



# Legal Briefing

## Minimising exposure to winter Court action

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NATIONAL WINTER SERVICE RESEARCH GROUP

# Top Winter Service Issues

- Changing conditions overnight
- Timing of operations & speed of reaction
- Not (quite) doing what was instructed
- Decisions not to treat based on residual salt levels
- Extent of treated network – carriageways but also footways & cycleways
- Bridge decks and other 'cold spot' treatment
- **Drainage (maintenance of)**
- [interestingly, although it does come up from time to time, this list does not include instructed spread rates]

# A Robust Defence

An Authority must be able to demonstrate that:

- Their policy was well considered and reasonable;
- Their management system was capable of meeting policy, was effective and was applied consistently;
- Their decision making was reasonable and took into account all potentially pertinent information available throughout the period leading up to the collision, i.e. This includes monitoring;
- Their actions were in keeping with their decision making.

# A Reasonable Policy

- Preferably follows national guidance;
- At least takes national guidance into account and, where 'departures' occur, reasonable practices appropriate to that area are implemented instead;
- Is preferably similar to the policies of neighbouring authorities;
- Is preferably formally approved by Elected Members;
- Was preferably developed following stakeholder consultation exercises;
- Is publicised.

# Case 1

- Collision between LGV and motor car on a Principal 'A' Class road at around 07:30hrs on a week day morning in January.
- Carriageway was adversely affected by a large area of 'black ice' (glaze ice) that extended for approximately 50 metres in one traffic lane (Police photos and witness evidence)
- RSTs of down to -4C following evening showers had been predicted in forecasts received by the Authority
- Decision was taken to pre-salt following the showers using 10g/m<sup>2</sup> and then to monitor with 'Stand-To' in the morning (from 06:00hrs)

# Case 1

- This decision was consistent with the Winter Plan which only referred to increasing pre-salt spread rates when RSTs were -5C or below (or for snow).
- The data shows that the predicted timing of the showers was accurate, and that the salting operation was undertaken after the showers had ceased.
- The pertinent salting vehicle data log also shows that the collision site had been treated with 10 g/m<sup>2</sup> during the operation.
- The vehicle also had a valid calibration certificate.
- Lowest recorded overnight/morning RST was -3.9C and no reports of adverse conditions were received before the collision occurred.

# Case 1

- However, national recommended practice is to increase spread rates at these RSTs when roads are wet.

<b>TREATMENT MATRIX K (De-icer spread rates in g/m<sup>2</sup>)</b>			
<b>Good coverage, medium level of traffic, normal loss after spreading</b>			
<b>Frost or forecast frost Road Surface Temperature (RST) and Road Surface Wetness</b>	<b>Dry salting</b>	<b>Pre- wetted salting</b>	<b>Treated salting</b>
RST at or above -2°C and dry or damp road conditions	8	8	7
RST at or above -2°C and wet road conditions	8	8	7
RST below -2°C and above -5°C and dry or damp road conditions	11	11	8
RST below -2°C and above -5°C and wet road conditions	21	21	16
RST at or below -5°C and above -10°C and dry or damp road conditions	20	21	15
RST at or below -5°C and above -10°C and wet road conditions <sup>o</sup>	2 x 20	2 x 21	30

# Case 1

- It is 'obvious' that liquid water on the road surface dilutes salt solutions and lessens their effectiveness in preventing ice formation.
- This is, in fact, the most likely reason for the ice to have formed.
- When questioned by their QC in a case conference, the only answer the Authority had as to why their policy did not follow national guidance in this respect was that their experience indicated it was not necessary.
- The case was settled before going to Court.

## Case 2

- Collision between two vehicles at around 07:00hrs on a week day morning in February on a Principal Road in a Metropolitan Borough – where the road passes an area of fairly open ground (a cemetery).
- Carriageway was clearly adversely affected by a heavy hoar frost (Police photos and witness evidence)
- RSTs of down to -5C and a heavy hoar frost had been predicted in forecasts received by the Authority
- Decision was taken to pre-salt in evening and re-salt in the morning – both operations using 15g/m<sup>2</sup>
- Spreading vehicle data log records show that the site was treated at 19:48hrs and again at 06:13hrs

