

## Other cases of interest

### **The Ramblers Association v The Secretary of State for Environment, Food and Rural Affairs (and Others)**

[2017] EWHC 716 (Admin)

Case No: CO/421/2016

In the High Court of Justice Queen's Bench Division, Planning Court

February 2017

Full report: <http://www.bailii.org/ew/cases/EWHC/Admin/2017/716.html>

The Ramblers Association had applied for a footpath to be added to the definitive map of rights of way. At one point the footpath crossed a railway line. An Inspector appointed to consider the case had refused the application and the Ramblers Association had applied to the High Court for judicial review of this decision. The Court refused the application on the basis that a right of way could not have been created across the railway line. This is an English case and the law on creation of rights of way in England is different from in Scotland. However, the case includes some interesting discussion on the question of the creation of rights of way across railway lines. The Ramblers had also argued that, even if the right of way could not be created across the railway line, there could be two 'cul-de-sac' routes, each terminating at the railway line, but this was not accepted. The court said that the railway line was not a suitable terminus for a right of way because it was not a 'legitimate place of public resort'.

### **Carol Rohan Beyts v Trump International Golf Club Scotland Limited**

Sheriff Court, Edinburgh

5<sup>th</sup> April 2017

<https://www.scotcourts.gov.uk/search-judgments/judgment?id=0c452fa7-8980-69d2-b500-ff0000d74aa7>

Sheriff Donald Corke

The claimant had been photographed on a mobile phone by employees of the Golf Club when she had been urinating 'discretely' in sand dunes on the Golf Club's land. She was reported to the Police and initially charged with an offence under the Civic Government (Scotland) Act 1982, although the charge was later dropped (the Sheriff called it a 'frivolous criminal complaint'). She brought a claim against the Golf Club for damages for distress caused as a result of the taking of the photograph. Her claim was based on the digital photograph being personal data which was protected under the Data Protection Act 1998, and that the Golf Club had failed to register under that Act.

The Sheriff said that the claimant had been lawfully present on the land in accordance with the Land Reform (Scotland) Act 2003 and that it was lawful and in accordance with the Scottish Outdoor Access Code for her to urinate discretely where she did. He agreed that the Golf Course was in breach of the Data Protection Act 1998 because they were not registered in accordance with the Act. However, it was the taking of the photograph that had caused the claimant distress, not the fact that the Golf Club was not registered under the Act, and her claim therefore failed. However, he was very critical of the employees who had photographed the claimant in these circumstances and warned that such behaviour could lead to prosecution for a public order offence or voyeurism.