

Public Rights of Way

Overview of the Assertion Process

ORNI Webinar Presentation on 27.01.21

by Mark Strong
Coast & Countryside Officer
Causeway Coast and Glens BC

Presentation Content:

- Brief overview of what constitutes a public right of way
- Statutory duty under Access to the Countryside (NI) Order 1983 - Article 3
- Creation of PROWs and principles of dedication at common law
- Process of Asserting a Public Right of Way
- Closing comments regarding public rights of way and outdoor recreation

What is a public right of way?

- PROW is not defined within the Access Order
- Common law principles:
 - PROWs are highways
 - Used by public as of right
 - Legal right to pass and re-pass - not a physical entity
 - May be created specifically or through “deemed dedication”
 - Permanent legal entity: “Once a highway, always a highway”
 - Different categories of PROWs:
Footpath, Bridlepath, Carriageway

Statutory Duty: Access to the Countryside (NI) Order 1983

- Article 3:

“A district council shall assert, protect and keep open and free from obstruction or encroachment any public right of way; and for this purpose a district council may institute proceedings in its own name”.

- Neither the term “assert” nor “procedures to be followed” are defined in legislation
- The term “assert” has been judicially interpreted as meaning *“in essence, to claim there exists”*

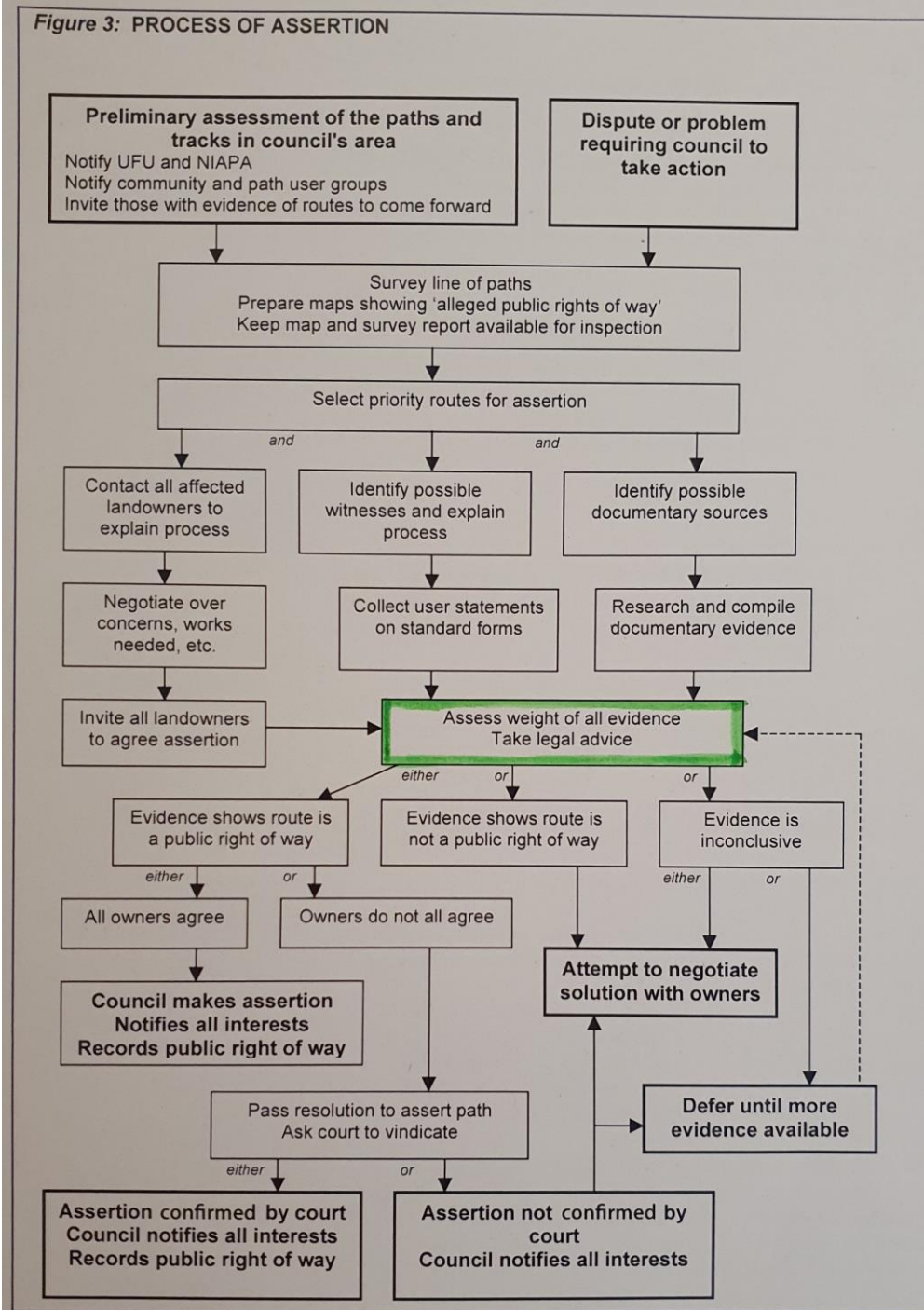
Creation of PROWS:

