time to consider the request carefully. The circumstances of any

adjournment will need to be fully recorded for use in dealing with any consequent cost application.

9.114 A party may request an adjournment on grounds of ill health. Clearly a short term illness contracted a short time before an inquiry is unpredictable and a common sense view has to be taken of this. However, it may be that the claimed illness of a witness or advocate might be a ploy by one of the parties to delay the inquiry. This may be (say) because their preferred advocate is not available that day. Such matters may have been previously considered by the RoW staff in the office and it is not appropriate for the Inspector to undermine a decision made by the office to continue with an inquiry under such circumstances. If illness is put forward as the reason for the non-appearance of a person then the Inspector should ask for a doctor's note to be produced.

9.115 There are other circumstances in which the case for granting a request for an adjournment is very strong, particularly if the issue of natural justice arises. The courts have taken a very strict view of the application of the rules of natural justice in inquiries where Inspectors have refused requests for an adjournment. Inspectors should not assume it is reasonable to carry on with an inquiry where a new point has been raised by the OMA simply because an unrepresented objector did not ask for an adjournment to deal with it. Inspectors are under an obligation to tell such an objector what his or her rights are in such circumstances.

9.116 The adjournment of an inquiry which has been opened implies that eventually it will be resumed, and one of the parties may later demand that it should be. Accordingly when adjournment is an appropriate course, a definite time and place for the resumption should always be specified. Apart from where there are unexpected circumstances of the sort described in 9.97 - 9.101, indefinite (or *sine die*) adjournment is not appropriate or desirable owing to the amount of correspondence necessary to arrange a fresh date. In setting the date on which the inquiry is to be resumed Inspectors must take into account existing commitments in their programmes, if necessary contacting the SGL/GM before agreeing any dates. Inspectors should also ensure that a suitable venue is available for the resumed inquiry.

9.117 In any event, when Inspectors adjourn an inquiry (other than for a short period) they must immediately telephone the SGL/GM stating the reasons for the adjournment and the date, time and place agreed for the resumption. This should be followed up with a minute setting out the details.

9.118 If, having adjourned the inquiry, the Inspector considers that the date fixed for resumption should be changed, or that the inquiry should be closed without being resumed, the SGL/GM must be consulted.

9.119 Short adjournments, for example to consider new items of evidence, which do not result in anyone having to return on another day generally cause less difficulty. Indeed, such adjournments can be beneficial, not least to

the Inspector. It is often more efficient to adjourn for an hour or so rather than continue with the inquiry in a situation where, for instance, the parties need to resolve matters on which they are capable of reaching agreement and where it is not practicable to re-arrange the programme.

9.120 Day-to-day adjournments should take place in accordance with the times announced at the opening, subject to some flexibility to enable the adjournment to coincide, if possible, with the end of a particular stage of the inquiry. Inspectors should not be persuaded to extend an inquiry session far into the evening, even if one of the parties is in difficulties about returning on another day - it is unfair to other participants and to the Inspector, who cannot be expected to concentrate for so long.

Requests for Recovery of Jurisdiction by the Secretary of State

9.121 If, in the case of an order where the Inspector is appointed to make the decision, the Inspector is asked at an inquiry to refer the case to the Secretary of State for decision, the arguments put forward should be noted and the parties informed that consideration will be given to seeking the Secretary of State's ruling as to whether jurisdiction should be recovered. After the inquiry, the matter must be brought to the attention of the SGL/GM so that consultations can be instituted as to whether recovery would be the appropriate procedure in that particular case.

Validity of the Inquiry

9.122 Inspectors may be faced with legal submissions, challenging the validity of the inquiry. Always ask for these to be produced in writing. Give the other parties an opportunity to respond to them, following which the person who made the original submission should be given a right of reply. In a case where the Inspector is to make the decision, you can seek advice from PINS' RoW procedure group after the inquiry has closed and before preparing your decision.

9.123 If the challenge is because of a defect in complying with statutory requirements, the Inspector should first hear the submissions before seeking the views of the other parties. The person making the original submission should then be given the right to reply.

9.124 If the submission is, in effect, that the inquiry is outside the powers of the Secretary of State and should not proceed, unless you are convinced that the submission is correct, the line to take is that you have been appointed by the Secretary of State to hold the inquiry, and that you intend to do so, but that you will reflect on the submission made, and deal with it in your decision. If the submission is to the effect that the procedural requirements of the Act have not been complied with, seek information about the allegation, invite comments from the OMA, and investigate the extent to which anyone might have been prejudiced by the alleged failure. Unless the interests of any of the parties have been seriously prejudiced, the Inspector should endeavour to carry on with the inquiry even if there is an admitted defect.

Validity of an Objection

9.125 It has been established through the Lasham judgement, which considered two issues relating to orders under section 54 of the Wildlife and Countryside Act 1981 ("the 1981 Act"), that an authority has no power to determine whether or not the grounds of an objection or representation are relevant. In particular, the case focused on the whether a surveying authority is entitled to treat an order made under section 54(1) of the 1981 Act as an unopposed order where the only objection to it is based on legally irrelevant considerations. The court took the view that the authority should have referred the order to the Secretary of State for confirmation despite the fact that the objection was based on irrelevant considerations of amenity.

9.126 Paragraph 7(1) of Schedule 15 to the 1981 Act provides that if any representation or objection is duly made and not withdrawn then a surveying authority shall submit the order to the Secretary of State for confirmation. A duly made objection is one that is made within the time and in the manner specified in the Notice of the Order. Neither the Secretary of State nor a surveying authority is entitled to disregard an objection that is made on legally irrelevant grounds or where no grounds are specified (see Rights of Way Advice Note No 9). In the case of a duly made but irrelevant objection, the Secretary of State will usually write to the party prior to inquiry to indicate the opportunity to alter the objection. If the party chooses not to alter or withdraw their objection they still retain the right to be heard.

Modified Proposals (also see Training Notes Section 7)

9.127 There may be circumstances where an order is modified during or before an inquiry. Little difficulty arises when there is time before the inquiry for the modification to be brought to the notice of the objectors and any other interested persons, particularly any statutory parties. The changes may overcome the objections, in which event it is likely that they will be withdrawn. If the objector maintains their opposition they will be in a position to give their reasons fully at the inquiry.

9.128 Where, however, amendments are put forward for the first time at the inquiry, or too late for the inquiry to be postponed, much will depend on the attitude taken by the objector(s) or their representative. If the modification is concerned only with a matter of detail, the objector may be able (perhaps after a short adjournment of no more than an hour) to give their views. An inquiry may be held on the basis of a modified proposal provided the modified scheme does not amount to a substantially different proposal.

9.129 Only in certain circumstances will a minor extension of the original route be acceptable as a modified proposal. Parties attending the inquiry may argue that they are unable to form a considered view on the modified proposal within the expected duration of the inquiry. If such an objection arises the Inspector should consider the weight to be given to the

objection, but the fact it has been made is likely to point towards refusing the request to adopt the modified proposal.

Requests for a Witness Summons

9.130 The Inspector (not the Department or the Inspectorate) has the power under Section 250(2) of the Local Government Act 1972 to issue a summons. It is a power which is used very rarely and should be exercised with extreme caution and only as the very last resort. If, however, the Inspector considers that a witness summons might be issued, the inquiry should be adjourned and the SGL/GM informed.

9.131 Parties applying for a summons should be made fully aware that they are required to pay out-of-pocket expenses, including compensation for loss of earnings where appropriate, to the witness sought to be summoned. The summons must be served by the party who applied for it and who is liable for any costs involved. If these obligations are accepted, the Inspector must then consider the case for issuing the summons.

9.132 Before issuing a summons the Inspector must be reasonably satisfied that:-

- the evidence to be given by the witness is likely to be material to the case;
- the witness is the appropriate person to give the evidence;
- they will not come unless a summons is served;
- the production of a sworn witness statement would not obviate the need for personal attendance.

