

Report to CABINET

Highway Safety Inspection Policy

Portfolio Holder:

Councillor Fida Hussain, Cabinet Member for Environmental Services

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Reason for Decision

To approve a new Highways Safety Inspection Policy

Executive Summary

The Highway Safety Inspection Policy details how Oldham Council will carry out proactive and reactive safety inspections to ensure that the Council can meet its statutory duty to maintain the highway. This policy also sets out how Oldham will apply the principles of the national code of practice and Greater Manchester Highway Inspection Framework to its safety inspection regime.

Recommendations

To approve the new Highway Safety Inspection Policy

Highway Safety Inspection Policy

1 Background

- 1.1 The main purpose of highway maintenance is to maintain the highway network for the safe and convenient movement of people, traffic and goods. However, even the best maintained roads will still be subject to deterioration.
- 1.2 Section 41 of the Highways Act 1980 imposes a duty upon the Highway Authority (Oldham Council) to maintain the adopted highway network (i.e. those highways maintainable at public expense) in such a way so as to ensure the safe passage of all road users, and almost all claims against the Authority relate to an alleged breach of this duty.
- 1.3 Section 58 of the Act provides a statutory defence against such claims, on the grounds that the Authority has taken such care as in all circumstances was reasonably practicable to ensure that the highway in question was safe for highway users.
- 1.4 In effect this requires the Highway Authority to:
 - Consider what constitutes a danger to road users.
 - To regularly inspect the highway in search of such defects, and
 - To repair such defects in a timely fashion.
- 1.5 In order to comply with our duty of care the Council carries out a variety of safety inspections specifically designed to identify those defects which represent, in varying degrees, a danger to users of the highway.
- 1.6 In October 2016 the document “Well-managed Highway Infrastructure: A Code of Practice” (WmHI) was published to replace the previous Code of Practice, “Well Maintained Highways” (WMH). Authorities have until October 2018 to adopt the new Code of Practice.
- 1.7 WMH recommended best practice with regards highways maintenance whereas the new Code of Practice recommends that authorities adopt a risk-based approach to highway maintenance and to work consistently with neighbouring authorities.

2 Current Position

- 2.1 The existing policy has been in place since 2013 and it is considered appropriate to now refresh this document.
 - 2.2 A Greater Manchester Highway Inspection Framework (GMHIF – Appendix A) has been developed by the Greater Manchester Combined Authority (GMCA) to ensure that each authority’s procedures for inspection and repair will comply with WmHI and ensure that they are consistent across the Greater Manchester area. The ten Greater Manchester (GM) authorities are working towards implementing the GMHIF from April 2018.
 - 2.3 This will reduce the potential for accidents to occur, whilst also providing the evidence that safe systems are in place in the event that an accident claim is made against the Council.
 - 2.4 Oldham’s new Highway Safety Inspection Policy deals specifically with safety inspections and repairs, and it details how Oldham Council’s approach will be consistent with the GMHIF and consequently our neighbouring authorities across GM.
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2.5 Highway Safety Inspections are currently carried out as part of the Unity Partnership contract. Any defects identified on these inspections are repaired by the Council's in-house Highways Operations team.

3 **Options/Alternatives**

3.1 **Option 1**

Approve the new Highway Safety Inspection Policy.

Advantages to approving the new policy:

- Compliance with WmHI (national Code of Practice)
- Collaborative working with neighbouring GM authorities
- Risk assessed approach to safety inspections

Disadvantages:

- Reduction in inspection frequencies for some streets
- Additional pressures on Highway Operations budget
- Increased risk of kerb repairs not being completed on time
- Some defects that may have been repaired under the current policy may now not get repaired under the new policy
- Possible increased demand on Unity Workplan budget

Option 2

Retain the existing policy published in 2013

Advantages

- Current working practices retained
- No additional pressures on existing budgets

Disadvantages:

- Not compliant with principles of WmHI
- Working independently from the rest of GM
- Different repair criteria from the rest of GM
- May harm the Council's ability to defend claims in court

4 **Preferred Option**

4.1 The preferred option is Option 1 to approve the new policy.

4.2 Adopting the new policy will ensure that we are working towards the same standards as the rest of GM. Claims hearings are likely to be held at courts across GM and any deviation in policy that is not consistent with GMHIF are likely to harm the Council's ability to defend claims.

5 **Consultation**

5.1 Internally the proposed policy has been developed in conjunction with:

- i) Unity Partnership (Highways)
- ii) Highways Operations
- iii) Risk and Insurance
- iv) Oldham Council Highways Client

6 Financial Implications

Revenue

- 6.1 The initial exercise to categorize Oldham's Carriageways, Footpaths and Cycle Ways according to risk is cost neutral and will not result in an additional financial outlay.
- 6.2 Adopting the proposed inspection policy is likely to result in additional future cost pressures. These pressures will impact on the Highways Operations and the Unity Workplan Medium Term Financial Strategy on cost centres 40350 and 40910 respectively. This was referred to in paragraph 3.1 above. It is anticipated that any additional costs will be absorbed within existing budget estimates. However, the situation will be carefully monitored as part of the annual budget monitoring timetable.
- 6.3 Any resulting cost increase is likely to be greater in the first year of operation due to the need to perform additional works associated with meeting the new inspection criteria. Costs, thereafter, are likely to moderate significantly as inspection work reverts to a 'business as usual' approach. The precise value of any increased cost is not known at this time but is not expected to be significant in terms of the Council's delivery of its Highway function.
- 6.4 If the existing inspection policy were retained, however, there is a risk that the number and value of insurance payouts will increase (due to a lowering of the claim repudiation rate). The inherent risk associated with insurance payouts is that they have the potential to be open ended in cost terms.
- 6.5 There is adequate funding available within the Council's Medium Term Financial Strategy to fund the cost of works associated with adopting this new inspection policy.