## Case 2

- All the depot records and staff timesheets etc relating to the operation referred to a 15g/m<sup>2</sup> spread rate (both instructed and applied)
- The route plan in the Winter Service Policy document indicated that the route required 4.5 tonnes of salt to treat at 10g/m<sup>2</sup> and 9 tonnes at 20g/m<sup>2</sup>
- This would indicate that it would require 6.75 tonnes at 15g/m<sup>2</sup>
- Salting fleet was fairly old and exhibited significant numbers of faults, as demonstrated in maintenance records
- Calibration records were incomplete

## Case 2

- Weighbridge records indicated that the vehicle had spread 3.6 tonnes in the evening operation and 4.2 tonnes in the morning operation
- Records of previous operations, undertaken during the month leading up to the date of the collision, indicated that too little, and varying, amounts of salt had been spread on this route throughout the whole of that period
- And this appeared to be the case on other routes too
- This situation had not been identified or queried by anyone at all
- Case was settled before getting to Court

## Case 3

- Single vehicle collision (motorcycle) at around 06:20hrs on a Saturday morning on an urban main road
- Area of 'black ice' (glaze ice) on carriageway
- Police photos show an area of flowing water and ice in a distinct and narrow strip, extending from a driveway of a residential property on one side of the road to a drainage gully on the opposite side (It was on a bend, so the carriageway was superelevated)
- It had been a wet period generally leading up to that date but there was no precipitation during the previous afternoon, overnight or during the morning

## Case 3

- Forecast had been for sub-zero RSTs, hoar frost and a 'risk of ice in damp or wet areas'
- Decision was to pre-treat during the evening and to patrol during the early morning
- Records show that the route was treated during the evening but that the morning patrols did not visit this location
- The driver of the pertinent salting vehicle made no record of observing any ice or water flowing across the road during the evening operation
- The amount of water involved would readily have negated the salt application in a relatively short period of time

## Case 3

- Unfortunately, there was a long history of problems of water flowing onto the highway at this location
- The Authority had been aware of the issue and, about three years prior to the collision, had undertaken improvement works on the land owned by the frontager (with their permission) to solve the problem
- These works included the construction of a gully and a pipe system to feed the water into the underground highway drainage system before it reached the highway

## Case 3

- Even more unfortunately, there were no records to indicate that, after these improvement works had been constructed, they had ever been inspected
- And the gully was not included in any routine gully cleansing schedule
- There was a deal of witness evidence stating that, prior to the collision, water had been flowing onto the road fairly continuously for about a week
- A Safety Inspection had been carried out on the morning of the day before the collision and did not record any problems at the site

## Case 3

- The case was settled on the basis that, once the Authority had carried out improvement works at the site, it then had a duty to maintain them
- It was also felt that, because the collision had occurred and that ice was present at that time, the Court would prefer the witness evidence from the locals about the water flow over the previous week or so, rather than that of the Safety Inspector and salting vehicle driver

## Case 4

- Snow and ice on a suburban street (collision was outside a Council run Home for the elderly and approx 100 yards from a Primary School) at 07:50hrs on a weekday
- It was on a 'Secondary' route
- Forecast = RSTs below 0C from 1800hrs to 1000hrs : min of -3C
- Snow around dawn, with accumulations up to 2cm

## Case 4

- The decision was taken to treat Primary and Secondary Routes in the evening at 20g/m<sup>2</sup>
- Plus a re-treatment at 20g/m<sup>2</sup> in the morning before 0700hrs
- Plus drivers remaining in the depots after the morning operation whilst conditions (snowfall) was monitored

## Case 4

- However, the pertinent road was not treated in either operation
- Secondary routes were 'planned' some time previously and consisted solely of marked up maps showing the lengths of road to be treated – not actual 'routes'
- Contractor & Client did not liaise and it is clear that parts of the Secondary network were routinely missed out in operations over a number of seasons
- This was not identified by the Client

## Case 4

- There was a history of contacts from the school and the Care Home to the authority
- However, their concerns were always answered with 'it's already on the Secondary network' etc
- After the incident, the Client side wrote a letter to the Contractor, copying in the school and care home, asking the Contractor to 'spot' salt the area 'when snow and ice were forecast' (whatever that means !)
- The Contractor actually put it onto a Primary salting route (because this was easier to manage)
- But didn't tell the Client !
- Case was settled before getting to Court



Thank you

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