



Final Order Decision

Accompanied site visits undertaken on 19 December 2023 and 4 February 2025

Hearing held on 4 February 2025

by Mark Yates BA(Hons) MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 5 March 2025

Order Ref: ROW/3295476M1

- This Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Wiltshire Council Trowbridge Path No. 8 Definitive Map and Statement Modification Order 2021.
- The Order was made by The Wiltshire Council ('the Council') on 19 January 2021 and proposed to upgrade a public footpath to bridleway status ('the claimed route').
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 notice has been given of the proposal to confirm the Order with modifications.

Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I proposed in my Interim Decision ('ID') of 12 February 2024 to confirm the Order with modifications. These modifications would increase the width of the claimed route at the entrance to Church Fields and add a limitation to enable posts or bollards to be erected on the route. Six objections were made in response to the advertising of the proposed modifications and these cover both the modified and unmodified elements of the Order. It is also apparent that some of the objectors support certain aspects of the proposed modified Order.
2. I reached my ID on the basis of the written representations of the parties and an accompanied visit to the site. In light of a request by one of the objectors to be heard, a hearing was held to consider the further submissions of the parties. I carried out a second site visit following the close of the hearing.

Main Issues

3. I set out the main issues in relation to the Order as made in the ID [2-8] and I need to have regard to these considerations in reaching my Final Decision. In terms of the objections to the ID, it needs to be determined whether any new evidence and/or argument presented, when taken in conjunction with the previously considered evidence, has a bearing on the conclusions reached in the ID.

Reasons

Unmodified part of the Order

4. Little in the way of new evidence was presented at the hearing to that already considered when I reached my ID. Additionally, some points have been raised which relate to the impact that the Order would have on certain parties and the need for a bridleway of a particular width. However, such matters sit outside of the
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relevant considerations for this type of Order. Accordingly, I cannot have regard to these issues when reaching my Final Decision. Furthermore, my role is to determine the extent of the public rights that exist over the claimed route and not whether particular parties have a private right of access. My decision does not remove any private rights enjoyed over the route.

Status

5. No additional documentary evidence has been provided for me to reach a different conclusion regarding the historical status of the claimed route [28]. It remains the case that the user evidence is supportive of the dedication of a public bridleway in accordance with Section 31 of the Highways Act 1980 [42]. The evidence provided does not demonstrate on balance that the route should be recorded as a vehicular highway. However, for completeness, I address the points raised in relation to the Natural Environment and Rural Communities Act 2006 ('the 2006 Act') below.
6. I concluded that for the purpose of the definitive map and statement any public rights for mechanically propelled vehicles have been stopped up by the 2006 Act [13]. In reaching this view I considered the exemption found in Section 67(2)(a) of the Act [10-11]. It is for the party relying on this exemption to provide evidence to show that it is applicable, and the evidence provided does not demonstrate that this is the case irrespective of whether people driving down the route to access properties had an easement or licence to do so. However, clearly some believe they have a private right of access.
7. The case of *Trail Riders Fellowship v Secretary of State for Environment, Food and Rural Affairs* [2022] cited by one of the objectors does not alter my conclusions regarding the above matters. In terms of the character of the route, for the purpose of use by mechanically propelled vehicles, it is a cul de sac serving various properties on Church Lane and Church Fields rather than a through route. Nonetheless, consideration needs to primarily be given to the use made of the route during the specific period for the purpose of this exemption.
8. Although reference was made at the hearing to the exemption found in Section 67(5) of the 2006 Act, this relates to the retention of private rights of access.

Width

9. I concluded that the evidence is supportive of the bridleway being dedicated over the whole width of Church Lane [37]. The reduction in the width of the route where it passes Nos. 24 and 26 Church Lane occurred at around the time the status of the claimed route was deemed to have been brought into question. Therefore, the subsequent width available in this locality would not be applicable to the period considered for the purpose of Section 31 of the Highways Act 1980 (1991-2011).
10. A photograph taken in 2006 of the section of the route near to point Y on the modified Order Map shows that a growth in the adjacent hedge had served to restrict the width of the route at that point in time. In contrast, there are other photographs taken during the relevant period which show the hedge cut back and a much wider width available. There may well have been times when a growth in the hedges adjacent to the route restricted the width available for people to use. However, it cannot be determined that this occurred to such an extent to warrant the recording of a lesser width.

11. It remains my view that the width of the claimed route should be recorded by reference to the boundaries of Church Lane that were in place during the relevant period.