9.133 If at the inquiry an Inspector decides that a summons ought to be issued the proceedings may have to be adjourned (to a fixed date) because the summons has to be drawn up and has to be signed by the Inspector, personally. An alternative is to continue with the inquiry, hearing other evidence until the date on which summoned witnesses are required to attend. In either case, the Inspector will need to know the name and address of the person requesting the summons, the name and address of the person summoned (the witness) and what documents, if any, the witness may be asked to produce. Written confirmation will be needed that the person requesting the summons is prepared to meet all justifiable costs. For guidance about drawing up the summons the SGL/GM should be consulted.

9.134 Inspectors may, very exceptionally, find it necessary to issue a witness summons of their own volition in order to elicit information which has not been forthcoming from the case as presented by the parties and where the parties have declined the Inspector's invitation to adduce further evidence. Inspectors should bear in mind that, in such circumstances, the expenses to be paid or tendered to the witness would have to be borne by the

Inspectorate. They must therefore consult the SGL/GM before embarking on this course.

9.135 If a witness fails to appear in response to a summons, the inquiry must be continued and the non-appearance reported to the SGL/GM. The party who requested the summons may commence legal proceedings. However, it should be noted that even if the witness does appear, he or she cannot be forced to speak.

Inspectors Served with a Witness Summons or Otherwise Requested to Give evidence in Court

9.136 An Inspector who is called upon to give evidence in a court, or who is actually served with a witness summons, should immediately inform the SGL/GM.

ADVOCATES AND WITNESSES

Advocates

9.137 Although advocates should generally be permitted to conduct their cases as they wish, without undue interruption, they are not entitled to digress in their submissions and discuss matters not relevant to the issues under consideration; this wastes public time and money. Moreover, once an advocate has been allowed to raise an issue the opposing party must be permitted to deal with it. Although it is the duty of an Inspector to see that time is not wasted at an inquiry situations of this kind should be handled with great discretion. Inspectors must never sit back and appear to be bored.

9.138 In their opening remarks advocates should be asked to summarise in "headline" form the basis of their case and the nature of the evidence to be called. The length and level of detail appropriate will depend on the complexity of the case, but 15 minutes should be enough in even the most involved cases. Neither is it necessary to reiterate the evidence in detail during a closing statement (except where the Inspector has requested submissions in writing in a form suitable for incorporation in his or her decision).

9.139 Even experienced advocates may sometimes be repetitious and may spend an excessive amount of time on small matters merely because they are not sure that the Inspector has understood the point they are making or are uncertain how much importance the Inspector may attach to it. Time can be saved to everyone's satisfaction if the Inspector courteously assures advocates that their point has been understood or that an issue has been explored far enough. Inspectors must, however, be sure of their ground before venturing the opinion that the issue is irrelevant particularly in cases to be decided by the Secretary of State.

Advocates Who Are Also Witnesses

9.140 Sometimes professional persons such as surveyors appear in a dual capacity as advocate and expert witness. The Inspector should check that they are prepared to be cross-examined on their evidence. They usually agree without demur, if not questions can be directed through the Inspector if necessary. It is, however, important to distinguish between the two roles and in such cases the person concerned should be asked to sit at the witness table when giving evidence.

Expert Witnesses

9.141 The weight which should be given to the evidence of expert witnesses will depend in part on their qualifications and experience. If these are not adequately described, details should be obtained by the Inspector, who must be aware of the significance of any qualifications held. In general, however it is the quality of the evidence which is important, and advocates' questioning of qualifications should be regarded in that light. When an advocate calls two or more witnesses with similar backgrounds it is important that the ground to be covered by each is clearly defined so that any overlapping of evidence can be avoided and questions are directed to the appropriate witness.

Professional Officers Who Disagree With Their Authority

9.142 An order making authority does not always accept the advice of its professional officers. It is reasonable to expect that officers whose advice has been rejected should explain to their council that if they attended the inquiry as a witness they would have to give their personal opinion if it was required. It would then be open to the council to call them nevertheless, or to call a policy witness instead, (e.g. the chairman of the highways committee), or to seek an independent professional whose views coincided more closely with their own.

9.143 Rights of Way officers and other professional witnesses may thus appear at inquiries in cases where their advice was not accepted by the council. Many local authority meetings are now open to the public, so that this circumstance may be freely revealed at the inquiry. But if it is not, and such witnesses are embarrassed by direct questions requiring them to give their personal opinion, they may seek the protection of the Inspector.

9.144 Inspectors should not insist that professional witnesses disclose the advice they gave to the council. If the council choose not to reveal the advice they receive from their officers the Inspector should not interfere. However if the matter is, in the Inspector's view, relevant, expert witnesses may properly be asked for their own professional views on a matter within their professional competence. Protection against such a question should not be afforded merely because it might embarrass the witness. The Inspector should say that they are expected to give an answer, and may make it easier for them to do so by drawing the distinction between giving their own professional opinion on a question

asked at the inquiry and revealing advice given to their council. If the witness declines to answer, the opposing advocates may be invited to draw what conclusions they will.

9.145 Where the OMA do not call a professional officer as a witness the Inspector should not accede to requests for such a witness to be called, unless satisfied that the issue could not be reasonably determined without the evidence of that witness (see 9.132). The same applies to the production of a document which one party wishes to have revealed and the party holding the document is reluctant to produce (see also 9.181).

NATURE AND RULES OF EVIDENCE

9.146 Inspectors are not bound by the strict rules of evidence, even when it is given on oath. Nevertheless it is desirable to heed the principles set out below; how closely they should be followed depends on the nature of the inquiry.

- In most kinds of inquiry the responsibility to demonstrate the validity of an assertion lies on the party who asserts, whether the allegation be affirmative or negative. It does not necessarily lie throughout the case with one or other of the parties, but can shift from side to side as the case proceeds.

- Evidence should be confined to the matters at issue, so that irrelevant matters should in theory be excluded. However, if in doubt, it is better for the Inspector to err on the side of admitting too much rather than too little. Where necessary Inspectors should tactfully question the relevance of evidence, but if its presenter persists, it is usually wise to proceed to hear it without prejudice to the consideration of the weight to be given to it. Occasionally the situation threatens to result in a serious waste of inquiry time - bearing in mind that the opposing party must be given the opportunity to counter it - and if Inspectors are sure of their ground, they should refuse to hear irrelevant or repetitious evidence. Discussion of the admissibility of evidence, however, may take up more inquiry time than listening to evidence of doubtful relevance. Usually, it will be unnecessary to do more than mention that the Inspector will refuse to hear such evidence; Inspectors must remember to say that the persons concerned may submit anything which has been excluded, but which they still wish to say, in writing, before the close of the inquiry.

- The best evidence available should be required; e.g. the original of a letter should be produced if possible. But if the contents of the documents are not disputed, or are not of special importance, production of a copy is acceptable.

- Oral evidence is of most value when witnesses speak of their own personal knowledge and what is said stands up to cross-examination. Hearsay evidence (i.e. what one hears but does not know to be true) is

clearly second best, although it should not be ruled out indiscriminately, even when an objection is made to its admission; it may be the only evidence available. How far Inspectors should subsequently rely on hearsay evidence in reaching their conclusions must depend on the nature and importance of the evidence and on the Inspector's judgement of its reliability. Similar considerations apply to the admission of documentary evidence which cannot be tested because its author is not available for questioning.

- Advocates should not ask leading questions (questions which suggest or tend to suggest the answer expected from the witness) on anything but wholly non contentious parts of the witness's evidence either in examination-in-chief or in re-examination. This rule of evidence is subject to two important exceptions:

    - To shorten the proceedings and bring the witness quickly to the material points of the case it is permissible, and indeed desirable in order to save time, to lead in matters which are not in dispute.

    - Where a witness is hostile to the party calling him, leading questions may be asked. Advocates must however obtain the Inspector's permission before they are allowed to treat one of their own witnesses as 'hostile'.

      A witness is not 'hostile' in this sense simply because his or her evidence is not as favourable as his or her advocate may have liked. If therefore he or she merely fails to come up to proof, his advocate will have to accept it.

