This is a submission by Henry Hobhouse (ex Somerset county council) concerning the proposed deregulation of the rights of way.

1 – Executive Summary-

The present system of rights of way methodology is seriously flawed in five main areas:-

a) All witnesses should give evidence under oath, so that if they are lying they can be prosecuted for contempt of court.

b) All enquirers should be judged by qualified legal personal, as in the land tribunal legislation.

c) All inspectors should be legally qualified.

d) There must be a consistent approach taken throughout the country to ensure that all applications are dealt with in the same way.

e) Applications for footpath alterations/deletions/formations should have a charging structure the same as building applications.

The above suggestions are based on the fact that you are trying to deregulate, save money and increase justice, not on what should be a root and branch review of the whole right of way problem.

2 – History –

My grandfather, Sir Arthur Hobhouse, was the chairman of the committee that wrote the Hobhouse report in 1948. The legislation based on the report went through parliament in 1949 under the labour government. Sadly, the aims and principles laid out in the report were neither adhered to in practice or spirit. The system put into place by the legislation in 1949, 1968, 1981 and 2007 has significantly increased the burden on the landowners and ensured that individuals have had to fight the machinery of the state; this situation is grossly unfair and should be terminated immediately, not in 2026. The Hobhouse report 2011, which bears my name, and I am one of the authors, lays out in considerably more detail the problems with the present legislation over what was intended.

3 – Unintended consequences of the rights of way legislation –

Nowhere in the legislation is there a differential between land (be it agricultural, open or forestry) and private property. I know of numerous examples where rights of way cross gardens, go down drives and through farmyards, making it impossible for these unhappy people to live privately. My grandfather in the Hobhouse report specifically excluded private property from the right of way network; I do not understand how this situation has been allowed to continue for over fifty years. We need to favour diversions with agreement of enabling landowners to take all rights of way from off of private property.

4 – During the existing legislative procedures, witnesses can lie at every stage with no consequence for their actions. This situation is frankly unbelievable in that user evidence, which is the main method of applying for new rights of way, can never be legally tested as there are no legal actions open to a party who has had to spend time and money in defending the rights on their lands to receive compensation from people who have in effect committed perjury. This situation is grossly unjust. I have intended two enquiries where, to my certain knowledge, ex right of way officers of Somerset county council have lied to the inspector. The inspector has accepted their evidence at face value and the land owner has had to fight through the high court to try and reverse the decision on judicial grounds, as there is no mechanism to appeal against the evidence given after it has been accepted by the inspector. All witnesses should have to give their evidence under oath so that if they have committed perjury they will have to face the consequences of their actions.

5- Prior to 2002, the inspectorate had to be made up of independently, legally trained individuals. In 2002, the government changed the makeup of the inspectorate without any form of debate to be made up of ex rights of way officers. The existing legislation is nowhere supervised or overseen by the legal profession until it reaches the high court. This is not the case in any other property based legislation. I cannot understand how partially trained officers at county council level are able to make decisions directly affecting the value and usability of private property in this country. It cannot be fair or just for inspectors to make decisions that are legally binding, being drawn from rights of way officers who are neither fair, unbiased, nor legally trained. As government policy is to increase access to the countryside, this situation is obvious to anyone. Let me make it clear at this stage that I have every sympathy with the argument about increasing access to the country side, I just find it completely unjust that individuals are expected to fight the government machine. All inspectors should be legally trained, as in all cases dealing with the land registry, house transfers and other legal disputes.

6 – In only one county (Linconshire) in the country are the correct legal procedures carried out. In the Winchester case, the High Court made it clear that evidence considered by the rights of

way officers and regulation committees should be the evidence that is on the application. In every other county, applications have been validated that contain no information that would legally suppose that there was a right of way in existence. In Somerset's case, there is a ten year backlog of applications which have been validated. The evidence used at the regulation committee is not the evidence supplied by the applicant it is, in most cases, evidence supplied by the rights of way officers. Each of these investigations costs the taxpayer between thirty and fifty thousand pounds apiece. It would be stretching human nature to suggest that if you have been looking for evidence to back up an application, that you would not do everything in your power to ensure that the application becomes a right of way. At one regulation committee in Somerset, an application to turn a private drive into a bridleway was recommended by the rights of way officer. On my questioning of the legal officer, he admitted that the evidence put before the committee failed on legal grounds as the ownership of a bridge defines who owns the road. This is but one example of the situation that appertains with the existing system. It is imperative that all county councils should carry out the same procedure on validation and that investigations should not be looking for new evidence but be based on the evidence provided in the application.

7 – Due to there being no hurdle to overcome, members of the public are able to put in frivolous applications that bear no relevance to reality. There are no costs to the applicant. They can put in as many applications as they like. There is no period of grace given to a landowner even after they have successfully won cases right up to the high court. Every application costs the county councils money and to me there should be no differential between rights of way and planning and yet there are no charges applicable for rights of way applications. These charges should be at the same level as planning applications.

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