

# Well-managed Highway Infrastructure: the new Code of Practice

Thursday 9th March 2017

## Highway Liabilities of the Future

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# The “New” Code In Practice

What does the Law Tell Us?

- Budget
- Decision Making
- Not on a Weekend!
- Defects
- Disclosure



# The “New” Code In Practice

## “Budget”

### Wilkinson v City of York Council [2011]:

- There must be good reason for departing from the Codes Recommendations
- Financial and/or Manpower Resource will not be sufficient reason.



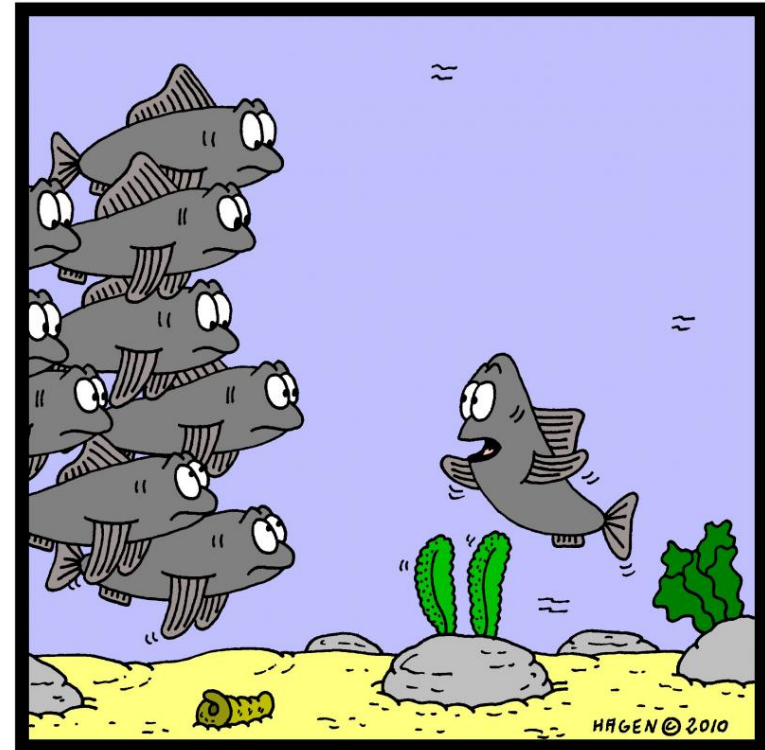
*“Section 58 was designed simply to afford a defence to a claim for damages brought against a highways authority which was able to demonstrate that it had done all that was reasonably necessary to make the road safer for users, not an authority which decided that it was preferable to allocate its resources in other directions because other needs were more pressing than doing what was reasonably required to make the road safe.”-Lord Justice Toulson*

# The “New” Code In Practice

## “Decision Making”

### Millard v Walsall MBC [2014]:

- It is open to the Highways Authority to amend its Highways Policy, providing there is sound justification for doing so.
- a distinction between a highways authority which, as a matter of policy, decided that it will not inspect highways at what are accepted to be necessary intervals because it chooses to allocate resources to other areas of its budget and a highways authority that seeks to manage its highways budget in accordance with the prevailing conditions at the time.



Guys, there's safety in numbers:  
We all have to agree on where to go next...

*"In my judgement extreme weather events of this nature are matters which can be taken into account and how the highways authority reacts to them to adapt its system is a matter that is relevant."* - HHJ Gregory

# The “New” Code In Practice

“Not on a Weekend”

## Crawley v Barnsley MBC [2017]

The council section 58 defence failed because the system suffered from the built in flaw that reports of potentially serious defects would not be evaluated at all by someone with the requisite skill out of the working hours, unless they came from members of the emergency services.



“No, we don’t have casual Fridays but we do have casual Saturdays, for employees who can’t finish their work during the regular work week.”

*“It may be perfectly reasonable to have a reduced staff and activity over a weekend, but there must be some means of responding quickly to complaints from the public of serious and dangerous defects in the road.” - Lord Justice Irwin*

# The “New” Code In Practice

## “Defects”

Three cases should be considered when determining whether or not a defect is dangerous and in need of urgent repair:

### **Mills v Barnsley MBC [1992]**

"This branch of law of tort ought to represent a sensible balance or compromise between private and public interest"-Lord Justice Steyn

### **Little v Liverpool Corporation [1968]**

"Uneven surfaces and difference in levels between flag stones of about an inch may cause a pedestrian temporarily off-balance to trip and stumble, but such characteristics have to be accepted, a highway is not to be criticised by the standards of a bowling green"-Mr Justice Cumming-Bruce

### **James v Preseli Pembrokeshire District Council [1992]**

"In drawing the inference of dangerousness the court must not set too high a standard"



# The “New” Code In Practice

## “Disclosure”

The New Code of Practice may result in a significant increase in the volume of documentation required to defend a claim:

- Published Highways Policy
- Inspection records
- Evidence of decision making
- Training documented
- Call Centre – defect reporting lines
- Documentation on contractors



# The “New” Code In Practice

“The future”

- Planning & regular review
- Evidence based decision making
- Technology
- Document and Record all decisions
- Collaboration
- Training
- What is a Defect?





# Thank You

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