      Inspectors should give permission to treat a witness as hostile only where the witness – either by his or her demeanour or the evidence he or she gives – displays a material degree of antagonism towards either his or her advocate or the case he or she was called to substantiate. Once such permission has been given the witness may be subjected to a rigorous cross-examination. This might include in-depth questioning on an earlier proof of evidence with which the current testimony is inconsistent.

- Public or official acts or duties are presumed to have been correctly performed in the absence of convincing evidence to the contrary. Submissions arguing otherwise should be resisted, unless specific evidence to substantiate the point is placed before the Inspector.

- Communications between the parties and their legal advisers are privileged and the Inspector cannot require evidence to be given about them.

- Witnesses are not required to give an answer which would incriminate them or their spouse. It is the responsibility of the Inspector to prevent them from so doing. If they appear to be in danger of committing a

slander, they should be warned of the consequences, especially if the potential injured party is not present.

HEARING THE EVIDENCE

Examination-in-Chief

9.147 Advocates must not ask leading questions, i.e. put the answer in the mouth of their witness (but see 9.146 for exceptions). Repetition of factual material should be avoided. For example all the parties at an inquiry into a rights of way order might reasonably be expected to know the route and the basis for the objections made to the order. While these facts should all be clearly stated during the opening phases of the inquiry, particularly if interested parties and the public are present, the repetition of them by successive advocates and witnesses is unnecessary and should be stopped. There should be no argument at the inquiry about the verifiable facts - they should merely be verified, for example physical features could be left to be checked at the site inspection. The inquiry should be concentrated on the judgements to be made in applying accepted facts and policies to the particular circumstances of the case. If necessary expert witnesses should be instructed to withdraw in order to resolve factual disputes without wasting inquiry time.

9.148 As part of examination-in-chief, advocates should put to their witnesses any relevant points in the other side's evidence which have not already been covered in the proof - together with any other points which may have emerged since the evidence was prepared.

Proofs of Evidence

9.149 Although it is helpful, indeed common practice, for witnesses to produce proofs of evidence, there is no obligation to prepare them; evidence may be given orally without reading from a prepared statement. Evidence given in this way should be accorded no less weight but is equally open to cross-examination.

9.150 The Inspector should have ensured in the preliminary stages of the inquiry that all parties who need a copy are provided with one, if possible in time to read and consider before the witness is called (see 9.77 – 9.79 above).

9.151 Where witnesses intend to read from proofs, unless there are copies available for circulation to participants, it will probably be necessary for them to be read out. Because all evidence should have been submitted in advance, unless the proof of evidence is quite short (i.e. less than 1500 words) it is not necessary for witnesses to read their proofs in full. Unless the Inspector permits or requires otherwise, it is sufficient for only the summary to be read out in order to allow the witness an opportunity to

'settle in' and to give those not directly involved an outline of the matters to be addressed by that witness. It will still be necessary to clarify matters which need further comment (e.g. putting to the witness a point made by a witness for the other side), but the overall saving of inquiry time should be significant. The summary should not normally be longer than 10% of the main proof. Where there is little interest from the public it may be possible to dispense with the reading of even the summary.

9.152 Repetitious evidence should be curtailed wherever possible (for instance one description of the route of the way from one witness is usually all that is necessary).

9.153 If a proof has not been read in advance by all those parties who wish to follow the evidence, the Inspector must take this into account. Unless the programme can be re-arranged, the evidence may have to be taken more slowly, perhaps to the extent of the proof being read out if the advocate or witness is unable to give an adequate oral summary.

9.154 The production of supplementary or rebuttal proofs at an inquiry may not be unusual where proofs of evidence (and the summaries) have been submitted prior to the opening of the inquiry. There may be instances, especially in major and complex cases, where complicated issues arise for which the presentation of a written statement is preferable to oral rebuttal in examination-in-chief. Having the material presented in written form helps the Inspector understand the narrowing points of difference between the parties. If supplementary or rebuttal proofs are presented in such circumstances and if they include any fresh matter the Inspector, having consulted the parties, must decide whether to postpone further consideration - adjourning the inquiry if necessary - in order to give the other parties more time to consider it. A short adjournment should usually be sufficient. If a longer adjournment is proposed the Inspector must satisfy themselves that such an adjournment is essential in the interests of natural justice before agreeing to adjourn.

Proofs not normally to be treated as Documents

9.155 Witnesses may often depart from or add to their proofs as a result of questions put to them by their advocates. Moreover, the substance of the proof must be assessed in the light of amendments or contradictions resulting from cross-examination and re-examination. For these reasons a proof as originally circulated may later seem misleading; therefore it should not be included in the documents listed and filed with the report or decision. One exception to this is a proof (or part of a proof) that is concerned with material evidence of a highly technical or statistical nature and is unchallenged, or if challenged is not varied by the witness. Another exception is where appending a proof to a report would help to shorten the report.

Summaries

9.156 When a written summary of the evidence has been submitted, only the summary should be read out unless the Inspector permits otherwise. Even if the proof is not read out the witness is subject to cross-examination on it in the usual way. The power to restrict witnesses to reading the summary must not be used unreasonably - for instance, they should be allowed to augment or amend their evidence in order to counter a point made by an opposing witness.

9.157 The use of written summaries can be of considerable help to parties in so far as they are informed of the key points of the evidence. Being concise documents, it is practicable to distribute copies more widely, and this should be encouraged. But it does not remove the difficulty of the party who has not seen the full proof of evidence in advance and needs time to study it (see 9.81).

Evidence in Camera

9.158 Section 321 of the Town and Country Planning Act 1990 requires that, subject to certain exceptions, inquiries held under that Act should be held in public. Oral evidence must be heard in public and documentary evidence must be open to public inspection. Section 321 of the 1990 Act applies only to inquiries held under that Act, but it is unlikely that Ministers would wish this matter to be treated differently if it arose in an inquiry conducted under any other Act, or at a joint inquiry under the 1990 Act and another. Inspectors' conducting such inquiries are therefore advised to act correspondingly, both in seeking to turn applications away and if one is pressed.

9.159 As for the exceptions, the Secretary of State (and only he) is empowered by the 1990 Act to direct the hearing of evidence in camera, and then only if he or she believes that the public disclosure of that information would be contrary to the national interest because it related to national security or to the measures taken or to be taken to ensure the security of any premises or property. (National security or the security of premises or property is a category of exemption that includes proposals for anti-terrorist devices being included in buildings). Commercial confidentiality, or the privacy of individuals, is not on its own a justification for an in camera session; and Inspectors are not entitled to accept information privately (including accepting written submissions which are not disclosed to the other parties). Making this quite clear in a tactful way may well solve any problem of this kind.

9.160 Inspectors should therefore dismiss applications for private sessions unless they concern a matter the disclosure of which would be contrary to the national interest as illustrated in the previous paragraph and the evidence about it is essential to the outcome of the inquiry.

9.161 In the very rare case where an application is pressed, or the need for a possible in camera hearing becomes evident, Inspectors should contact the SGL/GM at once for further guidance.

9.162 Such an application will have to be reported to the Secretary of State, in order that the question can be considered whether a direction ought to be given for excepted evidence to be dealt with at a private session (in which case jurisdiction in a transferred case might be recovered). For these reasons the Inspector will have to decide, bearing in mind the particular circumstances of the case, between concluding the inquiry without prejudice to the Secretary of State's decision on the private session and adjourning the inquiry pending a decision. In longer inquiries it may be possible to proceed with other business, but in short inquiries if an adjournment is decided upon, a period of at least a month should be allowed for the Secretary of State's decision.

Evidence on Oath

9.163 It has been the convention that it is not considered necessary to take evidence on oath at a rights of way inquiry. However Inspectors have the statutory authority to take evidence on oath, or instead of administering an oath may require the person examined to make a declaration of the truth of the matter in respect of which he or she is examined. This authority applies only to statutory inquiries.

9.164 It is for the Inspector to decide whether the circumstances of a case render it necessary or desirable, to take evidence on oath. The power should be used sparingly, and weight should be given to any views expressed by the parties.

9.165 Discrimination between witnesses should be avoided, and if one witness is to be put on oath it is desirable to put all witnesses on oath.

