'Unclassified County Roads'

a study into their status

A report by independent consultants

September 2004

Contents

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TRF, PO Box 196, Derby DE1 9EY

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1. AIM

To determine what, if any, legal rights of passage may, in the absence of evidence to the contrary, be presumed to subsist on Unclassified County Roads recorded on Local Highway Authorities' Lists of Streets.

(**N.B.** The name 'unclassified county road' was made redundant by the Local Government Act, 1972, and roads which carried this title should now be referred to simply as 'unclassified roads'. This study will primarily focus on those routes which were categorized as county roads under the Local Government Act, 1929.)

2. PURPOSE AND METHOD

The research presented below was commissioned by the Trail Riders Fellowship. It is intended to provide an objective evaluation of the legal status of Unclassified County Roads (UCR) by independent consultants of high standing within their profession. The consultants were commissioned not as advocates of the motor vehicle user lobby but as independent professionals charged solely with addressing the aim above.

It is acknowledged that, notwithstanding the *presumption of regularity*, mistakes can and do occur in recording individual highways and therefore this research cannot set out to determine the absolute legal status of all UCRs. However, it is intended to determine what, if any, *prima facie* rights can be presumed to subsist on highways recorded as UCR in the absence of specific evidence to the contrary. The determination of presumed status will, in keeping with highway law, be made on 'the balance of probabilities', NOT, as in criminal law, 'beyond reasonable doubt'.

Wherever possible this study has made use of original material, however, use has also been made of sources of collected material such as Pratt and McKenzie's Law of Highways. Original material has primarily been found in public record offices, the National Archives and the House of Lords Record Office. Additional material has been obtained from private collections.

The material found has been reviewed and interpreted by the consultants and the interpretation subject to critical scrutiny by the team. Neither the TRF as client nor any other party has had opportunity to influence the consultants' interpretation and conclusions.

A wealth of further evidence is concealed in archives throughout England and Wales. Care has been taken to draw together all original material recorded during this study. This material has been digitally photographed and the images stored on the CD-ROM version of this report 'hyperlinked' to the body of the text. This material may only be used for non-commercial research or private study. The use of any images for publication will require the permission of the copyright holder. For further information please refer to the House of Lords Record Office and the National Archives Copyright Officer as appropriate.

3. EXECUTIVE SUMMARY

The purpose of the study is to determine what, if any, legal rights of passage may be presumed to subsist on Unclassified County Roads.

It is noted that a significant problem is the change of meaning of words over time and that this process is still continuing. It is important to look at words in the context of their times rather than by modern usage.
Research followed five general themes

Definitions – *How do the various Acts define key words?*
The Local Government Act, 1929 introduced the term 'county road'. Glen interpreted a road as any highway. However, Ministerial papers from the time show that county roads were intended to be vehicular highways. We argue that Glen's construction was flawed and failed to take into account the context of the Act.

The confusion caused by lack of clarity in the legal definitions may have resulted in some bridleways and footpaths being incorrectly recorded as UCR: against this, Hobhouse noted that very few county councils had records of rights of way in 1946, so the number of occurrences of mis-recording as UCR may be correspondingly low. Only county by county analysis can quantify this.

Other legislation predominantly supports the interpretation of 'road' as meaning a vehicular highway.

Boards, Ministries and Grants – *What was the function of the Boards, Ministries etc. with relation to UCR? What does this and their distributions of grants tell us about UCR?*
The Ministry of Transport and the Road Board before it have based their grant schemes on the assumption of public vehicular rights existing on all classes of road, including unclassified county roads, regardless of the level of use or degree of construction and maintenance.

Relationship to the Definitive Map and Statement – *What was to be included on the definitive map and, by implication, what was to be excluded? What was the relationship between RUPPs and UCRs? What are RUPPs?*
NPACA49 was drawn up with the intention of providing a definitive record of highways that the public had the right to use as either a footpath or bridleway. Unfortunately, and for reasons currently unknown, it attempted to also record vehicular highways that the public used mostly as footpaths or bridleways rather than with vehicles. There was no intention to include vehicular highways that were used by the public mainly with vehicles.

The legislation did not change the status of any route and only three types of highway continued to exist: footpaths, bridleways (with or without the right to drive animals) and carriageways. RUPP was not a new type of highway; it was merely a descriptive term for how some carriageways were then used.

While the split between unclassified roads and rights of way should have been clear, there was some confusion in the practice of putting routes on the definitive map. Only an authority by authority investigation can determine the extent of this confusion due to the variance in how the local authority chose to interpret governmental instructions.

Official interpretation of UCR – *What can be drawn from the advice from Government departments and highway authorities?*
For the authorities who responded to earlier consultation, the conclusion must be that most authorities believed their UCRs to be vehicular highways, adding weight to the presumption, on the balance of probabilities, that UCRs are vehicular highways.

Later Government advice through the Departments does not contradict this but has moved towards stressing that applications for changes to the definitive map involving UCRs need to be looked at individually on their merits.

Road Lists – *How were roads recorded in the 20th century?*
It is unlikely that footpaths and bridleways recorded on the definitive map and statement under NPACA49 would have been recorded onto lists of streets, as at the time the County Councils were under no statutory duty to compile lists of streets. On some definitive maps there are instances of "dual status" routes – perhaps more properly called "dual-recorded routes", routes that are shown as footpath or bridleway on the definitive map and are also recorded on the list of streets. Further research into these instances might help to explain why dual recording happened, but this does seem to have been the exception rather than the rule. The rule seems to have been that roads were recorded on the list of streets and the only non-vehicular highways recorded on the list of streets were urban or semi-urban footpaths – what might be termed estate paths.

Broadly, public footpaths, public bridleways and RUPPs were recorded on the definitive map and statement, roads other than the roads used mainly as public paths were not so recorded and roads that were publicly maintainable were recorded on lists of streets and on highway records kept by County Councils between 1930 and 1980.

Schedules drawn up under the Restriction of Ribbon Development Act, 1935, and 'Handover records' can provide strong evidence of public vehicular rights on the roads that they list.

3.1 General Conclusions

- The words used in any Act need to be interpreted in the context of that Act unless the Act specifically refers to a definition contained in another Act.
- The terms 'county road' and 'unclassified road' are used consistently and unambiguously to refer to public vehicular highways.
- *Prima facie* UCRs were intended by statute to be public vehicular highways which were not classified roads or trunk roads.
- 'Road', as in 'road used as a public path', means a public vehicular highway.
- Confusion over what was to be recorded as a county road has led to some bridleways and footpaths being included by some local highway authorities.
- Road Grants were intended only for public vehicular highways, potentially (but not usually in practice) including all unclassified roads.

- Some roads were mistakenly recorded as footpaths or bridleways.
- The large majority of highway authorities, whose views are known, believed their UCRs to be vehicular highways.
- Government Department advice is consistent with UCRs being vehicular highways, but increasingly recognises that this may not always be the case.

3.2 Summary of findings

Unclassified county roads are public vehicular highways. While doubt may be attached to individual routes by some authorities, the balance of probability must be that routes recorded as UCRs are vehicular highways unless there is specific evidence to the contrary.

4. INTRODUCTION

4.1 Development of Highways

Highways legislation had a faltering start. In 1285 Edward 1 ordered all parishes to keep 'highwayes' clear for 200 feet on either side to deter lurking highwaymen. Concern equally turned to the state of repair of the highways and the first toll for repairing roads was levied in 1346 on some of the roads leading out of London[1].

By the 16th century the state of the nation's roads, and the dissolution of the monasteries which had previously had a major role in maintaining roads, forced Parliament to act. In 1555 the first Highway Act was passed placing the burden of maintaining highways on the parishes and requiring every parishioner to do six days unpaid work on the roads each year. This statute labour failed to improve matters. Increasing use of carts and carriages and the wear and tear they caused to the highways resulted in a series of Acts designed to restrict numbers of wheels and weights of vehicles.

The next major landmark came in 1663 with the first Turnpike Act, introducing a system which, while enthusiastically embraced by Parliament, was generally resented, often abused and ultimately failed.

During the 19th century, the Government encouraged the development of railways while heavy tolls were imposed on steam powered road vehicles, further undermining the already precarious economic viability of the remaining turnpikes.

The great road makers, Macadam and Telford, had improved road construction techniques during the late 18th century, however, highway administration was far from effective. The Highway Act 1835 abolished statute labour and gave powers for the appointment of parish surveyors and local rating. The Highway Act 1862 tried to improve efficiency through the formation of highway districts comprising several parishes, each with a highway board to administer them. Further Acts introduced state funding towards 'main' roads, and in 1888 the Local Government Act created county councils and gave them the responsibility for maintaining these 'main' roads. The Local Government Act of 1894 abolished the highway boards and transferred the duty of maintaining highways in rural areas, other than 'main' roads, to Rural District Councils. Rees Jeffreys[2] records that by 1894 there were 1855 authorities in England and Wales with responsibility for highways. The Local Government Act 1929 reduced this number by largely transferring the rural districts' highway responsibilities to the county councils, although this process was often strongly contested by the rural districts.

An important distinction was made from the 19th century onwards between rural and urban areas and the responsibilities of their respective authorities. In urban areas this was largely related to public health and the Victorian innovation of urban sewerage systems. Sewerage was invariably installed under highways in built up areas reflecting the close links between highway and public health legislation in the many highway provisions found in the Public Health Acts of 1875 and 1925.

[1] Syme, R. *The Story of Britain's Highways*. 1952

[2] Jeffreys, R. *The King's Highway*. 1949

In rural areas control of highways for public health was not such an issue and the main focus of concern was on the maintenance of important through routes. There were two factors to this; firstly there was the issue of local liability for the repair of damage caused by non-local traffic, and, secondly, there was the increasing need to maintain through routes to higher than local standards, as required by the increased volumes, weights and speed of traffic that they carried, especially as the use of motors spread.

These different sets of concerns in the urban and rural environment resulted in the split of highway authority responsibilities embodied later in the Local Government Act, 1929 and the differing requirements on urban and rural authorities to maintain lists of streets.

Macadam, Telford and others exploded the myth of roads mending themselves and showed that there was an engineering solution. However, their use of stone surfaces suited slow moving vehicles with iron tyres. The iron tyres created a dust which helped to bind the road metalling together. The advent of fast moving, rubber tyred traffic did not grind the surface but sucked out the particles, loosening the surface but also creating a tremendous dust problem. Dust became the big challenge for 20th century surveyors. Water spraying helped in the short term but was expensive to keep repeating. Sea water lasted better. However, tar and bitumen products provided the most long lasting, efficient and economical answer, both to binding the road surface (also preventing water penetration) and eradicating the clouds of dust. Coating with 'blacktop' added little to the load bearing capacity of a road but its suppression of dust, binding and water-proofing of the road crust made it the most important and most desired road improvement for the 20th century.

4.2 Highway fundamentals

4.2.1 Once a highway always a highway

There is a long established maxim in highway law that says, "Once a highway, always a highway". As Mr. Justice Joyce said in *Harvey v Truro Rural District Council* (1903)[3]:

> "*Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used would preclude the public from resuming the exercise of the right to use it if and when they think proper.*"

Public rights, once brought into existence, can only be extinguished by the use of a statutory provision.

4.2.2 Types of highway

There are only three types of public highway recognised in law; footpaths, bridleways (with or without the right to drive animals), and carriageways. As Lord Diplock said in Suffolk County Council v Mason:

> "*At common law, highways are of three kinds according to the restriction of public rights of passage over them. A full highway or cartway is one over which the public have a right of way (i) on foot, (ii) riding on, or accompanied by a beast of burden, and (iii) with vehicles or cattle. A bridleway is a highway over which the rights of passage are cut down by the exclusion of the right of passage with vehicles and sometimes though not invariably the exclusion of the right of driftway, i.e. driving cattle. While a footpath is one over which the only public right of passage is on foot.*"

[3] See Riddall & Trevelyan, *Rights of Way, a guide to law and practice,* 3rd edition, P.26

Of these three, only footpaths and bridleways are *public paths* (See National Parks and Access to the Countryside Act, 1949, below). However a highway is described it must be one of these three types. Whether unclassified or classified, county or otherwise, highways described as *roads*, *byways*, *green lanes* and *roads used as public paths* must all be footpaths, bridleways or carriageways.
Perhaps the most contentious descriptive term used is 'Road used as a public path' or 'RUPP'. This term will be discussed more fully later but it is important to appreciate that the National Parks and Access to the Countryside Act 1949 did not create a fourth type of highway when it introduced RUPPs. There are still only carriageways and public paths (footpaths and bridleways). A RUPP is simply a *road*, with public vehicular rights[4], that is mainly used as a *public path*, that is, it is merely a descriptive term for a *prima facie* carriageway (since by definition it is not a public path) that reflects that carriageway's normal traffic rather than the legal rights it carries.

4.3 Language drift

Our highway network is a dynamic system which has struggled to keep pace with social, economic, environmental and technological changes. The words used to describe this system are also dynamic and we must keep in mind that the meaning we attach to commonplace words today may be very different to those of the past, no matter how *obvious* the meaning might appear. For example, Edward I's demands in 1285 that all *highways* be kept clear for 200' on each side presumably used the word more restrictively than the Highways Act 1835 which defined the word as:

> "*And the word 'highways' shall be understood to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements*;"

Equally, a 'footway' as used in the 1835 Act would now be referred to as a 'footpath' with the term 'footway' more likely to be used for a dedicated pedestrian route alongside a made up carriageway. The Highways and Bridges Act 1891 defined 'highway' as "… includes any public bridlepath or footway." Today we would use the terms bridleway and footpath.

Much of this study will be devoted to looking at the meaning of the word 'road'. Before we get into the legal meanings, it is worth spending a little time looking at the history of this commonplace word. A W Fry FCA of the British Driving Society researched the expressions 'Road' and 'Way' in a study published in July 1999. In 'Road and Way' Fry states that:

> "*Early Highway Acts do not attempt to define the terms they contain, and use different terms within the same Act with considerable freedom. The 1835 General Highways Act is the first that sets out a comprehensive definition of terms in its introduction. Not surprisingly, the use of words changes considerably over the period under review …*"

Fry says that 'way' was the universal term for a means of passage until the end of the 16th century. Thereafter, 'road' started to find its way into common parlance.
Fry goes into considerable detail and provides much historical evidence to support his summary:

> "*From the above details it can be seen that the meaning of the words Highway and Road has changed significantly over time. In the 17th Century through to about the middle of the 18th century road and highway*

[4] Instructions from the Ministry of Town & Country Planning issued with Circular 81/50 included that public footways and bridleways over private accommodation roads should be recorded only as footpaths or bridleways respectively.

were equivalents, both meaning general purpose ways for all manner of traffic. From the last quarter of the 18th century onward up to 1835, Highway clearly meant a general purpose route, distinguished from bridleway and footway. Road had not changed, and continued as an equivalent of Highway, either specifically or by implication."

"From 1835 'highway' could be applied to any type of way, including bridleways and footpaths, and therefore lost its special significance as a description of a vehicular route. Road however was not redefined, and therefore as a result of its earlier definition in the 17th century when it was clearly applied to vehicular routes it continued to indicate that, and that meaning was implicit in the bodies formed to look after the interests of motorists and cyclists at the turn of the century."

"However by the time of the 1929 Act "road" was defined as a "highway repairable by the inhabitants at large" and lost its unique distinction as a word defining a general purpose way. This has effectively muddied the legal waters since, although in common parlance there is no doubt that 'road' still means a vehicular route to this day."

This language drift continues today.

4.4 General Strands of Evidence:

The investigation has followed five general strands of evidence under the themes of:

Definitions – How do the various Acts define key words?

Boards, Ministries and Grants – What was the function of the Boards, Ministries etc. with relation to UCR? What does this and their distributions of grants tell us about UCR?

Relationship to the Definitive Map and Statement – What was to be included on the definitive map and, by implication, what was to be excluded? What was the relationship between RUPPs and UCRs? What are RUPPs?

Official interpretation of UCR – Reviewing the advice which has come from Government departments and from the highway authorities as to what UCRs are.

Road Lists – Looking at the recording of roads in the 20th century.

These themes are explored below.

5. DEFINITIONS

The purpose of this review is to seek clarification of the term unclassified county road (UCR) from statute, to see if the term is specifically defined in statute, or if its component parts are defined to the extent that an inference may be drawn as to meaning.

5.1 Statutory Definitions

The table below draws together the various relevant definitions found in Acts from 1835 onwards. Definitions of the same word are grouped in chronological order of the Acts containing them.

No statutory definition of unclassified county road (UCR) has been found, and it is considered unlikely that one will be found. Statutory definitions for a variety of terms have been located in the interpretation sections of a number of later statutes (see table), and whilst "classified road" and "county road" have precise definitions, UCR does not.

It should be noted that most Acts preface their definitions and interpretations in words which allow for limitations and context. For example, in two of the key Acts: the Local Government Act 1929 begins its definitions section (134) with, "In this Act unless the context otherwise requires –." The Highways Act 1835 begins: " In the construction of this Act – ." The LGA 1929 accepts and accommodates the possibility of alternative definitions to those given dependent upon context and restricts its definitions to that particular Act. The HA 1835 similarly limits the scope of its definitions to that Act, although context is not considered.