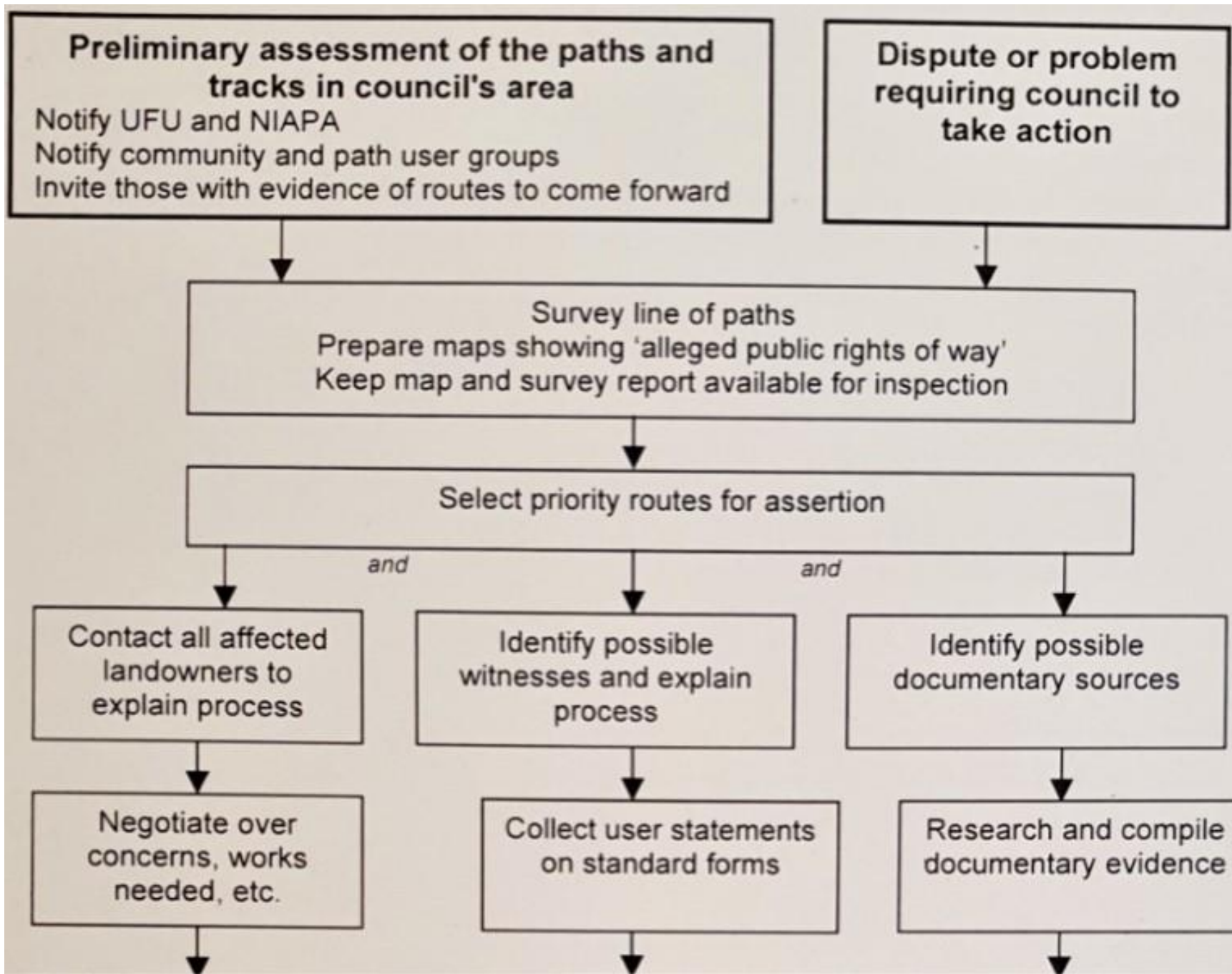
Principles of dedication at common law

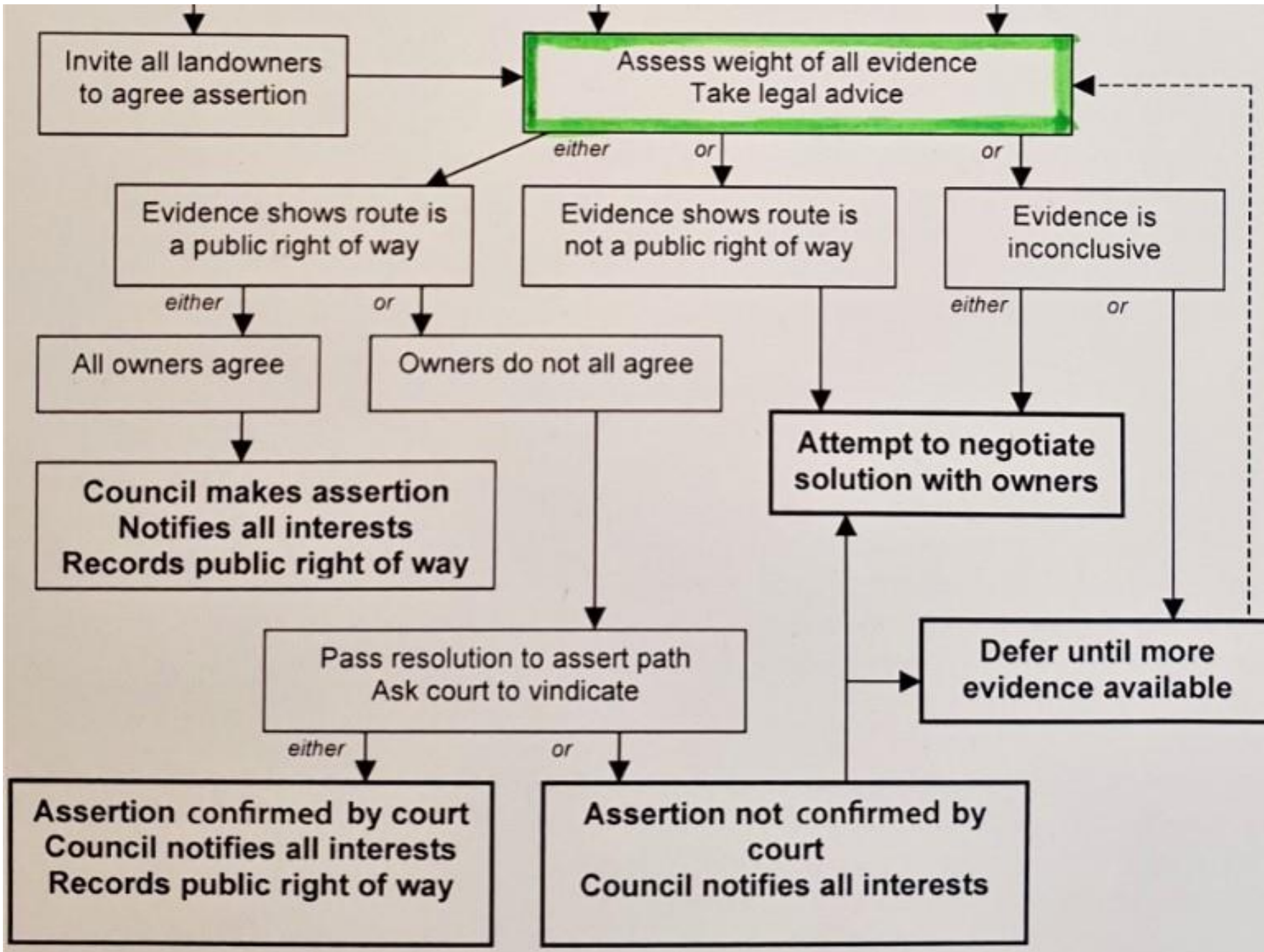
- Council must be satisfied a PROW exists at common law
 - Dedication by landowner &
 - Acceptance by the public
- Deemed/presumed dedication (express dedication is rare)
 - route connects two public places
 - route used as of right
 - public's use of path was open
 - public use continued, without interruption
 - users followed a more-or-less consistent line
- There is no 20 year rule in NI, unlike England

Process of Assertion

Figure 3: PROCESS OF ASSERTION







Closing comments on PROWs and Outdoor Recreation

- Limited role in terms of delivering quality outdoor recreation experience
- England - 50,000 sq mls - 118,000 miles
Wales - 8,000 sq mls - 20,625 miles
NI - 5,500 sq mls - 123 miles
- Important to remember - only one of a range of mechanisms for providing access to the countryside

Thanks for listening

Email: mark.strong@causewaycoastandglens.gov.uk