9.166 If witnesses object to being sworn on the grounds that they have no religious belief, or that the taking of an oath is contrary to their religious belief, they must be allowed to make a solemn affirmation in lieu. A witness has the right to be sworn with uplifted hand in the Scottish form and manner; in this case a Bible is not required. If an interpreter is needed for a witness giving evidence on oath, the interpreter must be sworn.

9.167 Copies of the Old and New Testaments are kept in the PINS RoW procedure section (Room 3/25) at Temple Quay House for issue on loan to Inspectors for use with witnesses who are Christians or Jews. Witnesses who are neither Christians nor Jews are sworn according to the form prescribed by their particular religion. If a witness has confirmed that they wish to be sworn according to their particular beliefs they should be allowed to do so.

9.168 Care is needed in administering these oaths because there are certain rituals associated with some of them. For example, Muslims must not be

offered the Koran by a non-believer unless the book is covered by paper. Further, washing facilities would be needed for Islamic witnesses. Inspectors will need to use their discretion and judgement when dealing with special oaths and should generally ask for guidance on particular requirements or rituals from the person who is to be sworn. If a witness has confirmed that they wish to be sworn according to their particular beliefs they should be asked to provide the appropriate Holy Book. Where it is not reasonably practicable to do this, or where the witness has no religion, an Inspector may require the witness to make a solemn affirmation instead. The forms of oath and affirmation which should be used are set out in Annex 9.1.

9.169 Evidence on oath need not be taken down word for word, but in Secretary of State cases it must be noted in sufficient detail for the proceedings to be fully reported. In such cases the Inspector must indicate the name of the witnesses and distinguish what was said by each, in evidence-in-chief, cross-examination and re-examination.

9.170 The sanction behind the administering of an oath, or affirmation, is that witnesses who knowingly make a false statement of fact on a matter material to the questions at issue may render themselves liable to prosecution under the Perjury Act 1911. Seven years imprisonment is the maximum penalty for perjury in judicial proceedings, which include inquiries but not hearings.

Inspector's Notes

9.171 The Inspector should make notes of what is of relevance at the inquiry. The notes cannot be a word-for-word account of the proceedings, but all the significant points necessary for the production of a balanced report or decision must be recorded, however briefly. Too much obvious note-taking should be avoided because it creates an impression that the Inspector is not mentally alert, cannot readily absorb the arguments being put, and is not attending to the advocate or the witness. However, full notes should be taken of legal submissions, requests for rulings (including the ruling given) (9.104 - 9.109), costs applications and evidence taken on oath (9.163 - 9.170). It is important to record the times of any significant adjournment (together with the reasons given for adjourning) in circumstances where these may be required in dealing with any claim for costs.

9.172 Inspectors should bear in mind the possible implications of recent challenges which could mean that their notes might under certain circumstances be made public. Inquiry notes should therefore be confined strictly to matters of fact.

MODIFICATION INQUIRY

9.173 The format of inquiries into proposed modifications will be different to that of a 'normal inquiry'. The main difference is that the purpose of the inquiry

is to consider the objections or representations made in relation to the Inspectors' own proposals to modify the order. Therefore it will be usual practice for the Inspector to

- open the proceedings by outlining the detail of the modifications, with a brief explanation of his or her reasoning;
- explain how the proposal has been advertised to satisfy the (appropriate) statutory requirement;
- read out the list of the objections against and any representations in support of the proposal;
- if the OMA appear to be neutral in relation to the modification, i.e. they have submitted no representations upon the matter, they should be invited to set out their position at the start of the proceedings; and
- establish the order in which parties are to be heard. See Annex 9.5 for further advice.

9.174 If anyone seeks to present evidence in relation to the unmodified part(s) of the order, the Inspector should refer to the guidance given upon the Marriott judgment in Rights of Way Advice Note 10. Having said that, it may still be relevant to set up an inquiry which runs under both paragraph 7 and paragraph 8 of Schedule 15 of the Wildlife and Countryside Act 1981 where substantial new evidence has been discovered relating to the merits of the order as originally made. If this is the case, then the Rules will still apply with regard to prior submission of evidence and the resisting of further evidence after the close of the inquiry.

DOCUMENTARY AND OTHER FORMS OF EVIDENCE

Acceptance of Documents (Including Maps, Plans and Photographs)

9.175 Documentary evidence is to be treated in the same way as oral evidence in that it cannot be taken into account unless it has been disclosed to every party having a locus, or proper interest, in the matter in issue, and these parties have had an opportunity of commenting, whether by cross-examination or otherwise, upon it. Just as objection could and would be taken to a request by any party to give oral evidence in private, so also objection could and should be taken to the submission of evidence of a documentary nature in private (see 9.1588 - 9.1622). When parties submitting documentary evidence are not available for cross-examination or are not prepared to be cross-examined, that evidence must be accorded less weight than would otherwise be the case.

9.176 The Rules require that documents are circulated in advance. However, it is recognised that some documents are not capable of being circulated in advance either because of their size (large plans), or their condition prevents photocopying (some historic documents etc.). In these

circumstances, it is not unreasonable for documents dealing with points to be produced for the first time at the inquiry. However, the Rules imply that the Statement of Case should indicate the supporting documents which are to be relied upon (Rule 17). The production of documents at the inquiry should not be used as a pretext to "ambush" the opposing party – sufficient time must be allowed for the other party to study and consider the significance of such documents if they have not been forewarned they will be referred to.

9.177 The parties should generally ensure that enough copies of any document they seek to submit are available. If there is any difficulty the Inspector has a reasonable expectation that any person entitled or permitted to appear at the inquiry should be given access to facilities to take or obtain copies of evidential documents.

9.178 Inspectors must ensure that the other parties have the opportunity to explore the contents of submitted documents and to comment on or object to their admissibility. Short documents may be read out, as may extracts from a longer document if only a few passages are relevant. Otherwise, it may be appropriate to adjourn briefly or, for instance, to delay consideration until after the lunch adjournment. Items which are not easily copied - plans, photographs, bulky petitions etc - can be shown to all those properly concerned, again using an adjournment if necessary.

9.179 A party may wish to hand in a large bundle of documents which have neither been copied nor seen by others present at the inquiry. In such a case Inspectors should ask the person submitting them to select and submit only the items which should be taken into account.

9.180 It is never right to refuse proffered evidence unless it is admitted to be tendered in support of a point which the Inspector holds to be potentially libellous or, without question, irrelevant. If an objection is made, but the documents are nevertheless accepted, it should be noted in the Inspector's decision or report. If there is a doubt about relevance of documents or their authenticity, either in the comments made by the parties, or in the mind of the Inspector, they should be accepted but it should be made clear that these doubts remain.

Requests for the Production of Documents

9.181 A party may ask for documents or plans to be produced, but only the Inspector can demand their production. The power to issue a summons that is available to an Inspector at a local inquiry (but not a hearing) under Section 250(2) of the Local Government Act 1972 extends to production of documents as well as giving evidence. If a party asks that certain documents be produced, it is for the Inspector to decide whether the demand is justified; clearly issue of a summons should be avoided if possible (see 9.130 - 9.135). Inspectors should also avoid asking for documents or information to be sent on after an inquiry is closed unless it is essential. A short adjournment may suffice for their production. If documents are submitted after an inquiry is closed copies must be sent to

other interested parties who must be given the opportunity to comment on them. This can lead to counter-submissions and in any case often holds up the completion of a report or the issue of a decision.

Custody of Documents

9.182 At inquiries Inspectors may have to receive many documents that are handed in during the course of the proceedings. It is their responsibility to keep track of them and to see that they, as well as the relevant documents already on the file, are safeguarded as part of the record. They will be held personally accountable for lapses. Consequently they must ensure that any document accepted during the proceedings and passed to one or other of the parties or to an interested person for examination is returned before the close of the inquiry. The attendance list or lists must also be collected before the close of the inquiry.

