

[REDACTED]
Interim Chief Executive



Our Ref PJG/LG
Your Ref
Date 11 October 2017
Please ask for [REDACTED]
Direct Line 0161 253 5102
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HM Coroners Court
Coroner's Service,
Phoenix Centre
L/Cpl Stephen Shaw MC Way
Heywood
OL10 1LR

Sent via email to [REDACTED]

Dear Sirs

Inquest touching the death of Roger Hamer (deceased)

A Regulation 28 Report to Prevent Future Deaths was sent to Bury Council dated 21st August 2017 following the investigation into the death of Roger Hamer which concluded at the end of the inquest on 11th August 2017.

The response set out below seeks to address the Coroner's concerns raised in Box 5 as follows:

- 1) Bury Council, as Highway Authority, ensured that their procedures and systems of inspection were in accordance with best practice guidance as set out within the Well Maintained Highways – A Code of Practice for Highway Maintenance Management 2009.

Highway Inspectors during the course of safety inspections and when responding to specific complaints are trained and instructed to undertake an on-site risk based assessment of any safety danger which may give rise to a risk of injury.

All identified safety defects giving rise to a real source of danger to reasonable users of the highway would be recorded by the highway inspector on to a handheld device which identifies the nature, location and type of defect to enable the repair team to easily identify the repair when an order is raised.

For operational and safety issues not all safety defects identified in the carriageway would be measured as this in itself would raise risk management safety concerns for the highway inspector who may be faced with oncoming traffic. Highway inspectors using their experience of identifying safety defects would use their on-site judgment in assessing any safety defect and order a time response repair accordingly.

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Due to the technology requirements which would be required and the storage facilities for data, photographs of defects have not previously been taken. There is no specific guidance with the Code of Practice that this was deemed to be good practice or a requirement.

The Jury in their narrative recorded that accurate measurements of each defect and use of spray paint and pictorial evidence are only used for insurance claims and not all defects identified. That is the case in insurance claims in order to secure and preserve available evidence which are requirements for the purposes of establishing the nature of the defect and where measurements of defects are helpful in order to assess whether a particular defect would be deemed to be a real source of danger as a matter of law.

All safety defects identified in the footway are measured if borderline with industry standard intervention levels of safety defects or defects may be visibly obvious to represent a danger without the need to measure a defect during safety inspections. Appropriate repair orders are raised to allow the repair teams to respond to remedy and repair safety defects within timescales which are based on and dependent on the level of risk posed by a particular safety defect, given its location and use etc.

Each Highway inspector is assigned an area in which they operate and carry out safety inspections to scheduled inspections or in response to specific enquiries from members of the public.

Bury New Road, Ramsbottom, was subject to regular monthly safety inspections which was in accordance with the recommendation of the Code of Practice. Given the regular frequency of safety inspections being undertaken on this highway, the Highway Inspector was essentially monitoring and assessing the condition of the highway in order to ensure that there were no safety defects which gave rise to real source of danger.

It is not accepted that the lack of images or measurements of the pothole restricted the Highway Authority's ability to effectively supervise and monitor the highway inspector or did not allow it to comply with its statutory duty under the Highway Act 1980 to ensure that they had taken such care as in all the circumstances was reasonably required to secure that part of the highway was not dangerous for traffic.

Due to investment in the highway maintenance procedures and IT systems, highway inspectors now routinely take photographs of defects giving rise to a real source of danger. Repair crews also take photographs prior to and post repair.

- 2) The Highway Authority does not paint markings around potholes especially in the carriageway. As identified above this is for reasons of safety of the highway inspector who would otherwise place himself in a position of danger caused by traffic.

Paint markings are not used to highlight defects to users of the highway. If they were historically used then this would have been to allow a pothole raised for repair to be identified by the repair team. The need to mark defects is no longer

necessary given two factors, namely the use of handheld GPS devices which co-ordinates the exact location of the defect requiring repair and the repair response time when safety defects are identified using the risk based matrix for repair.