Table 1 Collated definitions from Acts

Term	Act	Definition
Road	Telegraph Act 1863, s.3	"The term "public road" means a public highway for carriages repaired at the public expense"
	The Tramways Act 1870	"The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same"
	Roads Improvement Act 1925	"includes any bridge, viaduct, subway, road, ferry and footway;"
	Road Transport Lighting Act 1927	"means any public highway and any road to which the public has access"
	Local Government Act 1929	" a highway repairable by the inhabitants at large, and, save as in this Act otherwise expressly provided, includes any bridge so repairable carrying the road, and 'improvement' in relation to a road includes the fixing of a building line or improvement line under any enactment"
	Road Traffic Act 1930	"means any highway and any other road to which the public has access, and include bridges over which a road passes."

Road	Restriction of Ribbon Development Act 1935 (S 24)	" a highway repairable by the inhabitants at large and includes any part of such highway and any proposed road and any bridge over which such a highway passes or a proposed road is intended to pass"
	The Trunk Roads Act 1936, s.13	""Road" means a highway and includes any part of a highway and any proposed road and any bridge or tunnel over or through which a highway passes or a proposed road is intended to pass, and "trunk road" shall be construed accordingly"
	National Parks and Access to the Countryside Act 1949	S93 (8) "In this section the expression 'road' means a highway other than a public path (as defined in Part IV of this Act);"
	Highways (Provision of Cattle-Grids) Act 1950	"means any along which there exists a public right of passage with vehicles, whether exercisable over the whole or part only of the width of the way"
	Agriculture (Improvement of Roads) Act 1955	"road includes any bridge viaduct or subway"
	Road Traffic Regulation Act 1967	"means any highway and any other road to which the public has access, and includes bridges over which a road passes"
	Countryside Act 1968	""Road" has the meaning given by section 104 of the Road Traffic Regulation Act 1967"
	Road Traffic Regulation Act 1984, s.142	""road" means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes"
	Road Traffic Act 1988	"road", in relation to England and Wales, means any highway and any other road to which the public has access, and includes bridges over which a road passes,
Classified Road	Local Government Act 1929 S 134	"a road classified by the Minister under the Ministry of Transport Act 1919 in Class I or Class II or any class declared by him to be not inferior to those classes for the purposes of this Act".
	Restriction of Ribbon Development Act 1935 S 24	"a road classified by the Minister under the Ministry of Transport Act 1919 in Class I or Class II or any class declared by him to be not inferior to those classes for the purposes of this Act".
	Highways Act 1959 S 295	"a highway classified by the Minister under the Ministry of Transport Act 1919 in Class I or Class II or any class declared by him to be not inferior to those classes for the purposes of this Act".
Unclassified Road	Agriculture (Improvement of Roads) Act 1955	"means a road which is a maintainable highway but is neither a trunk road nor a road classified under the Ministry of Transport Act, 1919"

County Road	Local Government Act 1929	"29.-(1) The council of every county shall be the highway authority as respects every road in the county which at the appointed day is a main road or which would, apart from this section, at any time thereafter have become a main road, and every such road and every other road as respects which a county council become by virtue of this Part of this Act the highway authority, shall be termed a county road, and all enactments relating to main roads shall as from the appointed day have effect as if for references therein to main roads there were substituted references to county roads."
	Highways Act 1959 S 295	"a highway which by virtue of section 21 of this Act or some other enactment is a county road"
Unadopted Road	Agriculture (Improvement of Roads) Act 1955	"means a road which (whether it is highway or not) is not a maintainable highway"
Proposed Road	Restriction of Ribbon Development Act 1935 S 24	"land upon which in accordance with plans approved by the Minister a highway authority are for the time being constructing or intending to construct a highway or part of a highway shown in the plans which will be repairable by the inhabitants at large"
Road used as a Public Path	National Parks and Access to the Countryside Act 1949 S 27	"means a highway other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used."
	Countryside Act 1968 Schedule 3 Part III para 9	"In this paragraph 'road used as a public path' means – (a) a way which is shown as a road used as a public path in the last definitive map and statement, or (b) a way which is shown as 'bridleway' or as a 'footpath' in the last definitive map and statement, and which in the opinion of the authority ought to have been there shown as a road used as a public path, or (c) where the special review is not a limited special review, a way which in the opinion of the authority would but for the provisions of this Part of the Schedule, have fallen to be shown, in the definitive map and statement resulting form the special review, as a road used as a public path."
Crown Road	Countryside Act 1968	""Crown Road" means a road, other than a highway, to which the public have access by permission granted by the appropriate Crown authority, or otherwise granted by or on behalf of the Crown"
Street	Public Health Act 1875	"any highway and any public bridge (not being a county bridge) and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not" . (Where there has been a public footway prior to 1835 it is not a street under this section [Rishton v Haslingdon (Mayor etc, of), [1898] 1 Q B 294])

Street	Private Street Works Act 1892	"means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large"
Highway	Highways Act 1835	"And the word 'highways' shall be understood to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements;"
	Highways and Bridges Act 1891	"6. Words and expressions to which meanings are assigned by the Local Government Act,1888, have in this Act the same respective meanings, and in this Act the word 'highway' includes any public bridlepath or footway."
Maintainable Highway	Agriculture (Improvement of Roads) Act 1955	"as respects England and Wales, means a highway maintainable or repairable by the inhabitants at large, and as respects Scotland means a highway managed and maintained by the Minister of Transport and Civil Aviation or by a county or town council"
Public Path	National Parks and Access to the Countryside Act 1949 S 27	"means a highway being either a footpath or a bridleway."
	Wildlife and Countryside Act 1981	"means a highway being either a footpath or a bridleway."
Bridleway	National Parks and Access to the Countryside Act 1949 S 27	"means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway."
	Highways Act 1959 S 295	"a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway"
	Highways Act 1959	""bridleway and footpath" have the meanings given by section 295(1) of the Highways Act 1959"
	Road Traffic Regulation Act 1967	"a way over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the way"
	Highways Act 1980 S 328	"a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway"

Bridleway	Wildlife and Countryside Act 1981	"means a highway over which the public have the following, but no other, rights of way, that is to say a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway." ""horse" includes a pony, ass and mule and horseback shall be construed accordingly."
Bridleway	Road Traffic Act 1988	""bridleway" means a way over which the public have the following, but no other, rights of way: a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the way"
Footpath	National Parks and Access to the Countryside Act 1949 S 27	"means a highway over which the public have a right of way on foot only, other than such a highway by the side of a public road."
	Highways Act 1959 S 295	"a highway over which the public have a right of way on foot only, not being a footway"
	Road Traffic Regulation Act 1967	"means a way over which the public have a right of way on foot only"
	Countryside Act 1968 (S.49)	""bridleway and footpath" have the meanings given by section 295(1) of the Highways Act 1959"
	Highways Act 1980 S 328	"a highway over which the public have a right of way on foot only, not being a footway"
	Wildlife and Countryside Act 1981	"means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road."
	Road Traffic Act 1988	"footpath", in relation to England and Wales, means a way over which the public have a right of way on foot only,
Footway	Highways Act 1959 S 295	"a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only"
	Highways Act 1980 S 328	"a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only"
Byway Open to All Traffic	Countryside Act 1968 Schedule 3 Part III para 9	"(b) subject to paragraph (c) below, any entry in the map describing a way as a "byway open to all traffic" shall be conclusive evidence of the existence on the date of publication of a public right of way for vehicular and all other kinds of traffic, (c) section 32 (4) (c) of the Act of 1949 (position and width, and limitations or conditions affecting the public right of way as shown in the statement) shall apply to any byway so shown as it applies to a footpath or bridleway"

Byway Open to All Traffic	Wildlife and Countryside Act 1981	"means a highway over which the public have a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpaths and bridleways are so used."
Right of way	National Parks and Access to the Countryside Act 1949 S 27	" "right of way to which this Part of this Act applies" means a right of way such that the land over which the right subsists is a public path."
	Wildlife and Countryside Act 1981	" "right of way to which this Part applies" means a right of way such that the land over which the right subsists is a public path or a byway open to all traffic"

5.1.1 Road

The word 'road' is of prime importance. The earliest legal definitions found (Telegraph Act 1863 & The Tramways Act 1870) offer clarity; a road is a public carriageway. These definitions are not contradicted in later Acts, however, their clarity is often obscured by unqualified use of the word 'highway', which includes footpaths and bridleways. The National Parks and Access to the Countryside Act 1949 (NPACA 49) defines road as being other than a public path and therefore a carriageway, although it should be noted that the definition is prefaced with 'in this section' (no other definition of 'road' is given in the Act). Similarly, the Highways (Provision of Cattle-Grids) Act 1950 is clear about the rights to use vehicles on roads under its definition. However, it is clear from the variation in definition that there is no absolute meaning to the word 'road' and its actual meaning, unless specified, needs to be determined from its context within a particular Act.

5.1.2 County road

A UCR is a "county road" that is not a "classified road".
The definition of "county road" stems from the Local Government Act 1929, where, whilst "county road" is specified, its definition is circular, relying on a definition of "road", and "road" is <u>not</u> specifically defined as being any particular type of highway.

Glen's Local Government Act 1929 states:

"The Act [Local Government Act 1929] *(s 134) defines 'roads' as meaning highways repairable by the inhabitants at large, and as including bridges so repairable carrying roads, and does not define 'highways'. By section 5 of the Highway Act 1835, "highways shall be understood to mean all roads, bridges (not being county bridges) carriageways, cartways, horseways, bridleways, footways, causeways, churchways and pavements". So that if any of these various kinds of ways, including, it will be noticed, even a footway, is repairable by the inhabitants at large, it will be a "road". If it is not so repairable it will not be a "road" and therefore not a 'county road', or an 'unclassified road'. The Act (s 29 (1)) makes "county roads" of three kinds of roads, namely (a) roads which, on April 1, 1930, are "main roads", (b) roads which become main roads and (c) every road as respects which a county council becomes the "highway authority" under the Act. The Act amends the law as to declaring roads to be "county roads" (s 37)".*

An alternative interpretation is that the definition of road in the 1929 Act says only that a 'road' is a 'highway repairable by the inhabitants at large'; it does not say that all repairable highways are roads. Similarly, whilst the Highways Act 1835 included 'roads' as highways, it does not say that all highways are roads. All chickens are birds, not all birds are chickens.

As the later definitions of "county road" in statute all ultimately refer back to the 1929 Act definition, references to county road in documents prepared in relation to other later statutes also cannot be legally presumed to apply conclusively and exclusively to vehicular highways. Again other evidence will have to be sought to clarify the meaning.

However, it is arguable that since both the Highways Act 1959 and 1980 contain definitions for footpath and bridleway that prelude the existence of higher public rights (a footpath is a footpath 'only' and a bridleway is a bridleway 'only'), records prepared in connection with those Acts that use the term "road", (but not "street") can be presumed, unless there is evidence to the contrary, to mean public vehicular highways.

Further research into the circulars, statutory instruments and proceedings of Parliament has revealed evidence that the definition of county road was not intended to include non-vehicular highways. This evidence is discussed in 5.2 below.

5.1.3 Classified road

Classification of roads into

(a) Main Roads
(b) County Roads
(c) District Roads

was suggested in the Final Report of the Departmental Committee on Local Taxation in 1914,[5] . However, this was not implemented until the Ministry of Transport Act 1919. Classification was introduced for the purposes of allocating advances from the Minister to local authorities for the construction of new roads and the improvement or maintenance of existing roads.

The 1919 Act does not define "road". However section 2 of the Act, which sets out the powers and duties of the Minister, refers to "roads, bridges and ferries and vehicles and traffic thereon". The implication being that road as used in the Act means something used by vehicles. Since the purpose of classification of roads was for advancement of public funds, classified roads are inherently public. It seems beyond argument that classified roads are public vehicular highways, irrespective of whether or not a classified road is or is not also a county road, although this is not specifically stated in law. Classification with respect to grants is discussed further in Chapter 6.

5.1.4 Unclassified road

Unclassified road is used but not defined in the Local Government Act 1929. Classified road is defined in the 1929 Act by reference to its definition in the 1919 Act. By inference, an unclassified road is a road within the meaning of the 1919 Act that has not been classified under that Act. The definition of Unclassified Road in the Agriculture (Improvement of Roads) Act 1955 is consistent with this. Arguably the term "unclassified road" can be presumed to be a vehicular highway, unless there is evidence to the contrary, although, in parallel to classified roads, this is not specifically stated in law.

5.1.5 Bridleway and Footpath

Notwithstanding the change in nomenclature of both of these types of highway over time, they are both consistently defined in familiar fashion. The definitions mostly contain the word 'highway' or 'way' but do not use the word 'road'.

[5] Hawkins, J.F. *Control, management & Maintenance of Rural Roads*, 1914

5.1.6 Public Path

This phrase is unambiguously defined in the NPACA 1949 and again in the Wildlife and Countryside Act 1981 as meaning a footpath or bridleway.

5.1.7 Road Used as a Public Path

This phrase was introduced and defined by the NPACA 1949. It was again defined by the Countryside Act 1968 but in a circular fashion which does not add to the definition of the 1949 Act.

5.2 Interim conclusions

The definitions cited above are often prefaced with words to the effect that they have to be read in the context of the Act and also that they only apply to that Act or a Part of that Act.

The word 'road' has been used inconsistently over time. It is sometimes used interchangeably with 'highway' and can therefore include all classes of right of way.

'Classified road' appears to refer unambiguously to certain public vehicular highways. 'Unclassified roads' appears to refer to the remainder of that same type of highway; those that are not classified or trunk roads. Unclassified roads are a stage in a hierarchy from trunk roads, through classified roads to unclassified roads.

The phrase 'county road' is a reflection of the body administering the road.

Argument about the meaning of 'county road' rests upon the definition of 'road' in the '29 Act as being 'a highway repairable by the inhabitants at large'. Glen offers an interpretation which throws the whole meaning into obscurity. Further evidence is needed to determine what was actually meant.
However, the combination of Unclassified Road with County Road to make UCR indicates that, on the balance of probability, the term Unclassified County Road was intended to mean public carriageways which were not classified or trunk roads.

5.3 Inferred Meaning

We have seen above that definitions in Acts of Parliament can only provide a probable but inconclusive answer as to the legal rights subsisting on unclassified county roads recorded by highway authorities. However, further evidence can be inferred from within the Acts themselves and from circulars, memoranda, working papers etc. related to those Acts. This evidence will be examined below.

A general question that we will continue to ask is this; Is 'road' a synonym for 'highway'? But, more specifically, we will look for evidence amongst the Acts and relevant papers found for the intention behind the Acts and their use of 'road'.

5.3.1 Highway Act 1835

'Road' is not defined in the Highway Act 1835. However, the Hobhouse Committee of 1947 presents an argument that section 23 of the Highway Act, 1835, is incompatible with the inclusion of footpaths, bridlepaths or driftways in the term 'road': The Report of the Special Committee on Footpaths and Access to the Countryside (the Hobhouse Report), 1947, says:

> "59. *The Common Law liability of the inhabitants at large for the maintenance of highways was ordered by the Highway Act 1835 to be exercised by the Surveyors of Highways. Today, the functions of the Surveyors are exercised by the highway authorities …*
> 60. *… But a number of highway authorities have invoked Section 23 of the Highway Act 1835 as justifying the view that highway authorities are not liable to maintain all the rights of way referred to in our terms of reference [footpaths, bridleways and driftways]. That Section states that no "Road or Occupation Way", dedicated or created after 20th March, 1835, shall be deemed to be repairable by the highway authority unless the individual or body dedicating it gave notice to the authority and made it up to the prescribed width in a manner to the satisfaction of the Surveyor and of two magistrates. These conditions have seldom been observed in respect of footpaths and it seems to us that the Section was never intended to apply to public footpaths, bridlepaths and driftways. As Section 23 of the Act refers only to the roads and occupation ways, a prima facie duty to maintain all other rights of way would appear to rest upon highway authorities. On this interpretation footpaths, bridlepaths and driftways would not be comprehended in the description "roads" or "occupation ways" used in Section 23 of the Highways Act 1835. This matter of legal doubt will however have no further practical importance if the recommendation contained in paragraph 66 is adopted."* [Recommendation that highway authorities should be required to maintain all rights of way.]

If this view is correct it may suggest that road should generally be read as excluding footpaths and bridleways in the 1835 Act. However, that would run contrary to the explanation given earlier from Glen (a respected textbook) and to the perceived view of more than one highway authority (e.g. Warwickshire and Bedfordshire) where records indicate that the Local Government Act 1929 was interpreted as meaning that the County Councils were taking over more than just vehicular highways into the new class of county roads.

5.3.2 Highways and Locomotives (Amendment) Act 1878

This Act deals extensively with the process of 'disturnpiking' roads and also 'maining' roads. The inference throughout is that 'road' is used to mean a vehicular highway as, following the folding of turnpikes but before trunk roads and special roads, main roads were the highest class of public highway and of necessity vehicular. Any highway could become a 'main road' but once it was a road it was vehicular.

> "15. *Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts aforesaid to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a main road, shall make an order accordingly.*"

5.3.4 The Local Government Act 1894

Section 13 of this Act illustrates that there was a distinction made in this Act between footpaths and roads:

> "13.-(2) *A parish council may, …, undertake the repair and maintenance of all or any of the public footpaths within their parish, not being footpaths at the side of a public road.*"

The implication is that 'road' is being used to denote a vehicular highway as we are unaware of examples of footpaths (read 'footways') being created at the side of bridleways at this time.