Proposed modifications

Width

12. Nothing has been raised in relation to the proposed increase in the width of a section of the claimed route at the junction with Church Fields [37].

Limitations

13. I am unable to reach my decision on the basis of what may be a desirable outcome. The issue to be determined is whether there were any structures in place when the higher public rights were dedicated. It was the erection of the present chicane barrier, which arose from a condition in the planning permission for Nos. 24 and 26 Church Lane, that served to bring the status of the route into question. Further, a historical field gate had ceased to exist long before the onset of the relevant period. In contrast, the evidence is supportive of posts being in place throughout the relevant period [39] and this was supported by information provided at the hearing. It was further asserted that one of the wooden posts was removed on occasions to facilitate vehicular access to one of the properties.
14. I am not satisfied that the posts could necessarily be classed as an obstruction of the recorded public footpath when they were in place. There was no suggestion at the time that they should be removed and there was ample space for people to pass between them on foot. It is also evident that the posts did not prevent cyclists or horse riders from using the route. It was accepted at the hearing that the posts were situated broadly at the locations shown on the modified Order Map.
15. The proposed modification would only give the right for the Council to erect posts or bollards at particular locations in line with what existed when the higher public rights were dedicated. They do not have to be put in place and the Council have expressed an intention to erect a suitable barrier towards the north-western end of the claimed route which would enable pedestrians, cyclists and horse riders to use the route but prevent use by motor vehicles. Whilst views were expressed as to whether such a structure could be authorised under Section 66(3) of the Highways Act 1980, this is not a matter for me to determine.
16. In light of the above, I consider that it is appropriate for the limitation to remain in place subject to some minor changes. It is evident that the gaps between the posts would not have prevented use by motor cyclists and some people may have a lawful right to drive over the relevant part of the route. It therefore seems more appropriate to state that the purpose of these structures would be to restrict use by unauthorised mechanically propelled vehicles.

Conclusion

17. Having regard to these and all other matters raised in the written representations and the hearing I conclude that the Order should be confirmed with modifications.

Formal Decision

18. I confirm the Order subject to the following modifications:

- Delete '*in green*' from the first line of the description in Part I of the Order Schedule.
- Delete '*in green*' from the fifth line of the description in Part I of the Order Schedule.
- Delete the sixth and seventh lines from the description in Part I of the Order Schedule.
- Replace '*4m*' in the seventh line of the description in Part II of the Order Schedule with '*7m*'.
- Add at the end of the description in Part II of the Order Schedule:

'Limitations

The Wiltshire Council may permit posts or bollards to be erected between points X and Y on the Order Map for the purpose of restricting use by unauthorised mechanically propelled vehicles'.

- Include the remainder of Church Lane within the Order Map and add points X and Y at the appropriate points.
- Modify the key to the Order Map to reflect the extent of the route.