Return of Documents or Photographs

9.183 All documents, photographs and plans attached to reports and decisions must be available for inspection for a period after the report or decision has been issued. Persons entitled to inspect the documents may apply within 6 weeks of issue for an opportunity of inspection, which is therefore the minimum period; the maximum might in practice be 8 weeks. Accordingly, when Inspectors at inquiries accept in evidence documents or photographs the return of which is requested, they must make clear that return will not be possible until the inspection period has expired.

Audio and Video Recordings and Other Electronically Created Material as Evidence

9.184 Inspectors are sometimes asked to view and accept as evidence a video recording made on behalf of, say, tenants' associations. These might depict matters such as traffic congestion or road safety issues. It is generally reasonable to do so as long as all others appearing at the inquiry have the opportunity to view the recording. It should be made clear that such material is to be viewed without prejudice to the Inspector's consideration of its relevance, on which others will be allowed to comment. Oral evidence and the Inspector's own inspection must be preferred. It can be helpful for the witness presenting the recording to be asked afterwards to identify the main points made so that they can be the subject of cross-examination. The Inspector should, however, satisfy him or herself that the conditions shown are reasonably typical.

9.185 Inspectors are sometimes also asked to see or listen to an audio recording as evidence e.g. noise from an industrial site, or a recording of a statement by an absent witness. Such requests should be treated with caution. These recordings can be doctored easily and recorded statements of evidence preclude cross-examination. Inspectors should be satisfied, before accepting any evidence of this kind, that the recording is authentic. Occasionally there might be strong objection from other parties about accepting audio or video recordings as evidence. Inspectors should hear

the arguments and, unless the evidence is patently irrelevant, indicate that the substance of the objections will be taken into account in judging what weight, if any, should be attached to the recordings.

9.186 Increasingly, computer generated depictions of the effect of a scheme on its surroundings are being presented as evidence. There is no in principle objection to such material being put forward, but the Inspector should make sure that the method adopted in its creation is explained, documented, and that relevant technical data (e.g. the software package used) is supplied. Any comments by the opposing side about the accuracy of the virtual modelling technique used should be carefully borne in mind when assessing the weight to be given to this type of technique.

Information Supplied on Floppy Disk or CD-ROM

9.187 Inspectors are, with increasing frequency, receiving requests to accept information in digital form. The material which might be offered includes document lists, closing submissions, site descriptions, and other factual matters of the sort which might be included in statements of common ground, and possibly demonstrations of the impact of a project on its surroundings using 3-dimensional virtual reality software. There is unlikely to be much benefit from receiving electronic versions of proofs of evidence, particularly as, without giving all present simultaneous access to IT equipment to view the evidence, it would be impossible to check what has been said and to have it open to examination by the parties. However, the presentation of basic factual material already in digital form in this way can make the production of the decision or report more efficient and save some time, although editing will usually still be necessary.

9.188 Inspectors must not accept on disk any document unless it is available (though not necessarily in the same format) to all parties involved or interested in a case. Any such acceptance must be done openly so as to avoid any suggestion of secrecy or partiality. With the exception of virtual reality demonstrations, which will form part of the evidence and should be accepted for that reason as long as copies have been provided to all other parties, it is for the Inspector to decide whether to accept any offer, or to request copies, of documents on the disk. The key consideration in this is whether the Inspector expects the material offered in electronic form to assist in the decision or report writing task.

9.189 For compatibility with Inspectors' PCs it is preferable for text submitted in digital form to be in MS Word format. Inspectors should though be aware that current versions of this program are able to render documents produced in other word processing packages compatible with MS Word, albeit often with some loss of formatting. Basic DOS/ASCII format is universally compatible and is also acceptable.

9.190 If problems of compatibility are foreseen, the Connect Service Desk should be consulted before making a commitment to accept digital material. In any event all floppy disks or CD ROMs received from parties at an inquiry

must be virus checked by the Connect Service Desk before being inserted into the Inspector's PC.

9.191 Local authorities and others may hold some information on a spreadsheet or database program and there are likely to be instances where significant time and efficiency savings can be made from the use of such data. As with text, there are a number of formats with differing degrees of compatibility. Inspectors have MS Excel mounted on their machines and this is widely used elsewhere. If information in other spreadsheet formats or on database packages is offered, the Connect Service Desk should again be consulted before the Inspector agrees to accept the material in this form. As before, Inspectors should ensure that all parties have parity of access to the information.

Letters from Interested Persons and MPs

9.192 The contents of letters from interested persons and MPs may not carry as much weight as evidence that has been the subject of cross-examination, but untested evidence can still be an important material consideration.

9.193 In order cases written representations are as important as those made at the inquiry, and order-making authorities must always be invited to comment on them.

TESTING THE EVIDENCE

Cross-Examination

9.194 Cross-examination takes up a good deal of time at most inquiries. To most advocates cross-examination is of prime importance, and will have been prepared carefully. They will approach the key question circumspectly in order to demonstrate that the answer they expect is the only conclusion that could be drawn from the facts previously put to the witness. Inspectors should be wary of making frequent or ill-timed interruptions in these circumstances. Nevertheless, advocates may carry cross-examination to excess and there are occasions when the Inspector should intervene (see 9.200).

9.195 There are two main purposes to bear in mind about the object of cross examination. First this is to elicit facts at issue or relevant to the issues that are favourable to the party on whose behalf the examination is being conducted. Strictly, cross-examination should be undertaken only where there is disagreement about the facts given in evidence by the opposing witness, or indeed about facts not referred to in evidence either by accident or deliberate omission. For example, there might be differences about the physical characteristics or about the contents of submitted records and maps, or about information given in user / landowner evidence forms (dates, physical features such as the presence of gates or notices and their contents, or place names and so on). The second purpose, which

stems from the first, is for an examiner to discredit the factual evidence and perhaps assumptions of an opposing witness.

9.196 In general, cross-examination is permissible only if a witness gives evidence which is contrary to the case of a party making the cross-examination, for example, where the evidence of a witness for the order making authority is damaging to the case of an objecting landowner, or vice versa. But the examination has to be about the factual accuracy of opposing evidence rather than about any expressed opinions relating to facts. However, an examination directed to the validity of an interpretation or an assumption made about the facts may be acceptable. Cross examination may range beyond the evidence which the witness has given, but only so long as it is relevant to the subject of the inquiry. It is acceptable for a witness to make a 'forward pass' to a witness yet to be heard if that later witness would be a more appropriate person to answer the question.

9.197 Parties should not normally be allowed to question "friendly" witnesses. Exceptions may be made if the witness has given clearly contrary evidence. A party in a "same side" situation is not permitted to question a witness who has not given contrary evidence, for example by the representative of a user group appearing in support of the order making authority. If a question of clarification is sought by a member of the public about a point of evidence, this is best undertaken through the Inspector. This enables a question to be framed appropriately because members of the public often find it difficult to frame purposeful and incisive questions or to differentiate between a statement and a question. Exceptionally a question of clarification about the evidence of a witness may be permitted by and through the Inspector where the questioner does not propose to give any evidence; such occasions will be rare.

9.198 Leading questions are allowed in cross-examination. Considerable latitude is also allowed, and provided the questions are relevant to the matter at issue they need not be confined to the subject matter of the examination-in-chief. Not only questions which are relevant to the actual issues of the case, but questions intended to attack the credibility of the witness may be asked. The result of this questioning may materially affect the value to be placed on that witness's evidence. However, the Inspector may have to call for some restraint. For example, it might sometimes be appropriate for the standing of a professional witness to be questioned, but seldom right for their personal character to be attacked. Moreover a bullying cross-examination is usually a hindrance rather than a help to the Inspector. Questioning should not amount to brow-beating, and it is the responsibility of the Inspector to protect any witness - particularly one without an advocate - from unduly harsh treatment. Usually a request to re-phrase an offending question is enough. In extreme cases, however, a more positive intervention may be necessary.

9.199 It can help in running an efficient inquiry and in keeping to time estimates to ask advocates at the start of a cross-examination for them to outline the topics to be covered. The purpose of any topics that do not seem likely to

assist in deciding upon the main issues identified at the start of the inquiry should be queried.