5.3.5 Development & Road Improvement Fund Act 1909

This Act was an attempt to kick-start strategic road management by the establishment of a *Road Board* which would grant aid highway authorities' road improvements and also itself build new roads. Funding was to come from a new fund – the Development and Road Improvement

Fund. This fund was entirely from the proceeds of motor vehicle licensing and fuel duties and was presented as a means of motorists paying for the improvements that were necessary because of motor vehicle use.

Rees Jeffreys (The King's Highway P.26) quotes from a Memorandum published by Lloyd George. This said:

> "*The Board are given power to act either directly by themselves constructing new roads, or indirectly, through the existing highway authorities, whom the Board will be able to stimulate by means of grants and loans made in consideration of the authorities undertaking either to construct such new roads or effect such improvements in existing roads* ***as will facilitate motor traffic***." [Our emphasis]

The Act itself does not specifically refer to 'motor traffic'. Section 8 deals with the Road Board and says:

> "8.-(1) *The Road Board shall have power with the approval of the Treasury-*
> *(b) to construct and maintain any new roads which appear to the Board to be required for facilitating road traffic.*"

> "8.-(5) *For the purpose of this Part of this Act the expression "improvement of Roads" includes the widening of any road, the cutting off of corners of any road where land is required to be purchased for that purpose, the levelling of roads, the treatment of a road for mitigating the nuisance of dust, and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair; and the expression "roads" includes bridges, viaducts and subways.*"

The purposes in s.8(5) suggest that the roads in question carried vehicular traffic and were vehicular highways.

Section 9(1)(a) of the Act indicates that the term 'Path' was also in usage at this time. It can be inferred that this was used for non-vehicular highways, however, the wording of the subsection may also indicate that 'road' and 'path' are being used as synonyms. In the context of this Act the former would appear to be more logical.

> *"Communications between a road or path and a road constructed by the Road Board shall be made in manner to be approved by the Road Board;"*

The Road Board and its grant are discussed further in chapter 6 below.

5.3.6 The Roads Act 1920

The introduction to this Act states that it is:

> "*An Act … to make other provision with respect to roads and vehicles used on roads, and for purposes connected therewith.*"

'Vehicles used on roads' is not qualified by terms such as 'some roads' or 'roads which are carriageways', the clear inference is that, for the purposes of this Act, roads generally carry vehicular traffic.

5.3.7 Roads Improvement Act 1925

The content and context of the Act implies that "road" is a term for a vehicular highway. The Act is particularly concerned with building lines and sight lines as respects the convenience and safety of traffic on the roads. Section 6 is particularly clear:

> "(1) *The Minister may … conduct experiments or trials for the improvement of the construction of roads, or for testing the effect of various classes of vehicles on various types of roads …*"

5.3.8 Local Government Act 1929

> *"29.-(1) The council of every county shall be the highway authority as respects every road in the county which at the appointed day is a main road or which would, apart from this section, at any time thereafter have become a main road, and every such road and every other road as respects which a county council become by virtue of this Part of this Act the highway authority, shall be termed a county road, and all enactments relating to main roads shall as from the appointed day have effect as if for references therein to main roads there were substituted references to county roads."*

As we saw in 5.1.2 above, legally it cannot be presumed without further testing that in the context of the 1929 Act, the term county road, as defined above, applies conclusively or exclusively to vehicular highways. Where the term is used in other documents associated with the 1929 Act, other evidence, internal or external to those documents, will be needed to clarify the meaning of the term. But the converse is also true; the meaning of the Act as expressed in related documents can shed light on the intended interpretation of 'Road'.

During its passage through Parliament, the Ministry of Health prepared a 'Memorandum on the Local Government Bill 1929 (as presented to Parliament)'.
Paragraph 22 of this Memorandum says:

> *"Clause 29 [of the Bill] provides that County Councils shall have in relation to all roads transferred to them the same functions that they now have with respect to main roads. Some of the roads to be transferred to the County Councils will be of comparatively small importance and could not be called main roads as the term is ordinarily understood. In order to preserve uniformity and avoid an inappropriate nomenclature, the clause accordingly provides that all roads vested in the County Council (including the present main roads) shall as from the appointed day be known as "county roads"."*

Three aspects are of interest here:

(a) The memorandum refers to 'all roads transferred' being subject to the same functions which the county councils had previously exercised over main roads. This does not suggest that it was intended that footpaths and bridleways should be included in the term 'roads'.
(b) The degree of importance of the road was irrelevant to it becoming a county road.
(c) '*could not be called main roads* ***as the term is ordinarily understood***' [our emphasis]; Commonly, main road meant a major through route whereas in reality lots of the routes to be transferred, including many 'main' roads, were far from this.

Paragraph 23 says:

> *"Rural District Councils are to cease to be highway authorities.*
>
> *Clause 30 (1) provides that every County Council shall be the highway authority in Rural Districts within the County both as regards highways repairable by the inhabitants at large and those not so repairable. The Rural District Councils shall cease to be highway authorities but the sub-clause provides for their retention of their functions in regard to the protection of rights of way and roadside wastes, and they will in this matter to a great extent exercise concurrent functions with the County Councils."*

The separation of highway authority and rights of way functions suggests that at this time a distinction was being drawn between 'highways' and 'rights of way'.

Paragraph 27 of the Memorandum says:

> "*Where after the passing of the Act a rural district or any part of a rural district is constituted an urban district it may be convenient that the County Council should continue to be responsible for the roads in the District.*
>
> *Sub-clause 6 of clause 31 accordingly provides that in such a case the order by which the change in the status of the area is effected may provide that any unclassified roads in the area shall continue to be county roads, and may also make provision for contributions to be paid by the urban district to the County Council towards the maintenance and repair of such roads.*"

The provision for contributions towards maintenance reinforces the impression that the roads discussed in this section are vehicular highways as there was no tradition of contributions being sought or made for the upkeep of bridleways or footpaths.

Paragraph 31 of the Memorandum says:

> "*… it shall be the duty of the County Council to delegate the maintenance, repair &c., of unclassified county roads to District Councils, unless they are able to satisfy the Minister of Transport that such delegation is undesirable in the particular case. It is further provided that County councils may also at their discretion delegate such functions in respect to classified roads.*"

This statement illustrates that there was not considered to be any fundamental difference between classified and unclassified county roads. As classified roads were undoubtedly public vehicular highways, it must suggest that unclassified county roads are also *prima facie* public vehicular highways.

On the 10th April 1929 the Ministry of Health published its 'General Circular on the Local Government Act, 1929', circular No. 1000.

Paragraphs 11 – 13 of the circular say:

> "11. *Secondly, the cost of constructing and keeping up highways of all grades of importance had inevitably increased owing to modern changes in means of transport and the habits of the people.*
>
> 12. *But the distribution of the cost had been settled long before these changes took place and when the burden was still light. A burden of cost of the present order of magnitude placed an unfair, and indeed intolerable, pressure upon the ratepayers of the less prosperous local government areas, especially in districts of an agricultural character traversed by great lengths of road over which vehicles ran without halting to bring trade or custom into the small and scattered centres of population, whose inhabitants nevertheless had to comply with demands for maintenance up to a constantly rising standard.*
>
> 13. *The remedy for this defect which Parliament has provided in the Act is the transfer to County Councils of general responsibility for work in relation to roads in rural areas, and in a lesser degree in urban areas, subject to a number of reservations in favour of those Councils of those areas which need not here be specified.*"

These three paragraphs lay out the basic reasoning, need and intent behind the changes made by the 1929 Act to the 'burden of charges for construction and maintenance of highways'. They leave no doubt that they were concerned with the impact of motor vehicle transport on road maintenance demands on local authorities. 'Roads' throughout these paragraphs undoubtedly means 'public vehicular highways'.

Paragraph 47 of the circular says:

> "*Forty years of mechanical invention, movement of population into towns to work, counter-movement out of towns to sleep, and growing habits of mobility, have led up to the changes brought about by the Act in the administration of work in relation to roads and town planning.*"

The Act is thus about coping with relatively recent developments. It is not primarily about traditional local traffic but is about administering the needs of commuters and increasing use of mechanised transport. This is largely incompatible with the Act being about transferring administration of footpaths and bridleways but is consistent with the transfer of vehicular routes and with county roads being public vehicular routes.

In or after 1932 the Commons, Open Spaces and Footpaths Preservation Society[6] published a pamphlet entitled 'Powers of District and Parish Councils Under the Local Government Act, 1929.' In this, the Society's advice is that:

> "*'Highways' are not defined by the Act of 1929, though 'roads' are; and the expression 'highway' must therefore be taken in its common law meaning of 'any way over which any subject of the Crown may lawfully pass without let or hindrance.' In which sense it includes all public footpaths and bridleways, as well as carriageways.*
> *County Councils are now, therefore, the highway authority for public footpaths and bridleways in rural districts as well as for roads;*"

The Society, which was taking an active lead in recording rights of way, were using 'roads' as meaning something different to footpaths or bridleways.

5.3.9 Restriction of Ribbon Development Act, 1935.

This Act is entirely concerned with development alongside roads, particularly following either the improvement of a road or the adoption by the highway authority of a new road. The definition given for "road" is not clear as to status:

> "*a highway repairable by the inhabitants at large and includes any part of such highway and any proposed road and any bridge over which such a highway passes or a proposed road is intended to pass*"

However, the context is such that the conclusion must be that road was meant as a public vehicular highway, for example in subsection 1(5):

> "*In determining the standard width to be adopted as respects any road, a highway authority and the Minister shall take into account the requirements of all classes of traffic, including foot passengers and cyclists likely to use the road, and shall consider the provision of margins for the accommodation of ridden horses and driven livestock.*"

Margins for horses or driven livestock can only be needed where rights higher than bridleway exist. Also, the phrase 'all classes of traffic' confirms carriageway status and is consistent with cyclists using the road as, at that time, cyclists were only legally permitted to use routes with public vehicular rights.

5.3.10 Hobhouse Report, 1947, s.60.

In paragraph 4 of its report the Hobhouse Committee states:

> "*Under our terms of reference we are concerned with all public rights of way except those for vehicles, i.e. public roads or carriageways.*"

[6] Now the Open Spaces Society

Clearly the Committee understood 'roads' to be synonymous with carriageways in meaning vehicular highways.

As was noted earlier, the Committee also considered (paragraph 60) that 'roads' or 'occupation ways' as used in s23 of HA 1835 could not be interpreted as including footpaths, bridleways or driftways.

The Hobhouse Committee was particularly concerned with the lack of formal recording of rights of way by County Councils in England and Wales. The report (paragraph 19) records that:

> "*In response to an enquiry made in June, 1946, action taken by County Councils in England and Wales was found to have been as follows:-*
>
> *County Councils claiming to possess an almost complete record* [of rights of way] … 3
> *County Councils with incomplete or partial records* … 8
> *County Councils with no central record* … 50"

This acute non-recording of footpaths and bridleways across the two countries has implications for interpretation of the handover of highway authority following the 1929 Act. It appears that only 11 of 61 County Councils claimed to have significant records of rights of way. This suggests that the handover process of 1929 did not involve the large scale transfer of records of rights of way and it is therefore probable that in most counties there was little or no recording of rights of way under the label of 'county roads'.

5.3.11 National Parks & Access to the Countryside Act 1949

Footpath is defined by both the NPACA 1949 and the Wildlife and Countryside Act 1981 as:

> "*means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road.*"

The only sensible interpretation of this is that a road has higher rights than footpaths, i.e. a road is not a footpath in these Acts. Further comparison of the definition of footpath in the Highways Acts of 1959 and 1980, including the definition of 'footway', provides a strong indication that the public roads referred to are carriageways.

Sub-section 34 (1)(c) of the 1949 Act says:

> "*the reference in subsection (1) of section thirty one of this Act to land on which the map shows a public path, or a road used as a public path, shall be construed as relating only to land on which the path or road was not shown …*"

Sub-section 57 (3) says:

> "*It shall be the duty of a highway authority to enforce the provisions of this section as respects any public path, or road used as a public path, for which they are the highway authority; and no proceedings in respect of an offence under those proceedings shall be brought except by the authority required by this subsection to enforce those provisions as respects the path or road in question.*"

These two sections illustrate that 'road' is the operative word in 'road used as a public path' and that it is different to a public path. The conclusion must be that, for the purposes of the 1949 Act, a road is not a public path and is therefore a carriageway and that a road used as a public path is, *prima facie* but not conclusively a carriageway.

Roads Used as a Public Path

The phrase 'road used as a public path was introduced in the 1949 Act and was defined in the Act as:

> "*means a highway other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.*"

Despite the confusion and controversy which has surrounded roads used as public paths, the meaning of the phrase is quite clear; they are highways which are not public paths (bridleways or footpaths) but which are used mainly as if they were bridleways or footpaths. If they are not bridleways or footpaths they can only be carriageways.

The *presumption of regularity* means that we must assume that instructions were carried out correctly unless we have evidence to the contrary. Paragraph 3(d) of the instructions for recording rights of way ruled out recording private accommodation roads as roads used as public paths . Therefore we can say that roads used as public paths are public carriageways.

Reference back to definitions of 'highway' in the Highways Act of 1835 or the Highways and Bridges Act 1891 may suggest that roads used as public paths can be footpaths or bridleways, however, this is contradicted by the phrase 'other than a public path' which must therefore exclude this possibility. This in turn lends weight to the counter argument against reference back to the 1835 definition of highway for use in interpreting other Acts.

5.3.12 Agriculture (Improvement of Roads) Act, 1955.

This Act was to enable the provision of exchequer grants for the improvement of roads in livestock rearing areas. As no examples have been found of Exchequer grants being used to improve footpaths or bridleways, this provision for grant aid itself suggests that the intention was to provide for improvement of vehicular highways.

This Act does not define road with reference to status (see Definitions above), however, the definition of "improvement" in the Act is illustrative of the context being that roads are vehicular highways:

> s.5 (1) ""improvement", *in relation to a road, includes the widening of the road, the cutting off of corners of the road, and the provision for the road of a cattle-grid and of any works required in connection with a cattle-grid, and "improve" shall be construed accordingly*"

It would be an unlawful obstruction to install a cattle-grid across a footpath or bridleway. The conclusion is that road in this Act refers to a vehicular highway.

5.3.13 Countryside Act 1968 s.30 (6)

> "*It is hereby declared that sections 9,10, 11 and 13 of the said Act of 1960* [Road Traffic Act 1960] *(offences connected with riding of bicycles) apply to bridleways as being highways which are "roads" within the meaning of that Act.*"

This sub-section apparently shows that bridleways can be roads in some Acts. However, the context of this section is that it grants for the first time the right for bicycles to be used on bridleways, albeit still in a subordinate way to horse riders and pedestrians. The purpose of this sub-section is to extend the offences for misuse of bicycles from roads to the new use on bridleways also. It is not saying that bridleways are roads but that they should be treated as such for the purposes of the sections of the Road Traffic Act 1960 listed.

Hard and fast interpretation of the word 'road' as being 'any highway' makes a nonsense of some pieces of legislation. For example, the Countryside Act 1968 includes a definition of 'Crown Road' as:

"*"Crown Road" means a road, other than a highway, to which the public have access by permission granted by the appropriate Crown authority, or otherwise granted by or on behalf of the Crown*".

5.3.14 Road Traffic Regulation Act 1967.

The definition of road in the Act is not helpful (see Table 1 above), however this Act also defines the following:

> "*"street parking place" and "off-street parking place" refer respectively to parking places on land which does, and on land which does not, form part of a road;*"

"Parking" can be presumed to refer to vehicles and, therefore, the inference must be that the word "road" is being used to mean a vehicular highway. We thus have two contradictory interpretations arising from this one Act, illustrating that 'road' needs careful interpretation within the context of each Act and sometimes each section of any particular Act.

5.3.15 Highways Act 1980

The Highways Act 1980 does not offer a definition of "road". This is discussed by the Encyclopedia of Highway Law & Practice in its Introductory Note 1 'The Classification of Highways' (2-014) ,

> "*It will be noticed that the word "road" is not defined at all in the 1980 Act* [Highways Act 1980], *and it has no precise legal meaning. There are particular kinds of roads – "trunk roads" and "special roads," and classified and unclassified roads, but these are all carriageways and the public have similar rights in respect thereof (subject only to the powers to exclude named classes of traffic by an order of the Minister in the case of special roads."*[sic]

Section 36(6) of the Act imposed a duty upon county councils (and London Boroughs and the Common Council) to make and maintain a list of streets which are highways maintainable at the public expense.

Authorities creating a list of streets in 1980 were mostly in the position of already having a definitive map and statement recording public rights of way. It may be speculated, therefore, that there would have been a tendency for authorities to satisfy this new duty by appending a supplementary list of carriageways (roads) rather than creating an entirely new comprehensive list of all highways. This assumption needs to be confirmed by research.

5.3.16 Road Traffic Act 1988

Use of the word 'road' in the Road Traffic Act 1988 is quite varied and generally specific to an individual section of the Act, as can be seen from sections 28, 29, 30, 34, & 182 below. This is a necessary device following on from the all inclusive definition of road given in the Act:

> "*"road", in relation to England and Wales, means any highway and any other road to which the public has access, and includes bridges over which a road passes,*"

This inclusiveness should be read in the context of the provisions for controlling inappropriate behaviour or other offences.