Mark Yates

Inspector

APPEARANCES

For the Council

Ms J. Green

Senior Definitive Map Officer

Objectors

Mr F. Morland

Mr A. May

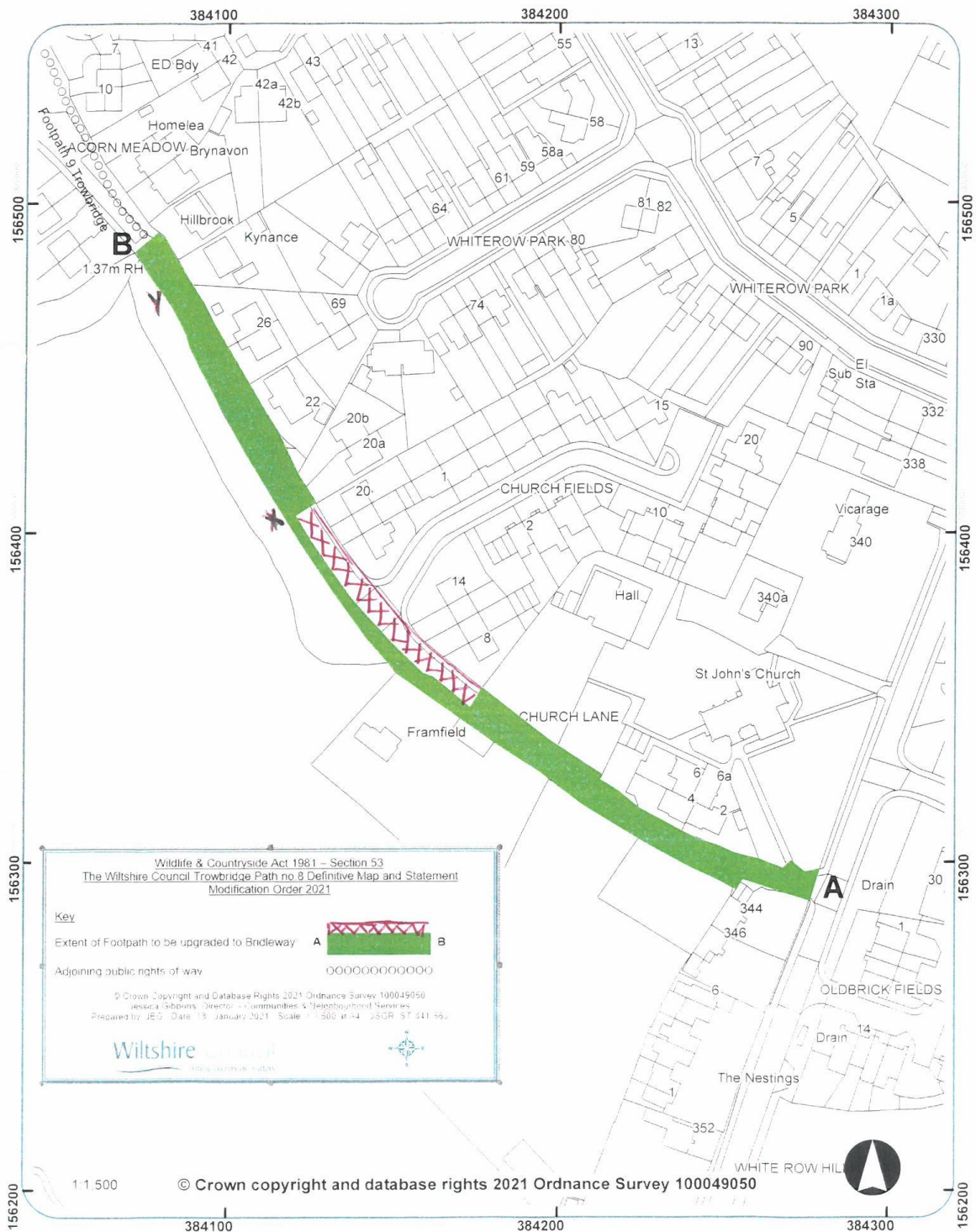
Cllr D. Vigar

Miss M. Dunne

Mr S. Coleman

Local Council Member

The Wiltshire Council Trowbridge Path no.8
Definitive Map and Statement Modification Order 2021





Our Complaints Procedures

Complaints

We try hard to ensure that everyone involved in the rights of way process is satisfied with the service they receive from us. Applications and orders to amend the rights of way network can raise strong feelings and it is inevitable that someone will be disappointed with the decision. This can sometimes lead to a complaint, either about the decision itself or the way in which the case was handled.

Sometimes complaints arise due to misunderstandings about how the system for deciding application appeals and orders works. When this happens we will try to explain things as clearly as possible. Sometimes the objectors, applicant, the authority or another interested party may have difficulty accepting a decision simply because they disagree with it.

Although we cannot re-open a case to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how long an order making authority took to submit an order to the Secretary of State) in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Customer Team to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the system for deciding rights of way appeals and orders and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made, we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. However, the law does not allow us to amend or change the decision.

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Ombudsman, who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

“Why can’t the decision be reviewed if a mistake has happened?” – The law does not allow us to do this because a decision is a legal document that can only be reviewed following a successful High Court challenge.

“If you cannot change a decision, what is the point of complaining?” – We are keen to learn from our mistakes and try to make sure they do not happen again.

Complaints are therefore one way of helping us improve.

“How can Inspectors know about local feeling or issues if they don’t live in the area?” – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

“I wrote to you with my views, why didn’t the Inspector mention this?” – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

“How long will I have to wait for a reply to my complaint?” – We will aim to send a full reply within 40 working days. In some cases where the issues raised are complex, a more detailed investigation will be needed, often requiring the views of those involved with the case. This may mean that we cannot reply to you as quickly as we would like.

Further information

Each year we publish our [Annual Report and Accounts](#), setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work.