Inspector's Intervention in Cross-Examination

9.200 In addition to protecting a witness from unduly harsh cross-examination (see paragraph 9.198), there are often occasions when the Inspector should intervene, including the following:-

- When an advocate labours a point, effectively repeating the same question; here it is usually sufficient for the Inspector to remark that the point has been understood and to invite the advocate to move on to the next question.

- When an advocate pursues a line of questioning so far that the answers no longer appear to be helpful: here the Inspector might question the usefulness of the cross-examination whilst remaining aware that the advocate may be pursuing a point the relevance of which has yet to be revealed. As a general rule, attempts to persuade professional witnesses to change their opinion on, for instance, an aesthetic matter are unrewarding and should be strongly discouraged - as should attempts to establish inconsistencies in the wording of policies which are not intended to be construed as statute. The same is true of matters which can be resolved by the Inspector's site inspection i.e. by measurement or by Inspectors making their own assessment in the light of opinions expressed at the inquiry. It is necessary to remember that cross-examination might be related to an application for costs, which will not be made until the end of the inquiry. Such cross-examination must therefore be heard even though it may appear to be irrelevant to the merits of the cases.

- When an advocate asks a question outside the competence of the witness (that is on a subject which has not been dealt with in evidence and of which the witness has no personal or professional knowledge), opposing advocates will usually challenge such a question, but the Inspector should not wait for them to do so. If possible, another witness to whom the question may be addressed should be identified. As a last resort, and if it is necessary to pursue the point, the Inspector could suggest that a witness is called who could deal with the matter.

- When inexperienced persons are having difficulty with cross-examination; here the Inspector should proceed as in 9.204.

- Sometimes an advocate attempts to cross-examine on legal matters. It should be suggested that these are best left to submissions.

- When an advocate seems determined to formalise the proceedings, seeking trivial advantages and unnecessarily creating a hostile and unpleasant atmosphere, the Inspector should point out that such an approach does not help.

- When a witness deliberately avoids answering a question Inspectors should not expect advocates to put the point repeatedly. Having satisfied themselves that the witness understands the question, Inspectors should ask advocates to move on noting that they may draw their own conclusions from the failure to answer the question. There are, however, exceptions to this approach as set out in paragraphs 9.205 and 9.206.

9.201 Rule 21(7) allows the Inspector to refuse to permit cross-examination that he or she considers irrelevant or repetitious. If an advocate or unrepresented party persists in asking such questions for instance, in some of the situations listed above, he or she should be reminded of the Rule. It is not normally necessary to invoke it formally. Where appropriate Inspectors should remind advocates of their duty to act courteously and promptly and to avoid unnecessary waste of inquiry time.

9.202 At the same time Inspectors have a positive part to play themselves and should ensure that they intervene effectively to provide clear guidance to the parties in the conduct of the inquiry as a whole and cross-examination in particular. They should remember that advocates welcome such guidance. Inspectors must, therefore take an active role while remaining courteous at all times.

Cross-Examination by Interested Persons

9.203 Rule 21(6) allows anyone appearing at an inquiry (i.e. who is an advocate or self-represented) to cross examine any person who has given evidence either orally or in writing. Having said that, an inquiry is a structured and formal event, it is not a general public meeting and Inspectors should be very careful that interest from "the floor" does not descend into some form of popular vote on whether the order is a good idea or not. Cross-examination by those who do not have a right to do so is at the Inspector's discretion. In practice, and as a matter of natural justice, interested persons must be allowed to cross-examine a witness, whether on the same side or not (see 9.197), but only where they have given evidence contrary to their case. The scope of the questions must not be limited by the Inspector to questions on the evidence already given, as other questions within the competence of the witness are also legitimate, e.g. contrary evidence given by another party.

9.204 When there are many interested persons attending the inquiry and they have not appointed a spokesperson, it is not usually appropriate to invite each one by name to ask questions, as excessive cross-examination wastes inquiry time and should not be encouraged; it is sufficient for the Inspector to ask at the appropriate stage, "Are there any other questions which have not already been put to this witness?"

Refusal to Answer Questions

9.205 When a witness or an interested person is asked a question on a subject about which they know little or nothing it is open to them to say that they do not know the answer, and it is better for the Inspector to encourage them to do this than let them waste time beating about the bush.

9.206 Witnesses may refuse to answer a question on the ground that the answer may incriminate them or their spouse i.e. that they may be exposed to a criminal charge or some other kind of penalty or forfeiture. It is for the Inspector to determine, in the light of the circumstances, whether the witness has reasonable grounds for apprehension. It is the practice of the courts to warn witnesses that they are not bound to answer a question if the answer would be incriminating and it is essential that Inspectors follow this course.

Re-Examination

9.207 The object of re-examination is to redress any adverse balance of evidence given under cross-examination by a witness. No questions may be asked which introduce wholly new matters. The advocate must not ask leading questions.

9.208 Advocates who are also acting as witnesses, and who are cross-examined on the evidence by the opposing parties cannot, of course, re-examine themselves. However they should be offered the opportunity to correct any false impression they feel you might have received as to their true position on an issue as a result of any answer they may have given in cross examination (but this cannot go to the extent of completely negating anything they have said in answer to questions). They should be advised that this is not an opportunity to raise new issues and that if they do, a further round of cross examination will follow.

9.209 You must not overlook the protocol of witnesses not being allowed to speak to their advocate after cross-examination has commenced and until re-examination has concluded ('witness isolation' – see paragraph 9.47 above)

Inspector's Questions

9.210 The Inspector may ask questions in order to obtain additional relevant information which has not already emerged. With this in mind lists of missing information and questions that need to be answered should have been prepared before the inquiry. When several witnesses are to be called by the same advocate the Inspector must beware of asking the first witness questions which the advocate intends to put to a subsequent witness. When putting these questions the Inspector should maintain impartiality in manner and phrasing; should not cross-examine or lead the witness and should only pursue these points if the parties' advocates have failed to obtain information which the Inspector or the Secretary of State

will need for their decision. Comments or expressions of opinion by the Inspector must be scrupulously avoided.

9.211 At this stage the Inspector must consider whether there is any issue within the competence of the witness which could be important in the decision (or recommendation) but which has not so far been adequately explored. If the point has not been covered by a previous witness, the Inspector may ask the witness currently giving evidence, if appropriate and within their expertise, to comment. Such matters must be put to the parties if they are to be taken into account, and it is imperative that the Inspector puts the point to the appropriate witnesses on both sides. There can be merit in putting a question to the first witness who deals with the relevant issue, even though it concerns a point which the opposing side would be more likely to be able to deal with. This allows the opposing side time to research and consider the matter.

9.212 Although Inspectors can draw on their own professional experience and expertise, any matters which are likely to be relevant to the decision should be brought to the attention of the parties so that they can comment if they wish to do so.

9.213 Sometimes it is clear to the Inspector after cross-examination that one or more material points of the current witness' evidence has not been adequately tested (see 9.211) and that the Inspector will therefore have a number of questions. In such circumstances he or she could suggest to the witness' advocate that re-examination be deferred until those questions have been put. This procedure enables the advocate to address all the matters arising from questions to his witness in a single spell of re-examination.

References to Court Proceedings

9.214 Inspectors should try to obtain accurate references to any court proceedings quoted. The references most likely to be cited are:-

AC - Appeal cases (House of Lords and Privy Council)

AER (or All ER) - All England Reports (cases in the House of Lords and all divisions of the High Court)

CH - Chancery division

P and CR - Property and Compensation Reports

QBD - Queens Bench division

WLR - Weekly Law Reports

JPL - Journal of Planning and Environment Law

9.215 The Encyclopaedia of Planning Law and Practice (Sweet & Maxwell), the Encyclopaedia of Highway Law and Practice (Sweet & Maxwell), and the Journal of Planning and Environment Law (formerly the Journal of Planning

Law) are available on request to the GM. In each case the volume and page or article number should be obtained.