Interpretation of the Local Government Act 1929 in the light of the definition for road in the 1988 Act would lead to the conclusion that all highways could be county roads.

Reckless cycling.

28. A person who rides a cycle on a road recklessly is guilty of an offence. In this section "road" includes a bridleway.

Careless, and inconsiderate, cycling.

29. If a person rides a cycle on a road without due care and attention, or without reasonable consideration for other persons using the road, he is guilty of an offence. In this section "road" includes a bridleway.

Cycling when under influence of drink or drugs.

30. (1) A person who, when riding a cycle on a road or other public place, is unfit to ride through drink or drugs (that is to say, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle) is guilty of an offence.

(2) In Scotland a constable may arrest without warrant a person committing an offence under this section.

(3) In this section "road" includes a bridleway.

Prohibition of driving motor vehicles elsewhere than on roads.

34. (1) Subject to the provisions of this section, if without lawful authority a person drives a motor vehicle—

(a) on to or upon any common land, moorland or land of any other description, not being land forming part of a road, or

(b) on any road being a footpath or bridleway,

he is guilty of an offence.

Special provisions as to accident inquiries in Greater London.

182. (1) Where, owing to the presence of a vehicle on a road, an accident occurs within Greater London and it appears to the Secretary of State that the sole or a contributory cause of the accident was—

(a) the nature or character of the road or of the road surface, or

(b) a defect in the design or construction of the vehicle or in the materials used in the construction of the road or vehicle,

he may, if he thinks fit, cause an inquiry to be held into the cause of the accident.

(2) In this section "road" includes a highway and a bridge carrying a highway and any lane, mews, footway, square, court, alley or passage whether a thoroughfare or not.

5.4 Summary and Conclusions

Glen's construction of what was meant by a county road was flawed and failed to take into account the context of the Local Government Act of 1929 and the explicit allowance for this in the Act. His logic is flawed in saying that a road is a highway and all classes of way are also highways therefore all ways are roads. This line of argument would hold equally true to 'prove' that all roads are footpaths (all footpaths are highways, roads are highways therefore roads are footpaths). Or, to use a more rigorously defined type of way, this argument would also 'prove' that bridleways are footpaths and carriageways as well. Indeed this line of argument leads inevitably to the conclusion that there can only be one type of highway, which is patently nonsense.

All highways in rural districts were transferred to county councils by the '29 Act (s30), but not all highways became county roads. However, the confusion caused by lack of clarity in the legal definitions may have resulted in some bridleways and footpaths being incorrectly recorded as UCR. Furthermore, records of the transfer from Rural District to County Councils ('handover records'), where made, should have included all highways, thus these handover records, where they exist, need to be treated cautiously to see what they contain if they are to provide evidence of the status of routes recorded as UCRs in any particular area. Against this, Hobhouse noted that very few county councils had records of rights of way in 1946, so the number of occurrences of mis-recording as UCR may be correspondingly low. Only county by county analysis can quantify this.

The overwhelming evidence from Ministerial papers is that the term county roads was used to mean public vehicular highways. Unclassified or classified made no difference to vehicular status and there was no reason legally why an unclassified road could not become classified, or vice versa. The conclusion must be that Parliament intended the term county roads, including unclassified county roads, to refer to public vehicular highways.

Other legislation predominantly supports the interpretation of 'road' as meaning a vehicular highway. However, this is not absolute. What it also illustrates is that each Act's use of the word needs to be considered in its own context. 'Road' can be and is sometimes used as a catch-all near synonym for 'highway'. But this does not undermine the weight of evidence supporting UCRs as being *prima facie* vehicular highways. The main question-mark must lie over how each authority interpreted its responsibilities under the 1929 Act; did it listen to Glen or did it follow common convention, as intended, in the use of the word road?

6. BOARDS, MINISTRIES AND GRANTS

6.1 The Road Board & Ministry of Transport

6.1.1 Road Board

The Road Board was established under the terms of Section 7 of the Development and Road Improvement Act, 1909, with powers to make "advances" to Highway Authorities for the improvement of roads and to itself construct and maintain new roads. The advances could take the form either of loans or of grants.

A policy memo of 4th January 1911 indicates that the main aim was to improve surfaces of existing roads so as to provide "*… smooth, dustless and mudless surfaces for traffic*".

Later in the memo it is made clear that "traffic" is specifically intended to refer to modern motorised use and that the Road Board was mindful of the challenges faced by Highway Authorities over and above their traditional duty to maintain:

> "*… it is by no means clear that the burden of extra cost due to the advent of motor traffic, coming upon roads which were not suitable for it and were never designed or intended for it can be fairly thrown upon the ratepayers whose duty it was to maintain the roads for the use of ordinary traffic*"

Level of use by motor vehicles was an important criterion for establishing eligibility for support, especially for rural roads:

> "*In considering road problems it is necessary to treat separately (1) streets in populous urban areas; (2) roads forming the immediate approaches to populous urban areas; (3) rural roads, and these latter must also be classified according to the amount and kind of traffic using them*"

The Development and Road Improvement Fund managed by the Board drew its funding, in part at least, from direct taxation of motoring through fuel duty and vehicle licensing. It was intended that this link with motoring should also be maintained in the allocation of funds and the Chancellor of the Exchequer announced in Parliament that:

> "*… the money will be spent on improving the roads for motor purposes*" [Debate on second reading of Development and Road Improvements Fund Bill, 6th September 1909, quoted in Road Board memo 10/11/1911].

The Board opened for business in 1910 and its powers are summed up in paragraph 9 of a memorandum of the Chairman dated 10/11/1911 which looks back over the first year of operation , :

> "*The powers of the Road Board to make advances for the improvement of roads embrace all roads, whether trunk or arterial, main or district, urban or rural; questions therefore naturally arise as to what class of road and to what kinds of improvement should first consideration be given.*"

The fund was targeted at needs arising from modern motorised traffic:

> "*There can be no doubt that it is motor traffic that must be principally kept in view in determining questions of distribution. It was the requirements of motor traffic and the damage done to roads by motor traffic which led to the creation of the fund …*"

The memo goes on to indicate that in practice grants had been confined to main roads passing through rural areas.

The classification of roads in use at that time is explained to some degree in paragraph 3 of the November 1911 memorandum as being led by the authority liable to maintain a particular route under the provisions of the Local Government Act 1888: "main roads", were paid for by County Councils and "district roads", (i.e. everything except main roads), paid for by District Councils.

The targeting of grants was adjusted to meet the needs of the current time; for example, the scope for the Road and Bridge Programme for 1919/1920 specifically mentioned main, or district roads, which carried considerable traffic and which suffered deterioration during the War.

District roads were within the scope of the grants where there was a wish to upgrade them to main roads but the District Councils did not have the funds to bring them up to standard. Applications for district roads were channelled through the County Councils (to place them in strategic context), although their highway authorities could also apply directly to the Board. As part of the procedure of applying for grants, the Development and Road Improvement Act required that a statement of particulars be supplied which was to include the:

> "*mileage of the roads within the applicant's jurisdiction, distinguishing between main roads and district and other roads*".

Examples found in the National Archives include forms to report to the Road Board on statistics of traffic and lengths/expenditure on different types of highway (see "Form 42"). The grant procedure was therefore intended to collect data of strategic use to the Road Board, going beyond the actual practical needs of supporting the grant application itself.

In summary, therefore, it appears that the Road Board's interests were intended to coincide with those of the motorist and its activities were restricted in practice to the increasingly well-used vehicular routes.

6.1.2 Ministry of Transport

The Road Board was superseded by the Ministry of Transport in 1919. The Ministry of Transport (MoT) had direct involvement in the provision of grant for roads, allied to powers of classifying roads. The draft MoT handbook of 1955 states:

> "*The power to classify roads was given to the Minister by the Ministry of Transport Act 1919 for the purpose of making grants for their maintenance, improvement and construction*".

This system of classification was based upon the location and use of the road, rather than (as with the old Main/District split) upon who maintained it. There were originally two levels of classification, Class I and Class II:

> "*The more important roads connecting large centres of population, and other roads of major importance by reason of the through traffic using them, were classified as Class I roads; many of these later became Trunk Roads. Other roads forming important links between Class I roads and the smaller centres of population were called Class II roads*"

This was extended in 1946 to include a new Class III for minor roads which:

> "*have more than local traffic*" [Circular No. 595 dated 9/04/1946].

The classes were used to identify the proportion of grant that the MoT would make; this had been set in 1946 as Class I: 75%, Class II: 60% and Class III: 50%. The Handbook states:

> "*roads which are of only local traffic importance are unclassified although they may be important streets*".

Unclassified roads were not eligible for grant from the MoT [confirmed in draft Handbook and circulars 697 & 696].

The classification was reviewed depending on traffic flows:

> "*There are changes year by year in the classification of sections of road as their through traffic importance grows or diminishes*"

The MoT administered the Road Fund until the Fund was abolished under S4 of the Miscellaneous Financial Provision Act 1955, which took effect on 1/04/1956. This change did not itself affect grant practice; references to "road fund" were substituted with "Roads etc., England and Wales Vote". There were two types of grant under the Road Fund:

- *For Major Improvements etc and*
- *For Maintenance and Minor Improvements of Classified Roads and Bridges* ("Classification grants").

The detailed criteria for the grants were set out in a series of memos and circulars (see below), but the two types of grant appear to have been intended to be mutually exclusive (i.e. if a road was eligible for one, it was not eligible for the other). From circulars 696 & 697 (1954)it appears that unclassified roads were not eligible for either type of grant. New roads were eligible for Major Improvement Grant, but only if they were intended to become classified roads.

Circulars 696 and 697 appear to deal exclusively with the needs of motorised vehicular traffic. The only reference to footpaths appears in the Schedules of the circulars which indicate that repairs and resurfacing of 'footpaths' and 'cycle-tracks' are eligible for the Maintenance and Minor Improvement Grant and that the repair and provision of footpaths and cycle tracks are not eligible for the Major Improvement Grant; in both cases, although not actually stated, it is clear that these refer to footpaths (footways) and cycle-tracks within the boundaries of a carriageway.

In summary, the role of the MoT as a grant giving body was concerned with the interests of motorised users on significant vehicular routes. Nowhere in the documents seen, which relate to the principles and aims of the two bodies, have we come across any consideration of the public rights which might have existed over classified, or indeed unclassified, routes. The consistent but un-stated assumption is that all roads, classified or unclassified, main or district, carry public vehicular rights.

However, the Ministry had another role in collecting information about the mileage of highways maintained by Councils. The forms used for collecting this data from County Councils (Form No. 197) and their covering letters refer, in some later versions, to public rights of way, and in doing so perhaps shed some light on the thinking, at that time, about rights which were assumed to exist over Unclassified Roads (see below).

6.2 Instructions for claiming grants & making mileage returns

No reference has been found to grants which could be claimed for unclassified roads. However, we would need to check all the circulars between the start of classification and circulars 696/697 to be absolutely certain they had not been drawn into the grant-giving arena at some stage (most likely just before the introduction of Class III). Inspection of circular No. 595 (5th April 1946), when found, might help clarify this point as this marks the introduction of Class III, but it is doubtful that it would add anything to the question of whether anyone ever considered the rights existing over individual routes. The annual mileage returns do, however, provide some clues.

Prior to 1924 information on the lengths of highways maintained by Councils had been provided annually to the Ministry of Health as part of the Local Taxation Returns. In 1924 the arrangement was changed [Circular No 202 (Roads) dated 29/03/1924] and forms were in future to be returned directly to the Minister of Transport for use by both the Ministry of Transport and the Ministry of Health. The forms to be used were identified as being:

Counties	– form 197 (roads)
County Boroughs and Metropolitan Boroughs	– form 198 (roads)
Boroughs and Urban Districts	– form 199 (roads)
Rural Districts	– form 200 (roads)

Form 197 has had a long life and undergone many changes and revisions, but has been consistent in founding the data sought on the liability of the council to maintain various types of route. The terms "roads" and "maintainable highways" appear to be used interchangeably in early versions of the form and covering letter.The 1928 version of form 197 sought mileages for "main" (ie County) roads, split down by the authority that actually carried out the maintenance (eg. claimed by or contracted out to Urban Districts, or maintained by agreement by Rural Districts). By 1929 the form had been amended and as well as the maintaining authority split described above, a new table had been introduced to break the "Main Roads" down into Classified roads (Classes I and II) and Unclassified (Scheduled and unscheduled). The information in this table was "desired for the purposes of verification only".

Following the changes of the Local Government Act, 1929, Form 197 refers to "County Roads" and is primarily subdivided according to the Ministry of Transport Classification system (Class I & II and unclassified). The form also contains a box for the "*mileage of unclassified Urban District Roads maintained by the County Council by agreement under section 34 of the Local Government Act, 1929*".

At some stage between 1931 and 1950, probably due to the War, there was a break in the continuity of the returns. Circular 565 (15/09/1950) refers to the resumption of the need for Councils to make returns.

By the early 1960s it had become clear to the Ministry that not all councils were calculating the mileage of their Unclassified Roads in the same way. This prompted the Ministry of Transport, on 14/06/1963, to write to all councils explaining the need for accurate data and attempting to clarify the situation. The letter includes:

> "*As you know, among other uses, these mileage returns form the basis of the estimated road mileage which the Minister sends to the Minister of Housing and Local Government for the purpose of calculating the low density grant in General Grant and the scarcity factor in Rate-deficiency Grant* [later versions of the letter say simply "calculating Exchequer Grants"], *and error or discrepancy in the compilation of the returns*

could lead in injustices in the distribution of the grants. There is evidence that at the time that the formulae were drawn up, Local Authorities did not include "green lanes" under unclassified roads. In the past two years however many County Councils have included "green lanes", (and those maintainable by each County should be included) and even footpaths, in their return of unclassified roads. In order to ensure that all returns are compiled on the same basis you are now asked not to include bridleways and footpaths, as defined in Section 295(1) of the Highways Act, 1959, as unclassified roads, but to show them separately where indicated on the form. In addition it is desired to know the mileage of "green lanes" which has been included in the total mileage of unclassified roads shown on your Council's return and a supplementary proforma on which this information can be given, has been prepared. At the same time it should be remembered that all roads maintainable by the Council should be included, whether or not the Council carries out any surfacing work on them."

The pro-formasubdivides unclassified roads into: other unclassified roads and "un-surfaced "green lanes" with right of passage for vehicles". It seems therefore, according to the Ministry of Transport, that for a "green lane" to be included as an unclassified road it was necessary for it to be maintainable at the public expense (but it was acceptable if it was un-surfaced) and to have a right of passage for vehicles [presumably a public one, but this point is covered in a later MoT letter]. This appears to spell out the Ministry of Transport's assumption that all unclassified roads must carry public vehicular rights. Incidentally, based on this letter, Wiltshire County Council officers agreed that all their CRB[7]s should be included in the return as Unclassified Roads.

This letter (14th June 1963) appears to have failed to solve the problem and various changes followed over the ensuing years:

1. Letter from MoT dated 13/05/1964:
    a. Bridleways and footpaths were not to be included as unclassified roads, but recorded as a separate figure elsewhere on the form
    b. A separate figure was identified for "*unsurfaced roads (including green lanes) included in the Council's unclassified road mileage total*". For this purpose "*a green lane may be defined as any unmetalled unclassified road which is maintainable by the Council*":

    This letter does not include a reference to the rights of passage which might exist over a green lane. The version of Form 197 which should have accompanied this letter was not available for study, but from the example for the previous year (see above) it is clear that any instructions regarding the existence of rights of passage would have been included in the Form itself or in the additional pro-forma which came with it. It may therefore be worthwhile trying to find a surviving example of Form 197 for 1964 to shed further light on this point.
2. Letter from MoT dated 16/05/1966:
    a. Bridleways and footpaths were not to be included as unclassified roads, but recorded as a separate figure elsewhere on the form
    b. Councils had "*to show a separate figure on the return, in the appropriate space, for unsurfaced roads included in the Council's unclassified road mileage total*". For this purpose "*unsurfaced, unclassified roads which are maintainable by the Council for the use of vehicular traffic, should be taken to include green lanes. A private carriage or cart road (whether surfaced or not) which has a public right of way over it as either a footpath or a bridleway should not be included in the unclassified road mileage but should be included in the separate total of 'bridleways and footpaths'.*"

[7] CRB – Carriage Road used mainly as a Bridleway (See chapter 8 below)

The 1966 letter appears to state that un-surfaced routes should only be considered to be unclassified roads if they are maintainable for vehicular traffic and carry higher public rights than those of a footpath or bridleway.

In 1967 and 1968 full returns were not sought from Councils, but they were required to inform the Ministry of any changes in lengths. The issue of un-surfaced routes was side-stepped by the introduction of a new system. The Ministry's letter of 24/07/1967 reads:

> "*In calculating this figure only those roads which are covered by the revised definition contained in paragraph 3(2) of the Rate Support Grant Regulations 1967 (SI 1967 No. 363) should be included*"

A note on Wiltshire County Council's copy of this letter says:

> "*3(2) The roads to be taken into account for the purposes of calculating road mileages are any highway maintainable at the public expense comprising a made-up carriageway as defined in the Highways Act 1959*".

This definition is repeated in the 1968 request for data.