Contacting us

Website: [Object to a public right of way order - GOV.UK](#)

Customer services and general enquiries

Room 3 O/P,
Temple Quay House,
2 The Square, Temple Quay,
Bristol,
BS1 6PN
Phone: 0303 444 5000

The Planning Inspectorate’s Customer Service Helpline will be available between the hours of 09:00 and 16:00, Monday – Friday, except bank holidays.

If possible we ask customers to email their case officer directly, if you do not have a case officer please use our contact form: <https://contact-us.planninginspectorate.gov.uk/hc/en-gb/requests/new>

Complaints

Please refer to our website: <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>

Please contact the Planning Inspectorate by using our [customer contact form](#)

Parliamentary and Health Service Ombudsman

Millbank Tower
Millbank
London
SW1P 4QP

Complaints Helpline: 0345 015 4033
Email: phso.enquiries@ombudsman.org.uk
Website: <https://www.ombudsman.org.uk/>



Challenging a Decision in the High Court

Important Note - This leaflet is intended for guidance only. It should be noted that there are different procedures involved for statutory challenges and judicial reviews, and they follow different timetables. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Challenging a decision

Once a decision is issued we have no power to amend or change it. Decisions are therefore final unless successfully challenged in the High Court. We can only reconsider a decision if a challenge is successful and the decision is returned to us for re-determination.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector had misinterpreted the law or that some relevant criteria had not been met. If, in relation to an order decision, a mistake has been made, and the Court considers it might have affected the decision, it will quash the decision and return the case to us for re-determination or it will quash the order completely. If the Court considers a mistake has been made on a Schedule 14 Appeal or Direction, it will quash the decision and return the case to us for re-determination.

Different order types

The Act under which the order decision has been **confirmed** will specify the conditions under which it can be challenged and is thus a statutory right to challenge a confirmed order - often referred to as a Part 8 claim as it is brought under Part 8 of the Civil Procedure Rules 1998. There is no statutory right to challenge where an order is '**not confirmed**'; in these circumstances a judicial review under Part 54 of the Civil Procedure Rules 1998 of the decision not to confirm may be applied for. Both scenarios are set out in more detail below.

Challenges to confirmed orders made under the Wildlife and Countryside Act 1981

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 12 of Schedule 15 to the 1981 Act on the grounds i) that the order is not within the power of section 53 or 54; or ii) that any of the requirements of the Schedule have not been complied with. If the challenge is successful, the court will either quash the order or the

decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.

Challenges to confirmed orders made under the Town and Country Planning Act 1990 and the Highways Act 1980

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 287, in the case of an order made under the 1990 Act, or paragraph 2 of Schedule 2 in the case of an order made under the 1980 Act, on the grounds that i) the order is not within the powers of the Act; or ii) that any of the requirements of the Act or regulations made under it have not been complied with. If the challenge is successful, the court will either quash the order or the decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.

Challenges to orders which are not confirmed and all Schedule 14 Appeal and Direction decisions

If an order made under any of the Acts is not confirmed, an aggrieved person can only challenge the decision by applying for a judicial review to the Administrative Court for a court order to quash the decision, the matter will then go back to the Inspectorate to re-determine. This also applies to an aggrieved person to a Schedule 14 Appeal or Direction decision as there is no statutory right to challenge.

For applications for judicial review, the Claim form must be filed with the Administrative Court promptly and in any event not later than 3 months after the date of the decision (for orders made under the Highways Act 1980 or the Wildlife and Countryside Act 1981) or 6 weeks (for orders made under the Town and Country Planning Act 1990), unless the Court extends this period.

Who should be named as Defendant in the claim form?

In order cases the Inspector is usually appointed on behalf of the Secretary of State for Environment, Food and Rural Affairs to confirm an order made by a local authority. In Schedule 14 appeal cases the Inspector is acting as the Secretary of State. The claim form for all types of proceedings should therefore be issued against the Secretary of State for Environment, Food and Rural Affairs and served upon: The Government Legal Department, One Kemble Street, London, WC2B 4TS. For telephone queries, please call the Government Legal Department on 020 7210 3000. Email: thetreasury solicitor@governmentlegal.gov.uk

Interested parties

Interested parties can find out whether a case has been challenged by contacting the Administrative Court. If you do not know the name of the likely claimant, you will need to provide the Court with the date of the decision and the full title of the order or appeal (including the name of the relevant local authority). The more information you can provide, the easier it will be for the Court to identify it. If a person wants to become a formal party to the Court proceedings, then they can make representations to the Court under Part 19 of the Civil Court Procedure Rules 1998 (see overleaf). Should you wish to become a formal party you may wish

to seek legal assistance or ask the court for guidance. To be a party to a judicial review a person would have to have a sufficient interest.