9.216 Examples of correct references to court cases are given below:

Pyx Granite Co Ltd v MHLG (1960) AC 260

Nelsovil Ltd v MHLG (1962) AER 423

Williams v MHLG (1967) 18 P&CR 514

Nicholson v Secretary of State for Energy (1978) JPL 39

Representatives of Organisations

9.217 The Inspector should ensure that the status of anyone claiming to appear on behalf of an organisation (or as a member of it) is clear. They should be asked to give their position within the organisation and their authority to give evidence on its behalf (e.g. a letter or a minute of the committee); it is also helpful to know the number of members. If they are not authorised by the organisation they should be treated as individuals.

Parties Who Are Not Professionally Represented

9.218 The smooth running of an inquiry is always helped if careful thought is given to the treatment of unrepresented parties, particularly local residents at small inquiries. The interested public cannot be expected to distinguish between fact and opinion, they cannot be expected to offer solutions or alternatives, and they are not always fully informed about the nature of the proposals or issues at stake. They are there to offer for consideration their own personal views on how they are likely to be affected, and for these views to be considered, as far as they are relevant, when a decision is taken. Inspectors should show that they are concerned to ensure that their points are understood and that they are not intimidated by the formality of the proceedings. If addressing the Inspector briefly, they may feel more at ease speaking standing up where they are, rather than coming forward to the witness table: this can be allowed if it seems appropriate.

9.219 If the main parties wish to ask questions of interested persons, they have the right to do so. But private citizens, who are normally unfamiliar with procedure, should not be expected to submit to rigorous formal cross-examination. If they are prepared to submit to it, cross-questioning of their evidence should, of course, be permitted, but not in such a way as to give offence. If they are not, they should be advised that an untested opinion will of necessity carry less weight.

Late Arrivals and Diffident Persons

9.220 Inspectors should remember, when they have heard all persons whose names were recorded at the beginning of the inquiry, to ask again (before the OMA's closing submissions) whether any other person wishes to be heard. This ensures that late arrivals are not overlooked and that diffident

persons are encouraged to come forward. It may well save time in the end.

Representatives of Government Departments

9.221 It would be rare for a representative of a government department to appear at a RoW inquiry. Departmental witnesses are likely to be there only to help on questions of fact and expert opinion relating to the matter under consideration. An order making authority might call them as witnesses. Otherwise they should normally be called upon to give their evidence independently at an early stage in the proceedings. To be taken into account, departmental evidence must be made available to the other parties. The departmental witnesses should give evidence and to be subject to cross-examination to the same extent as other witnesses. Although questions which are directed to the merits of government policy may be asked, they are not required to answer them; and they must be supported in their refusal to answer questions which might lead to a breach of security. The balancing of departmental views against other material considerations is a matter for the Secretary of State or the Inspector acting on his behalf.

9.222 Sometimes representatives of a government department attend the inquiry other than to explain government policy, in which case they appear on their own, or be called by a party. The Inspector should give them the same protection against questioning on the merits of government policy and against breaches of security.

CLOSING STAGES

Closing Submissions

9.223 The order in which closing submissions are heard is discussed in 9.60(n). Do not allow any new material that has not previously raised to be put forward at this stage. If you consider that something said in a closing submission is not in line with the evidence that you have heard, ask the advocate concerned to convince you that you are incorrect. If you would have expected some point to be covered in closing but it has not been, be prepared to ask the advocate to address you on that point. Alternatively, before they start their address, an Inspector may ask an advocate to cover a particular point. The Inspector must know how the party's case stands at the end of the inquiry, particularly if witnesses on either side have made significant concessions in cross-examination.

9.224 Copies of closing submissions in writing, or written notes on which closing submissions are based, are always welcome. For inquiries lasting 8 days or more it is a reasonable expectation for the Inspector to be provided with written copies of the closing submissions of the at least the main parties. Even for inquiries lasting more than one or two days advocates should be encouraged early in the proceedings to provide you with a written version of their closing submissions so long as they can be provided before the

inquiry is closed. They can be requested provided notice is given at the start of the inquiry, but it is not usually reasonable to press for them at inquiries lasting less than about 4 days. Inspectors should be careful to see that what is actually said in closing corresponds with the written copy – it is perfectly acceptable for advocates to add to or revise their closing speeches; it is up to the Inspector to make a note of any such variations. Offers to provide a transcript of closing submissions after the inquiry should never be accepted.

Costs Applications

9.225 Immediately before closing the inquiry, the Inspector should give the parties the opportunity to make an application for costs by using words such as "Are there any other matters anyone wishes to raise?" If an application is made, the guidance in Training Notes Section 12 should be followed.

Arrangements for the Site Inspection

9.226 The fact that a preliminary visit will normally have been made does not absolve the Inspector from the obligation to make an accompanied visit to the site if required to do so by the parties. The visit may be made either during an adjournment or following the inquiry. Any statutory party must be invited. In practice an accompanied inspection should almost always be made unless there are good reasons for not doing so and not merely the absence of a request by the parties. If the Inspector believes an accompanied inspection is unnecessary he or she should obtain the agreement of the parties before proceeding without one. Often, in a rights of way case, it is clear that there are only parts of the RoW in question at which there are features which have been mentioned in evidence that need to be viewed. If this is the case, then, with the agreement of the parties, the site inspection can be limited to those parts of the RoW. There is no value in all of those involved in a site visit walking 10 km if the only points which need to be viewed are at each end of the RoW concerned, and the journey between them can more speedily be covered by road. This consideration also arises in omnibus or multiple orders dealing with a number of rights of way. Again, with the agreement of the parties, the site visit can be limited to only some of the rights of way concerned.

9.227 There are two possible advantages in making the visit before the end of the inquiry. First, particularly in winter, it can save time if the visit takes place in the middle of the day when there is good natural light: it may then be possible to complete the inquiry the same day. Secondly, the Inspector may become aware of a consideration which has not been mentioned in the inquiry and can pursue it with the parties when the inquiry is resumed (9.210). Against this, there is risk that after the resumption, a fresh point emerges concerning the site and its surroundings and a further site inspection becomes necessary. Secondly, the interruption to the inquiry may be disruptive and inconvenient to those attending, particularly if the inspection takes a long time. The Inspector

should use judgement as to which course to adopt, depending on the circumstances of each case.

9.228 Rule 22(6) allows the Inspector to adjourn the inquiry to a site visit and then conclude the inquiry there. However, Inspectors should consider whether this would place anyone entitled to appear at the inquiry at a disadvantage, particularly if it involved taking oral evidence or questions.

9.229 The Inspector must announce the date and time of the site inspection at the inquiry. The precise meeting point should also be clarified. It is usually desirable to keep the party as small as possible and it should be emphasised that the Inspector will be accompanied by a representative of the main parties at all times. Parties can only enter private land with the consent of the landowner (see also 9.236 - 9.237). There may be Health and Safety or insurance implications for the landowner if people go onto his or her land without permission. If it is appropriate for representatives other than statutory parties to be present, they may be persuaded to nominate a single representative. If a party wishes to show the Inspector a particular feature, it may not be necessary for them to take part in the complete site inspection.

9.230 If the Inspector has travelled to the inquiry by public transport he or she will have to make arrangements with the parties before leaving the inquiry venue to be given a lift to the site. He or she must ensure that he or she is accompanied in the vehicle by a representative of each main party. He or she must never travel with one party only. Alternatively, it may be possible to arrange for a taxi to take the Inspector to the site and then on to the hotel, railway station, or back to the inquiry venue.

AFTER THE INQUIRY

Evidence after Closure of Inquiry

9.231 It sometimes happens that after the inquiry is closed the Inspector is asked to listen to someone who has failed to make themselves heard or who has felt unequal to the effort of speaking during the inquiry. Rule 23(3) and 24(2) respectively allow the Secretary of State or the Inspector to disregard any evidence submitted after the close if the inquiry. If everyone is still at the venue and nobody has left the inquiry an Inspector can ask the parties whether they agree to this person being heard by briefly reopening the inquiry. If this is impracticable, it should be explained that the inquiry is closed and that no further representations can be heard. If the person persists he or she should be given the Inspectorate address and advised that he or she may send their representations in writing – but with the caveat that it may not be accepted.