A full return was sought once again in 1969. The criteria were spelled out (with a trace of desperation, perhaps) in the Ministry's letter of 19/05/1969as:

> "*a) in calculating the mileage figures only those NON-TRUNK roads which are covered by the revised definition contained in paragraph 3(2) of the Rate Support Grant Regulations 1967 (SI 1967 No. 363) should be included …*
>
> *d) Unclassified Roads – should NOT include mileages of unsurfaced roads (including green lanes) or bridleways and footpaths, details of which should be entered separately in the spaces provided on the mileage return form*".

This approach was also taken for the 1970 return – this is the last year for which we have copies of documents.

In summary the mileage return forms show development designed to keep pace with the changes in Highway Authority arrangements while at the same time providing a largely continuous record of the lengths of maintainable highways – including, from the introduction of the classification system, Unclassified Roads themselves.

The question of public rights over unclassified roads appears to have been grappled with by the Ministry of Transport in the early 1960s in respect of defining how unsurfaced routes should be treated in Form 197. Although unsurfaced routes were later excluded from the returns of unclassified roads, it appears that it was considered necessary for all routes included in the category of unclassified road to be publicly maintainable for vehicular traffic and to carry public rights of higher than bridleway status. It is perhaps worth noting that this debate was in the context of a form upon which two Government Departments relied for the setting of grant aid to councils and where, in the Ministry of Transports own words, any "*error or discrepancy in the compilation of the returns could lead in injustices in the distribution of the grants*".

6.3 Consistencies / inconsistencies

As indicated above, it appears that the grants of the Road Board, in theory at least, might have been applied to any status of vehicular road to improve it for motorised traffic – including the lower classification (at that time) of District Road. The Minister of Transport was similarly empowered, but the introduction of the classification system in 1919 and the link to the grant-giving activities of the MoT's Road Fund effectively removed a whole class of minor general

purpose highway (the new "unclassified road") from the list of eligible roads, although the classification was later widened in 1946 to re-encompass many of these as Class III routes.

It can be speculated that there must have been little incentive for County Councils, at the time they took over Highway Authority responsibilities from the Rural District Councils, to record without question all the very minor unclassified routes as they would have merely been accepting the liability to maintain, without any possibility of getting grant-aid to assist them in the task.

It appears that as long as unclassified roads have been identified as such, they have been ineligible for grant-aid from the MoT Road Fund (although in theory still within the overall grant-giving powers of the MoT as defined in the Ministry of Transport Act, 1919). The length of unclassified road has however been used consistently as part of the formula to calculate the general grant which authorities receive.

6.4 Status & classification

We have found no indication among circulars etc. that the issue of public rights over routes was ever considered as part of the classification process and nothing has suggested that the Class I – III / Unclassified road split was ever anything more than a mechanism for targeting grant from central government. Roads were regularly moved between classifications, as for example is recorded in the early days of the MOT classification system in the Report of the County Surveyor to Kesteven County Council Highways Committee on 22/10/1924:

> "*Classification of roads. I beg to report that on behalf of Kesteven County I applied for the following roads to be raised from Class II to Class I roads, viz: …… and that the following roads be classified as Class II, viz: …. The Ministry of Transport reply that, after careful consideration, they have decided that it is not possible to accede to these applications. I beg to suggest that a census of traffic be taken for a week on these roads, in order to help any application, if made, for next year. The Ministry inform me that they have decided to classify the two following District Roads in Class II, viz: …. It has been your custom in the past to main*[8] *newly-classified roads when they are brought up to the condition of main roads.*" [Lincolnshire Archives Office: KCC Highways Committee Minutes].

The following year Kesteven County Council again considered the issue of moving certain unclassified roads to be within the classification scheme:

> "*Unclassified roads in rural areas. A report from a conference held on the 5th October 1925 between representatives of Kesteven County Council and several Rural District Councils in Kesteven for the purpose of a) considering a schedule of roads to be prepared by the several District Councils, which in their opinion should be classified; and*
> *b) preparing a combined scheme for submission to the Ministry of Transport with reference to unclassified District Roads which each Council, for exceptional reasons, considers should receive a grant*
> *was received and read, from which it appeared that a Schedule of applications had been prepared for submission to the Ministry of Transport, together with the proposals of the various representatives present at the Conference.*" [Lincolnshire Archives Office: KCC Highways Committee Minutes].

The grant-giving powers of both the MoT (in relation to "*the construction, improvement or maintenance of roads, bridges or ferries*" MoT Act, 1919 s. 17) and of the Road Board refer to all roads; the exclusion of "unclassified roads" is based on tests of location and level of use, rather than of status.

[8] 'Maining' and 'dismaining' were the older equivalents of 'trunking' or 'de-trunking' roads.

6.5 Conclusions

The vehicular rights which were assumed to exist over both classified and unclassified roads have never been questioned. The Ministry of Transport and the Road Board before it have based their grant schemes on the assumption of public vehicular rights existing on all classes of road, regardless of the level of use or degree of construction and maintenance.

There has never been any legal impediment to an un-surfaced, unclassified road becoming made up to classified standard, or even being made into a trunk road. No change in legal status has ever been necessary for such changes in classification. Similarly, there is no legal impediment to trunk, main or classified roads being de-classified. This process of roads moving up or down the continuum of classes has always been commonplace and continues today as transport needs evolve.

We can only conclude that routes recorded as unclassified roads, including 'green lanes', unclassified county roads, and roads used mainly as public paths all, *prima facie* carry public vehicular rights.

7. RELATIONSHIP OF UCRS TO THE DEFINITIVE MAP & STATEMENT

7.1 Definitive map legislation, practice in preparation, guidance and circulars.

7.1.1 Hobhouse Report and NPACA 1949

The report of the Special Committee concerning Footpaths and Access to the Countryside[9] (the 'Hobhouse' Committee) clearly set out that its remit was the consideration of three kinds of public rights of way, not including vehicular highways.

> *"4. Under our terms of reference we are concerned with all public rights of way except those for vehicles, i.e. public roads or carriageways."*

Although it was without legal weight, the Committee clearly considered that 'public roads' and 'carriageways' were synonyms for vehicular rights of way. It is reasonable to assume that the Committee was using the term in the commonly accepted way for its time.

The Committee defined the rights of way it was concerned with as:

> *"Footpaths, which afford a right of way for pedestrians only. Footpaths running alongside public roads form part of such roads, and are not dealt with in this report. Nor are we concerned with any alternative to these 'road footpaths', such as footpaths on the field side of the road boundary, or any other deviation of such footpaths from the road, which highway authorities or the Ministry of Transport may contemplate. It should, however, be noted that a right of way for pedestrians may lie along the line of a private road; with such we are concerned."*

> *"Bridleways, which afford a right of passage for riding animals, as well as for pedestrians. Bridleways, although no longer used for their original purpose of serving pack transport or travellers on horseback, have recently become more important through the greater popularity of riding for recreation."*

> *"Driftways, which afford a right of passage for cattle as well as for riding animals and pedestrians. Cattle includes all animals capable of being driven. Driftways are now of less importance for their original purpose than formerly, although for walkers and riders they may be of considerable value, being usually un-metalled and not legally open to motor cars."*

The Committee did not consider that its remit included any highways used by the public with vehicles, however the resulting legislation (the National Parks and Access to the Countryside Act 1949) encompassed three different kinds of highways; footpaths, bridleways and roads used as a public path (RUPP). The Act set out statutory definitions for all three kinds of way (see chapter 5.1 above), though in the case of RUPPs the definition has proven to be far from robust:

> *"means a highway other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used."*

[9] Footpaths and Access to the Countryside. Report of the Special Committee (England and Wales) Presented by the Minister of Town and Country Planning to Parliament by Command of His Majesty September 1947

The purpose of part IV of the NPACA 49 was to draw up definitive maps and statements recording all public routes used by non-vehicular traffic. This included footpaths, bridleways and those roads which were used mainly as public paths.

Given the Act's definition of 'roads used as public paths', the clear inference is that roads that were used by the public mainly in vehicles were not to be shown on the definitive map and statement.

7.1.2 Instructions for drawing up maps

In January 1950 the Commons, Open Spaces and Footpaths Preservation Society, in collaboration with the Ramblers' Association, published a "memorandum"[10] recommended by the County Councils' Association and approved by the Minister of Town and Country Planning[11] which sought to give guidance to those involved in the procedure of drawing up the initial survey information upon which the draft maps were to be based. This document contained detailed guidance as to how to research certain types of historical information and how to go about compiling a survey of paths. Unfortunately it used two terms, not contained in NPACA 49 – 'Public Carriage Road or Cart Road or Green (un-metalled) Lane mainly used as Footpath' (abbreviated to CRF) and 'Public Carriage Road or Cart Road or Green (un-metalled) Lane mainly used as Bridleway' (abbreviated to CRB). Although new to the use of surveying authorities, these terms are believed to have been in use by the Society for recording footpaths and bridleways for some time beforehand.
The advice about the use of such terms was as follows:

> "*highways which the public are entitled to use with vehicles, but which in practice are mainly used by them as footpaths or bridleways, should be marked on the map "C.R.F." or "C.R.B."*

And a note was to be added to the schedule also "*that their main use is as a footpath or a bridleway as the case may be*".[12]

Effectively, the terms CRB and CRF were being presented, with the Minister's backing, as sub-divisions of the more general term used in the Act of roads used as public paths. The terms were introduced in a re-draft of the original memorandum sent to the Minister on 22nd November 1949. A covering letter from the Commons, Open Spaces and Footpaths Preservation Society sent with the draft says:

> *"We have invented two new symbols to distinguish highways which can be used by the public with vehicles but which are mostly used as Footpaths or Bridleways (C.R.F. and C.R.B.). When the county council come to show these on their 2 ½ inch "draft" etc. maps, paths marked C.R.F. would be coloured purple and those marked C.R.B. green,* [i.e. in the same colours as footpaths and bridleways respectively] *but we would like to suggest that in order not to lose sight of the fact that the public still have a right to use these highways with vehicles they should be shown with a double line on the 2 ½ inch maps."*

No record has been found of any Ministerial response to this letter and it appears that the introduction of CRB and CRF was accepted without comment, although the system for double lines was not taken up.

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[10] "Surveys and Maps of Public Rights of Way" Commons, Open Spaces and Footpaths Preservation Society, London 1950

[11] Circular 81 (17th February 1950) para 3 details the arrangements for the supply of copies of the pamphlet to County, Borough, District and Parish Councils and Parish Meetings.

[12] Note (m) page 9 Ibid.

Correspondence and notes of meetings held on file in the National Archives (MT 120 series) illustrate just how closely involved the Commons, Open Spaces and Footpaths Preservation Society were in the development of instructions for the mapping of rights of way. The Society first approached the Minister (E.H. Wiltshire, Minister for Town and Country Planning) in July 1949 pointing out that they had already published instructions for parishes to map rights of way following the Rights of Way Act, 1932, and that these could form the basis of the '49 Act instructions. The Minister met with the Society on 21/7/1949 and members of his staff subsequently met the Society on 30/8/1949. Agreement was quickly reached that the Commons, Open Spaces and Footpaths Preservation Society draft, with modification, should be the basis of the Ministry's advice to parishes. The County Councils' Association also approved the Society's draft, but wanted distribution to be through their members. The Treasury was a little concerned about the Ministry supporting a private publication, however, the reasons behind this were fully explained in a letter to them of 22/12/1949. Essentially the argument was that the Ministry would have had to bring in experts to write the mapping instructions, those could only have come from the Commons, Open Spaces and Footpaths Preservation Society itself, it made more sense and was financially expedient to use the Society's pamphlet with an accompanying letter.

It is clear from the documents found that there was to be no other set of instructions for the rights of way survey; the Commons, Open Spaces and Footpaths Preservation Society's pamphlet, approved by the Minister and the County Councils' Association, was the sum total of the instructions produced and was the official version.

The same people that developed the Society's pamphlet noted that:

> *"in order not to lose sight of the fact that the public still have a right to use these highways with vehicles they should be shown with a double line on the 2 ½ inch maps."* (see letter of 22/11/1949 above)

It seems clear that in their minds the roads used mainly as public paths which were to be recorded on the maps carried public vehicular rights.

The instructions included a requirement to show public paths running over private occupation roads as footpaths or bridleways, as appropriate (Para. 3(d)). Thus only roads believed to have public vehicular rights, but mainly used as a public path, were to be recorded as RUPPs.

7.1.3 Parliamentary and Ministry records

From an early stage concern was raised that including roads on the definitive map and statement for public paths may result in the loss of their vehicular status.

The National Parks and Access to the Countryside Bill was considered by Standing Committee A. Its records for the session 48/49, Volume II, columns 767-768, include:

> "MR. SUTCLIFFE **:** *I presume that it is quite clear that this survey will be definitely limited to footpaths and bridleways, and that no other ways will be included, such as small narrow country roads on which a vehicle can proceed, and for which the owners of vehicles could claim a right of way for those vehicles? It may be said that such ways are mainly used as footpaths or bridlepaths, but I think it would be quite wrong to include them. I should like a definite assurance that there will be no loss of highway rights for such vehicles."*
>
> "MR. KING **:** *[for the Minister] In answer to the question of the hon. Member for Royton (Mr. Sutcliffe), if he looks at the Clause* [27] *he will see that the obligation is to*
>
> > *"carry out a survey of all lands in their area over which a right of way … is alleged to subsist …"*

> *The term "right of way" is defined in subsection (6), which I think answers his question."*
> [Subsection (6) said: " *'Right of way to which this Part of this Act applies' means a right of way such that the land over which the right subsists is a public path:"* ie. 'right of way' means footpath or bridleway.]

Mr. King's somewhat terse and inadequate response boils down to, 'there is only a requirement to survey footpaths and bridleways'. It failed to address the issue of recording roads used as a public paths.

The definition of 'road used as a public path' was discussed in the House of Lords on 10th November 1949 and recorded in Hansard columns 526-529. Concern focussed on the lack of a right for 'transport users' to claim that a way described as a road used as a public path was a road which they were accustomed to using. This was not resolved, but Lord Hawke also made a telling appeal:

> *"LORD HAWKE : Would the noble Lord consider at the same time altering the definition of "road used as a public path" in such a way as to be comprehensible to stupid people?"*
> *"LORD MACDONALD OF GWAENYSGOR : I will consider it."*

No amendments to the definition were put forward.

In the introduction to the Commons, Open Spaces and Footpaths Preservation Society's memorandum, the proper legal definition of RUPP is given, repeated exactly as it is in NPACA 49. It is clear that CRF or CRB was to be a notation for roads used as public paths, but whereas the notation for footpath was the familiar FP and that for bridleway the equally familiar BR, these legally undefined and generally unfamiliar terms were introduced instead of the statutorily defined term 'road used as a public path'. It is not clear why it was felt necessary to distinguish between those roads mainly used as footpaths, and those mainly used as bridleways in this way, but, this advice as to notation has led to considerable difficulties for some surveying authorities.

For many authorities the initial survey information was not used just to inform the drafting of the draft map, but became, almost line for line and word for word the draft map and draft statement. Thus the terms CRB and CRF became definitive map and statement terms – despite the fact that they had no legal definition whatsoever.

Despite this complication, it is perfectly clear from the instructions that the intention was to record all those vehicular highways that the public used mainly as footpaths or bridleways. In Section 3 of the OSS instruction, "Marking the Maps", readers are told to mark on the survey maps:

> "(c) *All highways which the public have a right to use with vehicles, e.g., public cart-roads and lanes, including green (i.e., unmetalled) lanes, but which are mainly used as footpaths or bridleways."*

In Circular No 91 (30th June 1950)[13] the Minister[14] gave the following advice at paragraph 6:

> "*The phrase 'Road used as a Public Path' which is defined in section 27 is intended to describe highways such as the Berkshire Ridgeway, and other 'green ways' which are now mainly used as footpaths and bridleways, although greater public rights of passage over them exist or are alleged to exist."*

[13] National Parks and Access to the Countryside Act 1949 – Public Rights of Way

[14] Minister of Town and Country Planning

In Circular 58/53 (14th October 1953)[15] the Minister[16] advised as follows:

> *"Representations or objections to the effect that a way shown on a Draft Map as a 'bridleway' is in fact a 'road used as a public path', or vice versa, have sometimes been made, presumably with a view to establishing the existence or absence of public rights other than on foot or on horseback; and on occasions the view has been expressed that the provisions of Section 27(6) and Section 32(4) are conflicting. The Minister thinks that the following comments might be helpful; it will be understood that any question on the interpretation of the Act is a matter for the Courts.*
>
> *The survey provisions of the Act are only directed to establishing the existence of such rights as are proper to footpaths and bridleways, and are not intended to settle the question whether the public have any other rights over such ways (e.g. a right of way for wheeled traffic). The surveying authorities are also required to show any way which in their opinion was 'a road used as a public path', that is to say a highway which is used mainly but not entirely for walking or riding (e.g. a Green Way such as the Berkshire Ridgeway). Section 27(6) gives a legal definition of both a 'bridleway' and a 'road used as a public path' but whether a way is shown as a 'bridleway' or as 'a road used as a public path' will only determine (in the words of Section 32(4)) ' that the public had thereover a right of way on foot and a right of way on horseback or leading a horse'. It has been suggested in some quarters that a Definitive Map showing a way as a 'road used as a public path' would provide prima facie evidence on the question of rights other than on foot or on horseback, but it is difficult to see that a Court would accept such evidence in the face of the specific provision of Section 32 (4) that ' this paragraph shall be without prejudice to any question whether the public had any right of way other than the rights aforesaid.'"*

The clear inference that can be drawn from the 1949 Act, the endorsed pamphlet produced by the Commons, Open Spaces and Footpaths Preservation Society and the advice given in Circulars is that it was not the intention that the definitive map process would record vehicular highways mainly used by the public with vehicles, neither would the process be determinative of public vehicular rights on other highways. Roads used as such were not to be entered in the definitive map and statement, roads used mainly as public paths were to be but without prejudice to any rights they carried.