Capital

- 6.6 Any capital investment on the overall road network should result in an improvement in the overall council repudiation rates relating to insurance. Annual statistics will have to be carefully monitored within the insurance section to determine the overall impact as the year progresses. (Sadrul Alam/Nigel Howard).

7 Legal Services Comments

- 7.1 Under section 58 of the Highways Act 1980, in an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic. For the purposes of a defence under section 58, the court shall in particular have regard to the character of the highway, and the traffic which was reasonably to be expected to use it, the standard of maintenance appropriate for a highway of that character and used by such traffic, the state of repair in which a reasonable person would have expected to find the highway, whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway and where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed.
- 7.2 The WmHI Code of Practice is not a statutory document but it provides highway authorities with guidance on highways management. Compliance with the Code and the Council's revised Highway Safety Inspection Policy will be a relevant consideration in
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assisting the Council in establishing the defence under section 58 of the Highways Act against claims for loss or personal injury or of legal action by those seeking to establish non-compliance by the Council with its highway maintenance duties. (A Evans)

8. Co-operative Agenda

8.1 Highway maintenance helps the Council achieve its corporate priorities:

- By carrying out highway inspections and repairs we can improve the appearance of the environment resulting in safer communities. Residents are also encouraged to report any defects that may appear between inspections
- Adopting the new policy will improve service delivery by increasing inspection frequencies in high risk locations reducing them where the risk is low. This ensures that resources will be targeted in the areas most in need of repair, ensuring best value for money.

9 Human Resources Comments

9.1 N/A

10 Risk Assessments

It is recognised that it will not be always possible to inspect a highway at exactly the same time of each month that it is due for inspection, so some flexibility will be required regarding inspection dates. Inspections will be scheduled to be completed as close as possible to their due inspection date, taking into account availability of resources, weekends / bank holidays and periods of adverse weather. In these instances the maximum tolerances for each inspection will be determined by the inspection frequency as shown in the following table.

Inspection Frequency	Tolerance
1 month	± 1 week (7 days)
3 months	± 2 weeks (14 days)
6 months	± 3 weeks (21 days)
1 year	± 4 weeks (28 days)
18 months	± 4 weeks (28 days)

The expectation is that all inspections will be completed within the tolerances allowed. Where an inspection is completed outside of the tolerances then there is a risk that the Council will not be able to defend claims. Where performance drops below 92.5% of inspections completed within tolerance, there will be contractual financial implications for the partner.

Adopting the recommendations in the Greater Manchester Framework and providing a risk based approach should reduce the opportunity for legal challenge over the safety of the highway network will help achieve a consistency in claims decisions across Greater Manchester. If the changes identified lead to an increase in inspections, and repairs which are not carried out on time, this could result in a reduction of the present repudiations rate. The numbers and details of claims, inspections and repairs will need to be closely monitored to ensure that there are adverse financial implications for the Council. (Victoria Gallacher)

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- 11 **IT Implications**
- 11.1 No IT Implications associated with this policy paper (Chris Petrie)
- 12 **Property Implications**
- 12.1 N/A
- 13 **Procurement Implications**
- 13.1 13.1 All Council subsequent sourcing activity arising from this policy outcome will be procured in accordance with the Council’s Contract Procedure Rules. This will include satisfying value for money principles and with due regard to social, economic and environmental factors.
- 13.2 The new policy needs to be incorporated as part of the Terms & Conditions of any contractors that the Authority engages with, including those of Unity Partnership Limited. (Darren Judge)
- 14 **Environmental and Health & Safety Implications**
- 14.1 The introduction and adoption of the Highway Safety Inspection Policy will not have a negative impact on the local environment or air quality. (Justine Addy)
In addition to this policy, it must be ensured that suitable and sufficient risk assessments are in place relating to the role of the highways inspectors. The risk assessment should identify suitable controls to ensure the safety of a highways inspector and these controls must be implemented. (Laura Smith)
- 15 **Equality, community cohesion and crime implications**
- 15.1 A poorly maintained highway network may become a barrier to effective movement, deterring some people from making the journeys that they might otherwise have made. This, in turn, can reduce the level of natural surveillance which is known to be an effective deterrent to both crime and the fear of crime.
- 16 **Equality Impact Assessment Completed?**
- 16.1 N/A
- 17 **Key Decision**
- 17.1 Yes
- 18 **Key Decision Reference**
- 18.1 ENVS-01-18
- 19 **Background Papers**
- 19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :
Well-managed Highways Infrastructure – A Code of Practice
<http://www.ukroadsliaisongroup.org/en/utilities/document-summary.cfm?docid=4F93BA10-D3B0-4222-827A8C48401B26AC>
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20 **Appendices**

- 20.1 Appendix A – Highway Safety Inspection Policy
 Appendix B – Greater Manchester Highway Inspection Framework