9.232 Subject to the circumstances described in paragraph 9.231 above, Inspectors should politely, but firmly, discourage parties from sending in evidence after the close of an inquiry, if necessary, drawing attention to

the relevant Rule. Late evidence not only delays the writing of your decision, it means that the information has not been open to scrutiny through cross-examination. Such late information has to be copied to the opposing parties to see if they have any comments, which can lead to extended rounds of correspondence. It may also be also unfair on those parties who have complied with the Inquiry Procedure Rules by resisting the urge to send in late information. In extremis, this might even be used by a party to delay a decision which they suspect may be unfavourable to their position.

The Site Inspection

9.233 The procedure for conducting site inspections during or following an inquiry is similar to that used in written representations cases but some additional guidance applicable to all inquiries is given in the following paragraphs.

9.234 The Inspector should travel to the site either independently, or in a car accompanied by representatives of each party to the appeal. Riding with one party only must be avoided.

9.235 The Inspector must not trespass on private property. Entry on to any site should be with the consent of the owner or that of the party to the case whose interest includes right of entry.

9.236 The site visit, as in all matters concerning the inquiry proceedings, must be characterised by openness, fairness and impartiality. The Inspector ought not to be accompanied at any stage by the representative of only one party without the representative of the other parties also being present. Avoidable departures from this rule may well give rise to complaints.

9.237 No new evidence can be adduced during the visit, nor any comment made, and it is usually necessary to make this clear to the parties. But it is legitimate for the parties to direct the Inspector's attention to physical features which they believe are important to their case, and indeed the parties should be invited to do so. It is not advisable to ask questions at this stage because the answers may be open to argument. If it is essential to ask a question it must be so framed that the answer is likely to be a verifiable fact and directly related to matters raised in evidence at the inquiry or in the written representations.

9.238 If the inquiry has been closed and the inspection reveals new aspects of the case that have not been raised at the inquiry, and are likely to influence their conclusions, Inspectors must consult the SGL/GM. The matters will then be referred to the parties for comment before the report or decision is completed. This highlights the particular importance of preparing carefully for the inquiry and of pre-viewing the site so that an Inspector can foresee what information may be needed and can bring points forward for comment or information at the inquiry if they have not been raised by others.

9.239 Neither before the inquiry and inspection nor after they are over may Inspectors communicate with any of the parties or any interested person. Nor should they visit the site after the inquiry without disclosing their intention of doing so.

RE-OPENED INQUIRIES

Reasons for Re-Opened Inquiries

9.240 Inquiries may be re-opened in the following circumstances:-

- at the discretion of the Inspector (in transferred cases) or of the Secretary of State (in non-transferred cases) (see 9.248);
- when a decision has been quashed by the High Court (re-determination) (see 9.249 - 9.253).

9.241 Different considerations may arise in the two different sets of circumstances under which a re-opened inquiry is held:-

- consideration of new evidence, and
- consideration of a new issue of fact.

9.242 It should be noted that an inquiry into Modifications proposed by an Inspector as a result of an earlier inquiry is not a re-opened inquiry. A modifications inquiry (paragraph 8 inquiry) is an entirely new event and should only hear evidence which relates to the proposed modification (see Advice Note 10 on the Marriott judgment). Having said that, where substantial new evidence has been discovered which is pertinent to the order as originally made (paragraph 7 matters), it may be necessary to conduct effectively two inquiries; the first part as a re-opening of the first inquiry, followed by an examination of the representations made to the proposed Modification. It may be necessary to call an adjournment – perhaps only a very brief one - after the paragraph 7 matters for the Inspector to contemplate the implications of that new evidence on the proposed Modification and then resuming to hear (effectively as a new inquiry) the paragraph 8 matters.

Procedure at a Re-Opened Inquiry

9.243 When new evidence is to be considered, someone representing the source of that new evidence will attend the re-opened inquiry to give the relevant evidence and submit to cross-examination directed to this evidence but not to any other points. The parties concerned will have been given some indication of the new evidence and they must be allowed to call evidence of their own on the issue involved.

9.244 When a new issue of fact has caused the inquiry to be re-opened, the parties concerned will have been told what it is and they will be entitled to

bring any evidence which reasonably bears on it. It may or may not be necessary in this type of case for anyone to attend and give evidence; if anyone does, they will appear on the terms set out in the preceding paragraph.

9.245 When re-opening the inquiry, the Inspector must word the opening announcement clearly and carefully and must emphasise that the proceedings are strictly limited to the consideration of new evidence or the new issue of fact as the case may be. Normally, the re-opened inquiry is taken by the original Inspector, but if not, new Inspectors should add that they have studied the documents, plans, etc.

9.246 After the opening announcement the Inspector should take the appearances in the usual way. The usual procedure at inquiries regarding the press, notification of the decision and the list of persons present should be complied with. Before any representations are heard, the Inspector should explain the procedure to be adopted and if there are any objections should hear them and, if possible, resolve them by agreement. The usual reference to applications for costs should be made.

9.247 The body or person responsible for producing the new evidence or calling attention to the new issue should be asked to present their case first. This will normally be in the form of a statement which, usually, will have been circulated to the parties beforehand and is subject to examination in the usual way. The parties should then be heard in turn, followed by the interested persons, with the OMA being allowed the right of final reply. The inquiry should then be closed. An accompanied inspection of the site should be made if necessary.

Discretionary Re-Opening

9.248 Inquiries should only be re-opened voluntarily in exceptional circumstances as the point at issue can usually be dealt with by written representations. If Inspectors consider that a transferred inquiry should be re-opened, they should consult the SGL/GM. The Secretary of State may decide that a non-transferred inquiry should be re-opened in order that some factor which was not discussed at the inquiry can be taken into account. Inspectors should, by the way they conduct inquiries, do their best to avoid this happening e.g. by anticipating relevant factors and ensuring they are discussed.

Re-determinations

9.249 An inquiry may be re-opened for the re-determination of a case when the decision has been quashed by the High Court. Re-opening is only chosen when it is considered absolutely necessary.

9.250 Except where cases are particularly controversial the Inspectorate would normally appoint the same Inspector to re-determine a case.

9.251 When re-determining a case, it must be considered 'de novo' (Kingswood DC v SSE and R J Tanner (1988) JPL p248). New Inspectors are provided with the documents and written evidence that were before the original Inspector. They may also receive fresh statements from the parties.

9.252 Procedure at the re-opened inquiry follows the normal sequence. In their opening announcement, Inspectors must make clear that they are re-opening the inquiry held earlier and that the case has to be re-determined as the previous decision was quashed by the High Court.

9.253 Because Inspectors must deal with the case 'de novo', it is essential to reconsider all the original issues as well as taking into account any new evidence or material changes since the first inquiry. There may, however, be scope for saving time in relation to matters unaffected by the High Court's decision and rehearsed extensively before.

LONG INQUIRIES

Need for Special Arrangements

9.254 Such inquiries are very rare in rights of way casework. For inquiries lasting longer than 4 days the SGL/GM should be contacted.

EVENING SESSIONS

9.255 Evening sessions may occasionally be necessary when it is impossible for persons to attend an inquiry during the day. It should be remembered that countless tribunals nation-wide are held during the day and most people can usually arrange to be present at some time during the normal inquiry hours of a long inquiry. Inspectors and the parties need the evenings to prepare for the following day and evening sessions are particularly tiring and onerous. An evening session should therefore be an exceptional occurrence. If one is arranged there should only be one other morning or afternoon sitting on the same day.

9.256 An evening session needs to be carefully arranged and controlled. It is part of the inquiry and not a public meeting and all speakers must observe the normal rules of inquiries, addressing the Inspector rather than the public at large. However, it should be made clear when the evening session is announced that witnesses heard in the day sessions will not be available for cross-examination in the evening session. If possible a list should be collected of those wishing to speak in advance together with a brief outline of the points they wish to make; the Inspector should hear those listed first before asking if any others wish to speak. Attempts should be made to prevent repetition, but the Inspector should exercise discretion when the participants are inexperienced in such proceedings and wish to express genuine and deeply held views.