7.1.4 Vehicular rights on roads used as public paths

At the time of the National Parks and Access to the Countryside Bill concern was expressed by the Commons, Open Spaces and Footpaths Preservation Society and in the Lords that vehicular rights should not be lost sight of in the recording of routes as roads used as public paths (see 7.1.3 above). This concern was shared by the motorists' organisations. In June 1953 the Automobile Association (AA) wrote to the Ministry of Transport about the recording of roads used as public paths:

> *"In view of the information in regard to the [draft] maps which has been obtained from the various sources it has been difficult to decide the extent to which the use of roads and tracks throughout the Country by motor vehicles might be affected by their inclusion in the Survey of Rights of Way Maps. The Automobile Association is, however, of the opinion that the purpose of the National Parks Act is to ensure the preservation of public rights of way, and that accordingly the Authorities should not use as evidence the classification of roads shown in the Survey of Rights of Way Map in the event of any proposal, at some later date, to close particular roads or tracks to motor traffic. I should, however, appreciate your confirmation that the Ministry of transport shares this view and your assurance that in the event of any Authority wishing to close by Order*

[15] National Parks and Access to the Countryside Act 1949

[16] Ministry of Housing and Local Government

any particular road or track to motor traffic, the rights of the users of motor vehicles will in no way be prejudiced by reference to the Survey of Rights of Way Map."

The Ministry of Transport conferred with the Ministry of Housing and Local Government (which had taken over from the Ministry of Town and Country Planning), before issuing on 8th August 1953 the reply that:

"We are advised that the survey provisions of the 1949 Act are only directed to establishing the existence of footways [sic] *and bridleways and do not touch the question whether there are or are not other rights enjoyed by the public (e.g. a right of way for wheeled traffic)."*

The Ministry of Transport is clearly reiterating the consistent message that the intention of the 1949 Act was only to record footpath and bridleway rights and that this exercise was without prejudice to other rights which may or may not exist.

7.2 The Gosling Report & the Countryside Act 1968

In 1968, the Report of the Footpaths Committee (the Gosling Report)[17] considered the situation with regard to RUPPs.
They said:

"68. *As far as we can discover this kind of "way" was not formerly defined until the passing of the National Parks and Access to the Countryside Act 1949. We have heard from many quarters that the definition has led to a great deal of confusion and it does seem confusing to us. At a much earlier time many of these paths, or ways, were used as drove roads or pack-horse ways or by farm carts and they might have been described as carriageways. They fell into disuse in the nineteenth century and did not become motor roads in the twentieth century. Many are still used to a considerable extent for agricultural purposes and it has been foremost in our minds in considering the future of these roads that their continued use by farmers for their vehicles and livestock should not be questioned whether or not their land is adjacent to the path. We have received representations that most of these roads are not suitable for any form of motor traffic."*

"69. *We recommend that the definition "roads used as public paths" should be abandoned; not only is it confusing but the majority of them are unsuitable for motor traffic. We also recommend that these roads should be surveyed by the responsible authorities who should decide in each case whether the road should be designated as an unclassified road, a bridleway or a footpath. Once taken the decision will be recorded on the definitive map and should be clearly marked by signposts on the road which becomes a bridleway or footpath."*

Instead of enacting this recommendation the Countryside Act 1968 (CA68) introduced the concept of the special review of roads used as public paths, and in Schedule 3 Part III, para 9 we find the term "byway open to all traffic" (byways). 'Road used as a public path' was no longer to be used on definitive maps and statements and all such ways, and any ways that the surveying authority considered should have been included on the definitive map as a road used as a public path were to be re-classified, as footpaths, bridleways or byways under new criteria set out in the CA68.

Gosling attempted to clarify the situation with respect to roads used as public paths, however, the Committee's report if anything caused further confusion and suggests that the Committee was itself confused. For example, in the introduction the Report states:

[17] Ministry of Housing and Local Government, Welsh Office Report of the Footpaths Committee 1968 (sometimes known as the Gosling committee after its chairman)

> "*Although we are concerned with rights of way in the form of footpaths, bridleways and roads used as public paths, for simplicity in this report we use the single word "footpaths" …, except where we need to differentiate between them.*"

Not only did the generic use of the word 'footpath' psychologically, although not legally, undermine the rights existing on roads used as public paths, the inclusion of these roads as 'rights of way' was a fundamental mistake. A 'right of way' was defined in the NPACA 1949 as:

> "*right of way to which this Part of the Act applies "means a right of way such that the land over which the right subsists is a public path.*"

Roads used as public paths are excluded by their statutory definition from being public paths and, hence, cannot be rights of way. This error indicates the depth of confusion which has arisen around the fundamentally simple concept of a road used mainly by walkers and riders.

7.3 Wildlife and Countryside Act 1981

The instructions in Wildlife and Countryside Act 1981 s.54 say that roads used as public paths will be shown as byways open to all traffic (BOATs) "if a public right of way for vehicular traffic has been shown to exist".

> **"54.-** (3) *A road used as a public path shall be shown in the definitive map and statement as follows-*
> (*a*) *if a public right of way for vehicular traffic has been shown to exist, as a byway open to all traffic;*
> (*b*) *if paragraph (a) does not apply and public bridleway rights have not been shown not to exist, as a bridleway; and*
> (*c*) *if neither paragraph (a) nor paragraph (b) applies, as a footpath.*"

It would seem reasonable to argue that, on the balance of probabilities, the prior recording of a route as a road used as a public path of itself is strong *prima facie* evidence of vehicular rights, or at least that those preparing the definitive map and statement considered this to be the case. Therefore, all RUPPs should become BOATs unless there is evidence of vehicular rights not existing. Any other interpretation would be in contradiction of the provision in section 32(4)(b) of NPACA '49 which states that:

> "… *so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid;*"

Although the use of 'right of way' is ambiguous, it appears that the intent of this provision was to acknowledge that vehicular rights may be presumed to exist on roads used as public paths but would not be recorded by the definitive map process. As we have seen above, at the time of the '49 Act it was unquestionably assumed that vehicular rights did exist on these roads. These rights were the only thing which excluded 'roads used as public paths' from being public paths.

The default situation should therefore be that the *prima facie* evidence of being a RUPP is sufficient evidence on the balance of probability and in the absence of evidence to the contrary to warrant recording of the route as a BOAT. Thus unclassified roads, by reason of having been listed as RUPPs, should not be lost to the vehicular network, as was presciently feared by the Commons, Open Spaces and Footpaths Preservation Society, the AA and at least one Member of Parliament.

7.4 'Dual Status Routes'

Dual status routes are those where, for example, a route is recorded on the highway authority's List of Streets as an unclassified road or unclassified county road, and is also recorded on the definitive map as a footpath, bridleway, RUPP or BOAT ('Restricted Byways' will shortly be added to this list). This might be more properly termed 'dual recording'. Recording as a BOAT may be appropriate if the use of the road is mainly as a footpath or bridleway. Recording as a RUPP may similarly be appropriate, although this will not be the case once Restricted Byways are introduced as they will introduce a further tension between any (motorised) vehicular rights which may exist and the limited rights defined in Restricted Byways by the Countryside and Rights of Way Act 2000. Dual recording as a bridleway and a UCR is inherently contradictory but is facilitated by S32(4)(b) NPACA above. However, dual recording as both a footpath on the definitive map and a road on the List of Streets is contradictory and investigation will be necessary to determine which is correct, possibly followed by a definitive map modification order.

7.5 Recording of roads on the definitive map

It is not possible to draw firm conclusions as to the incidence of recording of unclassified county roads (as other classes of highway) on definitive maps without a highway authority by highway authority evaluation of local practices. Such a study is beyond the scope of the current project. However, such evidence as has come to light during this study suggests that a) highway authorities were mindful that 'roads' were not to be recorded on the definitive map and b) that this restriction was sometimes misunderstood and misinterpreted.

Evidence has been found from West Riding County Council; a minute sheet dated 17th December 1953 records:

> "*1. On the Draft Map a Path No. 10 in the Parish of Pool has been claimed as a public right of way. This path is on the route of a County Road and should not therefore be included in the Survey.*
> *2. Arrangements have been made to omit this path from the Provisional Map.*"

This Minute is clear and concise, however an earlier Minute (19th August 1953) from the same organisation, signed by the same County Engineer and Surveyor, but probably written by a different officer, records:

> "*1. …the path referred to … is not shown for its entire length on the Draft Map … The reason is that [it] … is part of the County highway known as Gildersleets Unclassified County Road and has a paved carriageway. A further length … is part of Runley Bridge Road Unclassified County Road, having a paved carriageway north of the railway bridge and an unpaved carriageway south thereof.*
>
> *2. The above lengths have not been shown on the Draft Map because, under Section 27(b) of the Act, footpaths "at the side of a public road" are specifically excluded.*
>
> *3. The remainder of the path claimed by the Parish Council is shown on the Draft Map as Footpath No. 17 and is defined in the Statement accompanying the draft map as terminating on the west bank of the river at Path No. 16, no reference being made to the ford. Although this length of path is part of the Runley Bridge Road Unclassified County Road, no carriageway exists, hence the path is necessarily shown on the Draft Map*".

In this minute the officer is clearly confused as to the interpretation of Section 27(b) and as to how UCR should be dealt with generally. His criterion seems to be, does a carriageway exist? In this he appears to be making a judgement based on physical attributes, hence his preoccupation

with footpaths at the side of roads, but it is also arguable that he is saying that no carriageway rights exist on this part of the UCR (although there is no indication as to how he might have known this).

Physical attributes were still determining status in 1955 when a further Minute Sheet of 21st February 1955 records:

> "1. *With reference to your minute dated the 12th instant I beg to inform you that Softly Lane … is recorded as an Unclassified County Road .09 miles length.*
> 2. *a site inspection has revealed that it has an average width of 4'6" and has walls about 4'0" high on each side. The footbridge is 3'0" wide with steel rails.*
> 3. *I suggest that this Lane would be correctly designated as a footpath as it is not conceivable that any four wheeled vehicle could use* [it.]"

This Minute drew the response, dated 23rd February 1955:

> "1. *With reference to your minute of the 21st. instant, would you please arrange for your records to be amended so that Softly Lane is deleted from the list of County Roads and added to the list of County Footpaths.*"

No evidence has been found, or yet sought, from other highway authorities' records so it is not possible to say how widespread this confusion might be.

7.6 Conclusions

NPACA49 was drawn up with the intention of providing a definitive record of highways that the public had the right to use either as a footpath or bridleway. Unfortunately, and for unknown reasons, it attempted to also record vehicular highways that the public used mostly as footpaths or bridleways rather than in vehicles. There was no intention to include vehicular highways that were used by the public mainly in vehicles.

Roads used as public paths became known by the shorthand term of 'RUPP'. The general adoption of this new term, aided by the confusion over CRB and CRF, and the inclusion of RUPPs on the definitive map gave rise to the folklore that a new category of right of way had been created by the NPACA 1949. However, the legislation did not change the status of any route and only three types of highway existed as before: footpaths, bridleways (with or without the right to drive animals) and carriageways. RUPPs could not, by definition, be footpaths or bridleways, therefore they are, *prima facie* carriageways. RUPP was not a new type of highway; it was merely a descriptive term for how some carriageways were then used.

It is generally argued that, whereas it was intended that records of footpaths and bridleways would be definitive, such could never be the case with RUPPs as their vehicular rights were not surveyed for or tested and so could not be definitively recorded. However, if instructions for mapping RUPPs were followed diligently, as we must assume, it would have been necessary for the surveyor to (a) consider whether a route was a carriageway and (b) to determine that the vehicular rights that existed were public, involving a degree of investigation commensurate with that for footpaths and bridleways. The results of RUPP surveys were open for public scrutiny in the same way as footpaths and bridleways. It might be counter-argued, therefore, that the recording of RUPPs was equally as robust in practice as the recording of footpaths and bridleways.

The recording of RUPPs on the definitive map straddled an otherwise clean split in responsibility for, and understanding of, 'rights of way' and 'highways'. Rights of way (footpaths and bridleways) were the domain of the Ministry of Town and Country Planning. Highways (roads) were the domain of the Ministry of Transport. *Prima facie* RUPPs are roads. Arguably, therefore the '49 Act should not have required them to be recorded on the definitive map and they should have remained solely on highway authorities' road lists. Had this been the practice, classified and unclassified roads would have been cleanly separated from public paths.

Why were RUPPs introduced? It can be speculated that the most minor roads which were of little use to motor vehicles were in danger of being lost through the disinterest of the MoT. Hobhouse and others may have recognised the continuing value of these routes to non-motorised traffic and the concept of the RUPP arose to ensure their survival as a public resource. Writing into the legislation that the recording of RUPPs was without prejudice to existing rights may have been intended to safeguard their vehicular status but was a poor substitute for the clearer 'byways open to all traffic' introduced by the Wildlife and Countryside Act 1981.

As we have seen from the single example of West Riding County Council, while the split between unclassified roads and rights of way should have been clear, there was some confusion in the practice of putting routes on the definitive map. Only an authority by authority investigation can determine the extent of this confusion.

8. OFFICIAL INTERPRETATION

8.1 Written advice as to status

LARA and the Trail Riders Fellowship have made enquiries on separate occasions as to the status attached to UCRs by highways authorities. All responses made available to the consultants have been reviewed and relevant sections reproduced below. The full texts can be seen by following the links on the CD version. We have also collected official letters from Departments and Ministries and relevant sections from these are also shown below. Again the full text is available by following the CD links.

Table 2 Correspondence

Highway Authority Correspondence	
Bedfordshire, (Deputy County Surveyor), 12/3/1987	"I can confirm that all roads shown in the County Council's list of maintainable highways, whether classified or unclassified, are highways open to all traffic."
Berkshire, (Director of Highways and Planning), 4/3/1987	"In general the County Roads listed in accordance with the requirements of section 36(6) of the Highways act 1980 are open to all classes of traffic whether classified or unclassified. However, it should be noted that in some cases … footways and cycleways exclusive to that class of traffic are also recorded in the register."
Cambridgeshire, (for Director of Transportation), 27/7/1987	"I refer to your letter of 8th July and can confirm that all unclassified roads in the country [*sic*] are full public highways and, subject to any traffic regulation order which may be in force, they may be used by all traffic including vehicular. Public soft roads are also full highways and enjoy the same status. … You should note that no [*sic*] all RUPPs or former RUPPs are Public Soft Roads.
County Durham, J Petrie (County Engineer), 2/3/1987	"To answer your question in general terms, however, my department do hold extensive records of publicly maintainable highways within the County. By and large the highways are open to all classes of traffic but obviously there will be lengths where certain classes of traffic are restricted or prohibited due for example to the making of weight restriction or other Traffic Regulation Orders or Pedestrianisation Orders."
Derbyshire County Council, E Hook (County Surveyor) to Miss J Tennant, 3/6/1987	"Unclassified County Roads carry a higher status than any of the public rights of way shown on the Definitive Map. In strict legal terms, therefore, it is not possible to include these paths [sic] on the Definitive Map unless as you suggest they are downgraded to Byways open to all Traffic."
Derbyshire, Eric Hook (County Surveyor), 9th June 1987	"Unclassified County Roads carry a higher status than any of the public rights of way shown on the Definitive Map."
Devon, M Hawkins (County Engineer & Planning Officer), 11/3/1987	"The large majority of roads shown on the highway register are open to all classes of traffic although there are certain exceptions:- i) Roads which are subject to traffic regulation orders … ii) Roads whose legal status may be in dispute."

Devon, M Hawkins (County Engineer & Planning Officer), 19/5/1987	"The large majority of roads shown on the highway register are open to all classes of traffic although there are certain exceptions:- i) Roads which are subject to traffic regulation orders … ii) Roads whose legal status may be in dispute. This applies to the roads shown on the Devon Roads network maps irrespective of their colouring. It should however be appreciated that while every effort has been made to ensure the accuracy of these maps, some errors have occurred and they cannot therefore be regarded as conclusive proof of a public road."
Dyfed, V B D Williams (County Engineer & Surveyor), 26/2/1987	"I refer to your letter dated 17th February 1987 and would confirm that the answer to your enquiry is prima facie yes."
Essex County Council, for R Adcock (Chief Exec. & Clerk), 25/2/1987	"… I would confirm that the highways shown on that list [the S.36 HA 80 List of Streets] will be public vehicular highways unless otherwise expressly indicated."
Essex County Council, for R Adcock (Chief Exec. & Clerk), 5/6/1987	"In answer to your query, all unclassified County Roads within Essex do have public vehicular rights."
Gwent CC, G S Probert (County Planning Officer) 19/10/87.	"In your letter you refer to U.C.R.'s. These are County unclassified roads that are the responsibility of the County Surveyor, and carry full vehicular rights."
Gwynedd CC, H Ellis Hughs (County Sec. & Sol.), 19/3/1987	"I would inform you that whilst all the classified roads, i.e. Class I, II, and III roads, are open to all classes of traffic, … this cannot be held as true for all unclassified roads. The right or type of usage on such highways will depend on historical evidence of usage and will vary from case to case."
Herefordshire, Mr Bucktin (for County Sec & Sol), 13/1/1987.	"… the list [S.36 HA 80] was compiled from records which were often inadequate with some inaccuracies and inconsistencies. Therefore, some roads shown cannot be traversed by normal vehicular traffic whilst, in others no trace of way exists. However, a member of the public is entitled to use, or try and use on any of the roads listed a vehicle legally equipped for use on the public highway."
Hereford & Worcester, J Renney (County Sec. & Sol.), 27/5/1987	"The statutory need to produce a list of streets is met by the preparation of two lists; one for vehicular streets maintainable by the public; the second being a definitive public rights of way statement.
Lincolnshire, G Brown (for Director of highways & Planning), 2/3/1987	"Whilst it is true that the overwhelming majority of roads maintainable at the public expense, whether classified or unclassified, are open to all traffic, this clearly does not apply to the total county highway network with a considerable number of roads subject to Traffic Regulation Orders in order to achieve environmental objectives or satisfy structural requirements."