Frequently asked questions

"Who can make a challenge?" – In principle, a person must have a sufficient interest (sometimes called standing) in the decision to be able to bring a challenge. This can include statutory objectors, applicants, interested parties as well as the relevant local authority.

"Who is notified of the challenge?" – In Part 8 statutory claims, the claimant will serve proceedings on the named defendants. In Judicial Review claims the claimant will serve proceedings on the persons the challenge is against and anyone else they have identified as an interested party. The Planning Inspectorate will not notify anyone of the challenge. The claimant would be expected to identify and include the Council as an interested party. If the defendant and any interested party are aware that another party should be made aware of the proceedings as an interested party they should include the details of that party in the acknowledgment of service.

"How much is it likely to cost me?" – A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though. It is usual for the costs of a successful party to be paid by the losing party, therefore if the challenge fails you will usually be ordered to pay the defendant's costs as well as having to cover your own. If the challenge is successful, the defendant may be ordered to pay your reasonable legal costs. However, the court ultimately has the power to issue whatever costs it sees fit.

"How long will it take?" – This can vary considerably.

"Do I need to get legal advice?" – You do not have to be legally represented in Court but it is advisable to do so, as you may have to deal with complex points of law.

"Will a successful challenge reverse the order decision?" – Not necessarily. The Court will either quash the order or quash the decision. Where the decision is quashed, we will be required to re-determine the order. However, an Inspector may come to the same decision again, but for different or expanded reasons. Where the order is quashed, jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

"Will a successful challenge reverse the appeal decision?"

Yes. We will be required to re-determine the appeal. However, an Inspector may come to the same decision again, but for different or expanded reasons.

"If the decision is re-determined will it be by the same Inspector?"

The same Inspector will be used unless there is a good reason not to do so.

"What can I do if my challenge fails?" – The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

"What happens if the order is quashed?" – Jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

"What can I do if I am not listed as an interested party on the challenge but want to be involved?" – You can contact the Administrative Court and ask to be listed as an interested party (see Part 54.1(2) of the Civil Procedure Rules 1998 for the definition of an interested party).

"Can the Planning Inspectorate or the Department for Environment, Food and Rural Affairs, provide me with advice about making a challenge?" – Neither the Planning Inspectorate nor the Department for Environment, Food and Rural Affairs can advise you on a challenge or on becoming a formal party – you should seek advice from your own legal adviser.

"Where will I find the claim forms?"

The forms are available on the Administrative Court's website at

www.justice.gov.uk/courts/procedure/civil/forms. The Part 8 Claim form is number N208 and the form for making a Judicial Review is N461. Guidance notes for claimants are also available.

"Where do I send the completed claim forms?"

They need to be filed with the Administrative Court at The Royal Courts of Justice, Queen's Bench Division, Strand, London, WC2A 2LL. They also need to be served on The Government Legal Department, One Kemble Street, London, WC2B 4TS.

Further Information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2A 2LL, telephone 020 7947 6000. Information can also be found on their website at www.justice.gov.uk/courts/rcj-rolls-building/administrative-court. Please see the attached flow charts setting out the main steps to be followed for both the statutory and judicial review procedures (please note that these charts do not contain the specific timelines for submitting evidence).

Inspection of order documents

We normally keep most case files for one year after the decision is issued, after which they are destroyed. You can inspect order documents at our Bristol office, by contacting the case officer dealing with the case, or our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey, it may be more convenient to arrange to view the documents at the offices of the relevant local authority.

CONTACT INFORMATION

The Planning Inspectorate

Rights of Way Section

The Planning Inspectorate

3A Eagle Wing

Temple Quay House

2 The Square

Temple Quay

Bristol BS1 6PN

E-mail: rightsofway2@planninginspectorate.gov.uk

Information: [Object to a public right of way order - GOV.UK](#)

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The Government Legal Department

102 Petty France

Westminster

London

SW1H 9GL

Phone: 020 7210 3000

Website:

<https://www.gov.uk/government/organisations/government>

Administrative Court

Royal Courts of Justice

Queen's Bench Division

Strand

London

WC2A 2LL

Phone: 020 7947 6655 Website:

www.justice.gov.uk/courts/rcj-rollsbuilding/administrative-court

Email for enquiries:

administrativecourtoffice.generaloffice@hmcts.x.gov.uk

Parliamentary and Health Service Ombudsman

Parliamentary and health Service Ombudsman

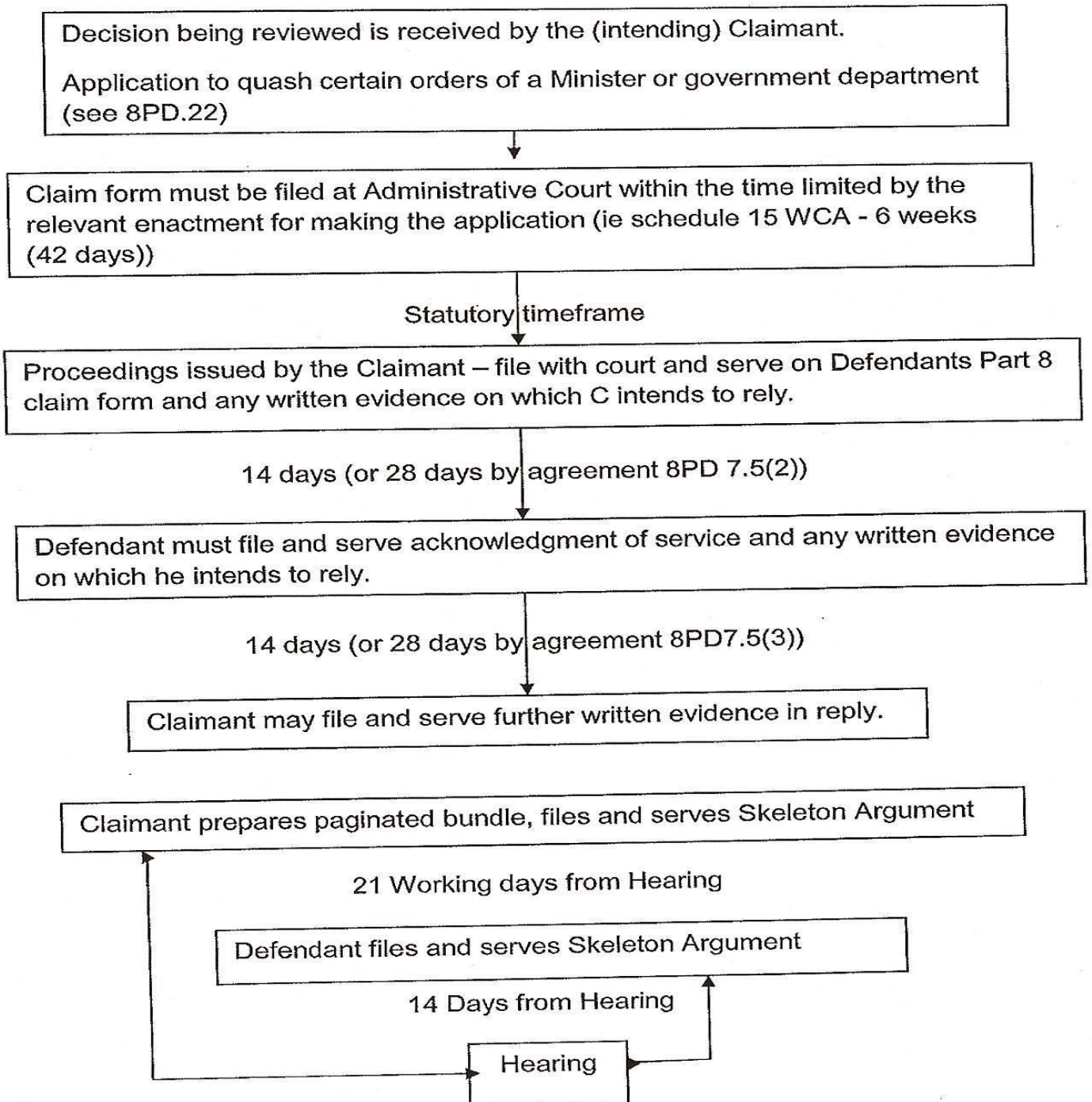
Millbank Tower, Millbank

London SW1P 4QP

Complaints Helpline: 0345 015 4033

Website: www.ombudsman.org.uk

Timetable for Part 8 Claims



Timetable for Judicial Review