Given the speed at which vehicular traffic uses Bury New Road, Ramsbottom, the Highway Authority contend that markings alone would not have been sufficient to highlight the presence of the pothole to Mr Hamer.

If a safety defect is identified to represent an imminent danger to users then Highway Inspector can order emergency repairs requiring repairs within 2 hours or 24 hours dependent on the nature of the risk.

- 3) GMP investigates highway incidents and reports these to Bury Council by the STATS 19 process. Any incidents linked to road defects (either condition or layout) are acted upon as soon as possible.

The Council have acknowledged the need for a formal procedure to be implemented for a follow up investigation following such notifications of incidents from the GMP. It is proposed to implement a procedure by March 2018.

- 4) The DFT commissioned a report to review the current Code of Practice. The UK Roads Liason Group published "Well-Managed Highway Infrastructure – A Code of Practice" in October 2016. In addition, the Institute of Highway Engineers provided guidance on risk and liability within the highways sector in a publication "Well Managed Highways Liability Risk" in March 2017.

The emphasis and recommendations of the new guidance Code is for Highway Authorities to implement local levels of service through risk based assessment. There is a change from reliance on specific guidance and recommendations to a risk based approach determined by each Highway Authority which involves appropriate analysis, development and requires approval through the executive process.

Highway Authorities are also required to collaborate with neighbouring authorities in determining levels of service across boundaries.

The Code is not statutory but guidance only, based on Highway Authorities own legal interpretation, risks, needs and priorities.

The Risk based approach of the "new code" will consider all road users including the varying types of users including cyclists.

There is a recommendation that all defects observed that provide a risk to users should be recorded and the level of response shall be based on the Highway Inspector applying a risk based matrix to assess the likely impact of a safety defect and the probability/likelihood of interaction with highway users. This is an on-site assessment made by the Highway Inspector based on various factors including location, the classification of the highway, the level of traffic that uses or likely to use a highway where a safety defect is identified. The emphasis is on local discretion.

Bury Council in collaboration with the other 9 Greater Manchester Highway Authorities, are seeking to agree an "Overarching Framework of Agreed Principles" which would provide consistency of approach across the boundaries on the following matters: frequency and classification of highways, the risk based approach to safety inspections, the risk based approach to repair timescales, the investigatory levels which would trigger the Highway inspector to apply the risk based matrix for assessing the risk.

Given the basis of the risk based approach for safety inspections, Highway Inspectors would have on-site discretion to identify safety defects which do not meet the investigatory level, applying the risk based criteria and order repairs where necessary taking into account various factors including pedestrian volume, traffic sensitive routes, accident data, character and traffic use and location and positioning of the safety defect.

Although some general guidance can be given on the likely risk associated with particular defects, on-site judgment will need to take into account of particular circumstances.

All Highway Inspectors are scheduled to undergo specific training and competency checks to ensure that they understand how to undertake their role under the new Code of Practice.

The Highway Authority aim is to ensure consistency of approach in application of both the current and the new Code of Practice. The new risk based approach and specific training of inspectors on their role in accordance with the WMHI Code of Practice should allow the Highway Authority to apply a consistent risk based approach where the reasons for taking specific decisions will be evidenced. There will be regular evidence based reviews of the new Code of Practice and monitoring.

Safety inspections are designed to identify all defects likely to create danger or serious inconvenience to users of the highway network. The risk of danger is assessed on site and the defect identified with an appropriate priority response.

Long term planned maintenance schemes in conjunction with safety inspections are undertaken by means of condition surveys, which are primarily intended to identify deficiencies which if untreated, are likely to adversely affect long term performance, serviceability and safety.

It is recognised that the loss of life is a tragedy in any circumstances and the Council are focused on ensuring that there are lessons learnt from such incidents and that their highway network is as safe as reasonably practicable for road users by managing the presence of any safety defects on the highway.

Yours faithfully


Interim Chief Executive