Mid Glamorgan CC, D Hugh Thomas (County Clerk & Co-Ordinator), 6/3/1987	"… I would confirm that all classified and unclassified and in fact all non-maintainable highways, in Mid Glamorgan are highways open to all classes of traffic."
Norfolk, N Hancox (for Chief Exec. & Clerk), 19/3/1987	"I can confirm that the computerized list of classified and unclassified roads maintained in this office under section 36 (6) of the Highways Act 1980, is of highways open to all classes of traffic and which are maintainable at the public's expense." "The road list takes no account of roads used mainly as public paths or byways. We have as yet no byways which are maintainable at the public expense."
Northamptonshire, S Fitzgerald (Definitive Map Officer), 8/6/1998.	"All unclassified roads within the county have full vehicular rights, subject to any traffic regulation order which may be placed on any particular road."
Northumberland, P J Rothwell (County sec. & solicitor), 23/2/87	"The short answer to your question is that I can so confirm." [Response to LARA question by D Gordon – need to have a copy of the question.]
Oxfordshire, Assistant County Surveyor, 17th June 1987	"Unclassified county roads are legally available to all classes of user unless specifically restricted."
Oxfordshire County Council, Land & Highways Record Manager, 2001	"I am writing to confirm that any route with dual status i.e. CRB or CRF and unclassified unmetalled would keep the higher classification of unclassified unmetalled. This would mean that public vehicular rights would still remain and not be affected."
Rotherham, A Savage (Countryside & RoW Officer), 9/1/04	"The list of Unclassified County Roads features 84 routes in Rotherham. An initial study of the routes was undertaken in October 2002 in order to assess the current and usage. The survey revealed that the majority of the routes are metalled and used as part of the recognised network of metalled roads. The remainder are unmetalled lanes which are mostly rural in character."
Shropshire, R C Sawtell (County Secretary), 11/3/87	"In general, maintainable County roads are highways open to all classes of vehicles."
Solihull, C Marsh, 9/1/04.	"Advising you now in the most general terms about those routes legally open to motorists within the Solihull Borough, I would comment as follows. Motorists can currently be safely presumed to be entitled to use all those publicly maintainable roads that are shown in the List of Streets and that have been metalled by the Council or its predecessors; plus those routes recorded as Byways Open to All traffic on the DMS." "Less certainty can be attached to any supposition that motorists are entitled to use those ways designated as 'E-roads' upon the List of Streets, which are predominantly unsurfaced on the ground. … Although we acknowledge that such routes will have a likely status of bridleway or carriageway, we are not generally able to give you immediate guidance as to which particular status applies." [Seems to imply that physical characteristics are an important factor in determining status.]

Somerset, D J R Clark (County Solicitor), 12/3/1987	"All County roads are technically open to all classes of traffic."
Staffs CC, B A Price (Chief Executive), 3/6/87	"The County Surveyor has advised me that as far as he is aware unclassified county roads in Staffordshire are open to all classes of traffic unless restricted by a Traffic Regulation Order."
Suffolk, K W Stevens (County Solicitor), 27/2/1987	" I can confirm that the highways shown in the County Council's list of maintainable highways are open to all classes of traffic in that the list does not include routes which are footways only."
Surrey, J A Bergg (County Engineer), 20/3/87	"Within the County of Surrey all un-classified County roads are maintainable at public expense. As such the County Council consider that all un-classified county roads which include roads used as public paths have carriage rights over them."
Surrey, J A Bergg (County Engineer), 24/3/87	"I am unable to confirm that all such listed streets are open to all classes of traffic."
Warwickshire, Tony Holmes (Traffic and Highways Information), 8/1/04	"For day to day purposes we usually assume that vehicle rights do indeed exist on motorways, trunk roads A, B & C class roads, and all unclassified roads, (whether adopted or not) currently recorded on our Highway Network Database."
Warwickshire, I G Caulfield (Chief Exec.), 10/6/87	"… Not all roads shown in the Council's list of maintainable highways are open to all classes of traffic owing to the existence of certain road traffic regulation orders. Also, the status of certain of the routes has been questioned and these will be examined in the near future."
West Glamorgan CC, M E J Rush (County Clerk), 20/2/1987	"Not all the roads shown in the list of maintainable highways are open to all classes of traffic."
West Sussex, E M Holdsworth (County Secretary), 25/2/87	"… I can confirm that all ~County roads whether classified or unclassified that are maintainable by the County Council are highways open to all classes of traffic."
Wiltshire, J G P Davies (County Surveyor), 18/11/86	"I consider that all unclassified county roads within Wiltshire have public vehicular rights."
Wiltshire, N A Smith (County Sec. & Solicitor), 6/3/87	"I write to confirm that all roads in the County of Wiltshire, whether classified or unclassified, are highways open to all classes of traffic, subject, of course, to any traffic regulation order which may be in force.."
Wrexham, G Griffiths, 8-1-04	"I would point out that some roads recorded as unclassified publicly maintainable highways might not be accessible with a vehicle owing to the width or gradient of the road or other physical features."

The abstracts of highway authority correspondence shown above represent all of the relevant correspondence available to us. This sample is not random and may not be accurately representative, however, we can use it to separate the opinions of the authorities as to the status of UCRs at the time of writing. The Table 3 below gives our interpretation of the authorities belief in the rights pertaining to UCRs:

Table 3 Status assumed by authority

Open to all traffic	Not open to all traffic	Uncertain
Bedfordshire	Gwynedd	Rotherham
Berkshire	West Glamorgan	Shropshire
Cambridgeshire		Solihull
County Durham		Wrexham
Derbyshire		
Devon		
Dyfed		
Essex		
Gwent		
Herefordshire		
Hereford and Worcester		
Lincolnshire		
Mid Glamorgan		
Norfolk		
Northamptonshire		
Northumberland		
Oxfordshire		
Somerset		
Staffordshire		
Suffolk		
Surrey		
Warwickshire		
West Sussex		
Wiltshire		

Table 4 Departmental advice

Departmental Advice	
DoE, 9/6/83 from CF Hart to Ms Herbst, secretary of Rights of Way Review Committee	"in a large majority of authorities, the term 'unclassified road' was used to cover only those (unclassified) ways which were believed to have vehicular rights over them." "We see no reason why ways which have been listed as UCRs should not be shown on definitive maps, and in particular shown as byways (or, under the 1949/1968 Act system, qualify as RUPPs) provided the criteria are met."
DoE, J Latham (Countryside division), 2/3/92	"Our understanding is that unclassified county roads are vehicular highways"
DoE, Martin Steer, 26/3/97	"In general an UCR is a highway maintainable at public expense over which the public have a right of way for vehicular traffic." "If a way is recorded as a UCR, or its equivalent, then in the Department's opinion it would not be appropriate to record it as a BOAT and place it on the definitive map." "Until this exercise has taken place in respect of any individual RUPP [RUPP reclassification] it would be unwise to make any assumptions as to whether vehicular rights exist."

DoE, Martin Steer, 6/6/1997	"In general an UCR is a highway maintainable at public expense over which the public have a right of way for vehicular traffic." "If a way is recorded as a UCR, or its equivalent, then in the Department's opinion it would not be appropriate to record it as a BOAT and place it on the definitive map."
DETR, S Carter (Head of Countryside Division) to Chief Executives, 24/8/1998.	'This letter is to advise you of the conclusions reached by the Department of Environment, Transport and the Regions on the interpretation of the term "unclassified county road" (UCR). This advice replaces previous advice, usually given in response to specific enquiries rather than a general statement, which was withdrawn in March 1998.' 'The term "unclassified road" was made redundant by the Local Government Act 1972. Some routes may, however, be described as unclassified county roads (UCRs) on certain documents, including the list of highways maintained at public expense.' '… the inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights.' 'Against this background, we have concluded that we cannot offer any guidance which is applicable in all cases on the rights that exist over routes known as UCRs. Any questions about the status of such routes, and the rights that exist over them, will need to be resolved by highway authorities on a case-by-case basis.'
DETR, Martin Steer, to B W Lewis, 30/9/1998.	'Where a question of the rights which exist over a UCR is raised, that would need to be decided on a case-by-case basis. This would be of interest to any authority either determining an application for a definitive map modification order under section 53 of the Wildlife and Countryside Act, or reclassifying a road used as a public path under section 54… The letter was not intended to indicate that authorities should now regard any way known as a UCR as not carrying vehicular rights nor was it intended as a prompt to authorities to consider adding UCRs to, or removing them from, their definitive maps or lists of streets.' 'Where a route once was, or is currently known by the term "unclassified county road", but is recorded by a highway authority on road maps or the list of streets as an all-purpose carriageway, then that would seem to be a clear indication that vehicular rights exist over it. As I said quite clearly in my letter of 15 September, where a UCR carries vehicular rights those rights remain, unless they have been extinguished by due process of law.'

Advice from Government Departments has become less certain over time. However, it appears to continue to support a presumption of vehicular rights on unclassified county roads, although, in relation to recording rights of way on the definitive map, increasingly the advice is that all routes being considered in the context of definitive map modification orders must be looked at on their individual merits. For example, Martin Steer's letter of 30/9/1998 is quite specific in that his advice re the need for individual assessment is only to be taken in the context of applications for DMMO or re-classification of RUPPs.

8.2 Conclusions

While there was an overwhelming belief among highway authorities that their unclassified county roads were public highways open to all classes of traffic, this belief was not unanimous. It is believed that all highway authorities were asked the same question at the same time but obviously not all have replied. We cannot tell whether or not the non-respondent authorities would have followed this distribution. However, for the responding authorities, the conclusion must be that most authorities believed their UCRs to be vehicular highways, adding weight to the presumption, on the balance of probabilities, that UCRs are vehicular highways.

The Government advice through the Departments does not contradict this but has moved away from making general statements about UCRs towards stressing the need for them to be looked at individually on their merits. No differentiation is made in the advice given between sealed and un-sealed roads.

9. ROAD LISTS

9.1 Relationship between definitive map records and list of streets

The Hobhouse Committee in its consideration of the maintenance and repair of rights of way identified a problem concerning the maintenance of rights of way by highway authorities:

> "*The Common Law liability of the inhabitants at large for the maintenance of the highways was ordered by the Highway Act 1835 to be exercised by the Surveyors of Highways. Today, the functions of the Surveyors are exercised by the highways authorities, i.e. in rural districts by the county councils and in boroughs and urban districts by borough and urban district councils.*
>
> *The Common Law liability of the inhabitants at large for the maintenance of the highways remains of course unaffected by the change which has taken place in the machinery for the exercise of this duty, but a number of highways authorities have invoked Section 23 of the Highway Act 1835 as justifying the view that highway authorities are not liable to maintain all the rights of way referred to in our terms of reference. That Section states that no ' Road or Occupation Way', dedicated or created after 20 March, 1835 shall be deemed to be repairable by the highway authority unless the individual or body dedicating it gave notice to the authority and made it up to the prescribed width in a manner to the satisfaction of the Surveyor and of two magistrates. These conditions have seldom been observed in respect of footpaths and it seems to us that the Section was never intended to apply to public footpaths, bridlepaths and driftways. As Section 23 of the Act refers only to the roads and occupation ways a prima facie duty to maintain all other rights of way would appear to rest upon highway authorities. On this interpretation footpaths, bridlepaths and driftways would not be comprehended in the description "roads" or "occupation ways" used in Section 23 of the Highway Act 1835. This matter of legal doubt will however have no further practical importance if the recommendation contained in paragraph 66 is adopted.*" [That the statutory liability to repair all rights of way be placed with the highway authorities, i.e., what became in the event SS 47- 50 NPACA49][18]

This seems to indicate that despite the view of some county authorities[19] as held in 1929/30 that they were indeed taking over maintenance responsibilities for footpaths when highways were "handed over" to them on 1 April 1930, by 1947 many were arguing that they had no such responsibilities, or no such responsibilities for maintenance of rights of way that could not be proven to exist prior to 20 March, 1835.

As noted above the NPACA49 sought to remedy the problem that the Hobhouse Committee identified, by placing maintenance responsibility for footpaths and bridleways on the highway authority. It is often argued that as highways maintainable at public expense, all rights of way that are now shown on the definitive map and statement that are publicly maintainable should also be shown on the list of streets, this is undoubtedly legally the case. However, in practice few authorities have added these rights of way to their list of streets.[20]

In considering list of streets records and the relationship between them and the first definitive maps, it must be remembered that County Councils, the authorities that largely compiled definitive maps, were not statutorily required to produce lists of streets until the advent of the

[18] Paragraphs 59 and 60 "Hobhouse" report

[19] See for example correspondence between Bedfordshire CC and Huntingdonshire CC in Bedfordshire Record Office file HiV 109

[20] It might be useful to research how many have done so, and when this exercise was done.

Highways Act 1980. Thus at the time the original definitive maps were prepared County Councils did not, in law, have lists of streets, per se, to add rights of way to.

It is, however, clear that in this period most County Councils compiled and kept highway records that equate to the list of streets (that the urban authorities were legally obliged to keep). It is also our experience that the general practice was for County Councils not to include footpaths and bridleways shown on the definitive map and statement on these records.[21]

Further, the areas that could be excluded from the requirement to produce a definitive map included urban areas where the requirement to keep of list of streets was a statutory one. The anomaly is County Borough Council areas which were excluded, but which again appeared not to be legally obliged to keep a List of Streets.

9.2 Other 'lists' and schedules

As is plain from 9.1 above, the 'List of Streets' is a confusing and often misunderstood concept. Prior to 1980 there was only a duty to maintain a List of Streets in urban districts. County Councils were not required to maintain such a list.

However, they did of course have need to record their routes for maintenance purposes, including making annual returns and grant claims to the Ministry of Transport and its successors. It is inconceivable that, given the importance of grant aid for road maintenance, records of maintainable roads were not kept by every highway authority. However, as we have seen so often, while in theory it was quite clear that only vehicular routes were to benefit from grant aid, it began to be the practice in some authorities to claim for bridleways and footpaths also. Instructions from the MoT (see 6.2 above) in the 1960s made it very clear that this was wrong and so lists from the mid to late '60s, where they exist, may be regarded as particularly accurate records of roads.

9.2.1 Local Government Act, 1929, 'Handover Records'

The obvious time for the counties to first create a list or map of the roads they were liable to maintain was following the Local Government Act, 1929, and their acquisition of highway responsibilities in rural areas. However, there was no statutory obligation to create such documents and consequently such 'handover maps' are often not available, were never made, or were inadequately labelled to subsequently determine their provenance 75 years later. The availability and authenticity of such maps needs to be assessed on a county by county basis. But it should be noted that, even where apparently good records were kept, they were working documents and not publicly tested, therefore they cannot be considered to be definitive, as was intended for rights of way maps. Nevertheless, where 'handover maps' do exist, they must be treated as good *prima facie* evidence of vehicular status on the routes they show unless there is evidence that that particular county also included rights of way as 'roads' and did not differentiate between them.

9.2.2 Restriction of Ribbon Development Act, 1935.

The Restriction of Ribbon Development Act, 1935, gave county councils the power to restrict development alongside roads. But to take advantage of these powers, the authority had to first publish a schedule of roads to which the provisions would apply. We have not systematically looked for these schedules but we are aware that detailed schedules were drawn up and

[21] Whilst this is a view based on our experience it is not as yet supported by actual research.

published for Wiltshire. Cumbria also drew up schedules[22] and it seems reasonable to assume that many other counties did likewise. Where they exist, these schedules will provide strong evidence of public vehicular rights on the roads they list.

9.3 Conclusions

It is unlikely that footpaths and bridleways recorded on the definitive map and statement under NPACA49 would be recorded onto lists of streets as at the time the County Councils were under no statutory duty to compile lists of streets.

Undoubtedly, County Councils held highway records, however it has been our general experience to date that these did not encompass those highways that were, in fact, footpaths and bridleways shown on the definitive map.

On some definitive maps there are instances of "dual status" routes – perhaps more properly called "dual-recorded routes", routes that are shown as footpath or bridleway on the definitive map and are also recorded on the list of streets. In the case of those ways that are recorded as bridleways, this dual recording might be explained by the advice in Circular 58/53. Equally, such instances might be explained by the confusion created by the term RUPP and the complications of the use of the terms CRB and CRF. The frequently occurring separation of 'highways' and 'rights of way' functions within different highway authority departments may have exacerbated any potential for duplication.

Further research into these instances might help to explain why dual recording happened, but this does seem to have been the exception rather than the rule. The rule seems to have been that roads were recorded on the list of streets and the only non-vehicular highways recorded on the list of streets were urban or semi-urban footpaths – what might be termed estate paths.

Broadly, public footpaths, public bridleways and RUPPs were recorded on the definitive map and statement, roads other than the roads used mainly as public paths were not so recorded and roads that were publicly maintainable were recorded on lists of streets and on highway records kept by County Councils between 1930 and 1980.

Schedules drawn up under the Restriction of Ribbon Development Act, 1935, and 'Handover records' can provide strong evidence of public vehicular rights on the roads that they list.

[22] Alan Kind, pers. comm.

10. GENERAL CONCLUSIONS

- The meaning of words drifts over time. Acts of Parliament need to be interpreted in the context of their own time. It is the contemporaneous meaning which is important, not the historical meaning, nor the modern meaning, no matter how 'obvious' the word.

- The words used in any Act need to be interpreted in the context of that Act unless the Act specifically refers to a definition contained in another Act.

- Glen was wrong to say that all highways in rural areas, including footpaths and bridleways, were roads and therefore county roads. This argument was based upon flawed logic and took both the Highways Act,1835, and the Local Government Act, 1929, definitions out of their time and context. Furthermore, he disregarded significant restrictors written in to the definitions sections of the Acts.

- The word 'road' is used inconsistently and often as a straight synonym for 'highway'. However, the terms 'county road' and 'unclassified road' are used consistently and unambiguously to refer to public vehicular highways.

- *Prima facie* UCRs were intended by statute to be public vehicular highways which were not classified or trunk roads.

- 'Road', as used in 'road used as a public path', means a public vehicular highway.

- Confusion over what was to be recorded as a county road has led to some bridleways and footpaths being included by some local highway authorities. Although significant, the scarcity of rights of way records at the time implies that this number will be small.

- Road Grants were intended only for public vehicular highways, potentially (but not usually in practice) including all unclassified roads.

- Some highway authorities used the confusion over county roads to increase their General Grant claims by including footpaths and bridleways in their road mileages. Post 1966 claims should be accurate and provide good evidence of routes regarded by the highway authority as public vehicular routes.

- In 1949 it was understood and accepted by all parties to the National Parks and Access to the Countryside Act that those roads to be recorded as 'roads used as public paths' were vehicular highways.

- The Gosling Committee misunderstood the name 'RUPP'. A road used as a public path can legally only be a vehicular highway.

- Roads, except for those used mainly as public paths, were not to be recorded on the definitive map of rights of way.

- Some roads were mistakenly recorded as footpaths or bridleways.

- The rights existing on RUPPs could not be definitively recorded.

- The instructions produced for the 1949 Act by the Commons, Open Spaces and Footpaths Preservation Society, and approved by the Minister, created confusion by introducing the terms CRB and CRF.

- Of those highway authorities whose views are known, the large majority believed their UCRs to be vehicular highways.

- Government Department advice is consistent with UCRs being vehicular highways, but increasingly recognises that definitive map modification orders and re-classification should be considered on an individual route by route basis.

10.1 Summary Conclusion

Unclassified county roads are public vehicular highways. While doubt may be attached to individual routes in some authorities, where there is no specific evidence to the contrary, the balance of probability must be that routes recorded as UCRs are vehicular highways.

11. RECOMMENDATIONS FOR FURTHER WORK

- The legal case appears to be quite clear cut; unclassified county roads were intended by law to be vehicular highways. However, this certainty has to be tempered by the practices of individual highway authorities. Where an authority included rights of way as county roads, the *prima facie* evidence of being listed as a UCR is undermined. The practice of recording UCRs should now be examined on an authority by authority basis.

- In looking at UCRs we have made significant progress in understanding roads used as public paths. This area of confusion could be further clarified by continuing the investigation into why it was considered desirable to record such routes on the definitive map. Who asked for this? What did they wish to achieve by it? How did it get onto the legislation? Clarifying the RUPP issue could be extremely important with the advent of Restricted Byways.

- Claims for Road Grant and General Grant using road mileages offer useful evidence of overall lengths of vehicular highways. Having looked at the process, and found the inconsistencies, it would be beneficial to look at individual highway authority returns, particularly post 1966.

- Schedules drawn up under the Restriction of Ribbon Development Act, 1935, will be available for counties other than Wiltshire and Cumbria. It would be helpful to carry out an authority by authority search for these.

- It is our experience (not noted previously in this report) that the number of RUPPs recorded varies enormously between authorities. It is thought that further light could be shed on this phenomenon by looking at the recording forms sent out to the parishes at the time of the survey. For example, Buckinghamshire County Council's recording form only allowed for the recording of footpaths or bridleways;Bucks had very few RUPPs recorded. Further, review of the ratios of RUPP to all rights of way through the draft, provisional and definitive map stages would illustrate continuity, or otherwise, of approach.

- Individual authority's practices in drawing up their list of streets should be reviewed to determine if this was done by creating an entirely new list or by appending a 'road' list to the definitive map and statement.

12. APPENDICES

12.1 Chronology of Acts

Date and statute	Theme	Note
1835 Highway Act (Remained in force till 1959)	Highway Authority	Introduced the annual election of a surveyor of highways (though the post had existed since well before this date) by the inhabitants in vestry assembled. Surveyor could be paid. Two or more parishes could be united in a highway district, with mutual agreement of the parishes and consent of the Justices. In large parishes boards (population of more than 5,000) of surveyors could be appointed. (Source Owston). End of statute labour – introduction of Highway rate, rudimentary "adoption" provisions (Source RWLR Section 1.1 P33/34)
1862 Highway Act	Highway Authority	*"An Act for the better management of highways in England"* the intention was to "take away the individual responsibility of each separate parish surveyor" (Owston P12) and vest the responsibility for management of the highway with highway boards analogous in constitution to the boards of guardians who administered the poor law (Source Owston).
	Adoption of roads	S36 allowed the inhabitants in vestry assembled, to, with the consent of the owners and occupiers of a driftway, private carriage or occupation road, instruct the surveyor to apply to the Justices for a declaration that the road should become repairable at public expense and for it to be a public carriageroad – another form of more formal adoption.
1864 Highway Act	Highway Authority	Effected amendments to 1862 Act.
1878 Highway and Locomotives (Amendment) Act	Classification of highways – main roads	S 13 Roads disturnpiked between 31/12/1870 and 16/08/1878 (coming into effect of this Act) became main roads

1878 Highway and Locomotives (Amendment) Act		S 15 *"Whereas it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of the opinion that there is probably cause for the application, shall cause the road to be inspected, and if satisfied that it ought to be a main road, shall make an order accordingly. A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order."* NB at this point the County Authority would be (we assume) the Justices at Quarter Sessions.
1888 Local Government Act (England and Wales)		Creation of County Councils
	Maintenance	S 11(1) Every road designated a "main road" by the Highway and Locomotive Amendment Act 1878 became the maintenance responsibility of the County Council (except those in Urban District Council areas, and by S97 those that were repairable by persons or bodies liable by reason of tenure, etc.)
	Classification of highways – main roads	S 11 (7) A Council could declare new "main roads" provided that the road was placed in proper repair – given that this involved taking on a financial liability I assume that this would, normally, be done by resolution of the Council or its Highways Committee.
	Maintenance – agency	S 11 (4) the County Council could contract any district council to maintain any main road
1894 Local Government Act		Creation of Rural District Councils, which took over highways other than main roads in rural areas and had the duties and powers of either the parishes or the highway board. Parishes ceased to have any responsibilities for highways (though immediately prior to Act there were approximately 5000 parishes annually electing a surveyor as they had done since at least 1836, and repairing their highways as they had done since 1555).
1909 Development and Roads Improvement Funds Act (Part 2)	Improvements	Set up the Road Board, which had powers to advance funds to **County Councils** for the construction of new roads or the improvement of existing roads and could itself construct and maintain new roads. S 8(5) defined the improvement of roads for the purposes of Part 2 S 8 of the Act as: *includes the widening of any road the cutting off the corners of any road, the levelling of roads, the treatment of a road for mitigating the nuisance of dust and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair…."* The Road Board came to an end during WW1 (Source Rees Jeffries)

1919 The Ministry of Transport Act	Classification of highways	S 17(2) *"For the purposes of advances for the construction, improvement or maintenance of roads, the Minister may, after consultation with the Roads Committee hereinafter referred to and the local authorities affected classify roads in such manner as he sees fit, and may, by agreement with the local authority responsible for the maintenance of such roads, defray half the salary and establishment charges of the engineer or surveyor to a local authority responsible for the maintenance of such roads subject to the condition that the appointment, retention, and dismissal of such engineer or surveyor, and the amount of such establishment charges, shall be subject to the approval of the minister."* S 22 Set up the Road Committee, which appears to have advised the Minister on the classification of roads. Road is not defined specifically in the 1919 Act, however, S 2 setting out the powers and duties of the Minister refers to "roads, bridges and ferries and vehicles and traffic thereon". The implication being that road as used in the Act means something used by vehicles. Since the purpose of classification of roads was for advancement of public funds, roads are inherently public.
1925 Public Health Act	List of Streets	S 84 required every **Urban** authority to prepare a list of the streets within their district, which are repairable by the public at large – this list was open to public inspection.
1929 Local Government Act	Highway authority	RDCs ceased to be highway authorities – roads in the rural areas became the responsibility of the County Council. There was no legal requirement for "handover" documents to be compiled but due to scale of task most authorities seem to have compiled some sort of documentation. Glen's *Local Government Act* 1929 states: *"The Act (s 134) defines 'roads' as meaning highways repairable by the inhabitants at large, and as including bridges so repairable carrying roads, and does not define 'highways'. By section 5 of the Highway Act 1835, "highways shall be understood to mean all roads, bridges (not being county bridges) carriageways, cartways, horseways, bridleways, footways, causeways, churchways and pavements". So that if any of these various kinds of ways, including, it will be noticed, even a footway, is repairable by the inhabitants at large, it will be a "road". If it is not so repairable it will not be a "road" and therefore not a 'county road', or an 'unclassified road'. The Act (s 29 (1)) makes "county roads" of three kinds of roads, namely (a) roads which, on April 1, 1930, are "main roads", (b) roads which become main roads and (c) every road as respects which a county council becomes the "highway authority" under the Act. The Act amends the law as to declaring roads to be "county roads" (s 37)"*

1959 Highways Act	Maintenance – agency	(RWLR S1.1 page 44) The Act provided that a district council could seek the delegation of functions from the County Council for any part of the classified road network and/or for all of the unclassified roads in the district.
1959 Highways Act	List of Streets	S38 (6) *"The council of every borough and urban district shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at public expense; and every list made under this sub-section shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours."*
1959 Highways Act	Financial Advances	S 235 Empowered the Minister to make financial advances to local authorities for the construction or improvements to highways and roads, by way of grant, loan or a mixture of grant and loans. S 235 (7) states: *"Nothing in this section shall be taken as authorising the making of any grants which before the passing of the Local Government Act 1929, were made as classification grants in respect of classified roads in county boroughs or as grants for the maintenance of highways, not being classified roads, in counties."*
1966 Local Government Act	Classification of highways	S 27(4) Any road which had been classified under earlier enactments remained classified as Class I, II or III for the purposes of making advances under the Highways Act 1959. S 27(2) empowered the Minister to classify roads for the purposes of making advances under HA 59 S 235.

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12.2 Glossary of terms

Name	Meaning	Comment
Main Road	Term used before 1 April 1930 and which meant in county areas: (a) Any road which ceased to be a turnpike road between 31/12/1870 and 16/08/1878 and which was not ordered to remain an ordinary highway (b) Any road which was a turnpike on 16/08/1878 and then ceased to be a turnpike (c) Any road declared by quarter sessions to be a main road between 16/08/1878 and 1 April 1889 (d) Any road declared a main road by a county council after 1 April 1889 (e) Any road constructed by a county council which had received an advance of funds from the Road Board (or latterly the Minister). Outside London every road which was a main road on 1 April 1930 became a 'county road'	
County Road	The term 'county road' is no longer used to describe a class of highway, but must be understood in the context of the list of streets and other highway records and the legislation that prevailed at the time. Under the 1929 Act 'county road' included any road, which was on the 1 April 1930 a main road. It also included every other road for which the county council became the highway authority on 1 April 1930. In rural areas this was, generally, all highways maintainable at public expense, but in urban areas it was only the main or classified roads. Under the Highways Act 1959, all existing county roads retained this status, additionally any road constructed by the county council under various powers, and any road appropriated or transferred to the council was a county road and a county council could declare any road a county road.	The term 'county road' was created by the Local Government Act 1929 (s 29(1)) repealed. It was retained by the Highways Act 1959 (s 295) and was made redundant for the purposes of advances by the Local Government Act 1972, but was retained in the Highways Act 1980

Classified Road	This term originates from the Ministry of Transport Act 1919 for the purposes of making advances of funds. The 1919 Act was amended by the Local Government Act 1966, so as to extend classification to three classes of road (from two). Roads ceased to be classified for this purpose on 1 April 1975, but the term continues to be used by virtue of S12 of the Highways Act 1980.	
Unclassified County Road (UCR)	This term had and has no precise legal meaning but it follows that an inference may be drawn that it was a county road of lesser status.	Guidance has been given in the Planning Inspectorate's Consistency Guidelines (Para 2.44) about what inference may be drawn from the term UCR in highway records as to the precise nature of rights therein.
Road	Highway statute does not define road. Halsbury (Vol 21 para 8) is helpful: "At common law highways are of three kinds according to the degree of restriction of the public rights of passage over them. A 'cartway' or 'carriageway' is a highway over which the public has a right of way (1) on foot, (2) riding on or accompanied by a beast of burden, or (3) with vehicles and cattle. A bridleway is a highway over which the rights of passage are cut down by the exclusion of the right of passage with vehicles and sometimes, although not invariably, the exclusion of the right of driftway, that is driving cattle, while a footpath is one over which there is a public right of passage on foot."	Definitions of these three kinds of highway at common law are to be found in *Suffolk County Council v Mason [1979]*.

Highway maintainable at public expense	A highway which by virtue of the Highways Act 1980 or any other enactment is to be maintained by the public expense	At common law every highway was prima facie maintainable by the inhabitants of the parish. The Highway Act 1835 introduced a basic system of "adoption" of highways so that no highway dedicated after the coming into effect of the Act automatically became repairable at public expense. After 1835 it was possible for roads to be created which no one had the liability to repair. The underlying principle of repair by the inhabitants at large was removed by virtue of the Highways Act 1959.
Highways maintainable by individuals	Highways may be maintainable by individuals or corporate bodies by reason of statute, by prescription, by reason of tenure or by reason of inclosure.	
Private Street	Private Street means any street that is not a highway maintainable at public expense	A private street may still be a highway dedicated to the public.

12.3 The Consultants – Curricula vitae

Mike Furness

B.Sc. (Ecological Science) Edinburgh, M.I.P.R.O.W.

Mike Furness has been a professional rights of way specialist since 1989 and gained his membership of the Institute of Public Rights of Way Officers in 1992. He has worked on a broad range of access issues in a number of roles, predominantly for Buckinghamshire County Council for which his work included the examination of Unclassified County Roads.
More recently Mike was National Trails Officer for the Ridgeway and the Thames Path National Trails during which time he dealt extensively with vehicular highways.
He began his consultancy career in 2002 and has since built up a significant portfolio with clients ranging from national bodies such as English Nature, the Countryside Agency and the Countryside Council for Wales, to private individuals and parish councils.
Mike was elected to IPROW's Council in 2003.

George Keeping

B.Sc. (Archaeological Conservation) University College Cardiff, F.I.P.R.O.W.

George Keeping has worked in public rights of way for 16 years and for 9 of these managed the countryside and rights of way section of Lincolnshire County Council. Since 1993 George has been actively involved in the CSS Countryside Working Group, as county representative, Regional Chairman and, since 1999, as secretary for the national group. He now acts as Rights of Way Officer for the CSS. He also works as a freelance rights of way consultant.
He is currently Policy & Development Officer for the Institute of Public Rights of Way Officers and Seminar Director for the Rights of Way Law Review. George is a Fellow of the Institute of Public Rights of Way Officers and a member of the Rights of Way Review Committee and of the Local Access Forum for South Lincolnshire and Rutland.

Sue Rumfitt

B.A. Geography & English (Lancaster), F.I.P.R.O.W.

Sue Rumfitt has twenty-one years experience of working in public rights of way, with five at senior rights of way officer level in a highway authority and eleven as an independent consultant. Sue has extensive training experience, and research experience in matters of highway and public rights of way status.
President of the Institute of Public Rights of Way Officers 1990-1992, Sue was elected as a Fellow in 1988, and remains an active member, with a network of professional contacts. She has a breadth of experience as a trainer, designing and delivering courses to local authority staff and members, Countryside Agency Staff, user group volunteers, and landholders. She was responsible for the organisation and delivery of the Institute's training programme from 1996 to 1999 and remains a tutor on several Institute courses. She has written course material for Sheffield Hallam University and has been a guest lecturer for Birkbeck College, London. Sue has worked as an independent consultant since 1993 and specialises in definitive map work and research.