



Krestina Hayes  
HM Coroner's Court  
Station Approach  
Woking  
Surrey  
GU22 7AP

Woodhatch Place  
11 Cockshot Hill  
Woodhatch  
Reigate  
RH2 8EF

3<sup>rd</sup> July 2024

**Re: Bass 28 Report - Action to Prevent Future Deaths – John William BASS**

Dear Assistant Coroner Hayes,

Further to the issuing of a Prevention of Future Deaths (PFD) Report on 8 May 2024, please find below Surrey County Council's (SCC) response.

At the outset, Surrey County Council wishes to pass on our condolences to the Bass family following this tragic incident.

We note that the Inquest took place in the Spring of 2024 and confirm that SCC provided a witness statement to the Assistant Coroner detailing the Inspection history of the site, however SCC were not classed as an "interested party" at the inquest and so were not invited to attend the inquest to give evidence.

SCC understands that the two matters of concern which the Assistant Coroner would like SCC to consider are set out within Section 5 of the PFD Report:

1. There is a risk to future pavement users if clear guidance is not provided to inspectors to identify safety concerns in terms of vegetation which encroaches on pavements
2. The current inspection regime whereby the pavement is inspected yearly needs to be reviewed based on the evidence provided at the inquest by the family of Mr Bass that the pavement is used frequently by cyclists

**Risk to future pavement users**

**Background – Highway Authority responsibilities for pavements**

SCC understands that at the time of the accident Mr Bass was cycling on the pavement of the A217 Brighton Road Tadworth in a southbound direction north of Vicarage Close.

Section 72 of the Highways Act 1835 and Rule 64 of the Highway Code state that pavements are for the use of pedestrians not cyclists and accordingly, SCC's Highway Safety Inspection policy only considers the safety of pavements with regards to pedestrians and not cyclists.

Further to the receipt of the PFD report, SCC requested and received from the Coroners Service a copy of the Forensic Collision Report prepared for the Inquest and photos taken for the report. The photos show the mud/grass, twigs and acorns described in Section 4 of the PFD report. Highway case law from [Rollinnson -v- Dudley Metropolitan Borough Council \(judiciary.uk\)](http://judiciary.uk) found that the duty upon Highway Authorities under s.41(1) of the Highways Act 1981 to maintain did not extend to a duty to remove surface-lying material, obstructions or spillages, whether or not they resulted in danger. The Court of Appeal upheld the Judge's decision. The Judge in the Rollinson vs Dudley Metropolitan Borough Council case described the conclusion as inescapable as the law had been established and further stated in his judgement that "The duty imposed by s.41 is a duty to maintain the fabric of the road, including its substructure such as its drains. The removal of surface-lying material which creates a danger is not within the section."

### **National Guidance on types of surveys**

Well Managed Highway Infrastructure – A code of practice, provides guidance to local authorities on developing a risk-based approach to maintenance of highway infrastructure. The Code identifies a number of different types of inspections and surveys that Highway Authorities may carry out which are summarised below;

1. Safety inspections are designed to identify all defects likely to create danger or serious inconvenience to users of the network or the wider community. The risk of danger is assessed on site and the defect identified with an appropriate priority response
2. Service inspections mainly comprise detailed inspections tailored to the requirements of particular highway assets and elements to ensure that they meet requirements for serviceability. The scale and scope of these inspections will be determined by the authority's approach to asset management
3. Condition surveys are primarily intended to identify deficiencies which, if untreated, are likely to adversely affect long term performance, serviceability and safety.
4. Reports from members of the public provide a further source of information on the condition of all aspects of the highway network.

Safety Inspections carried out by Highway Safety Inspectors are regular focused inspections where any immediate risks are identified and rectified within a limited time period of either 2 hours, 5 working days or 20 working days depending on the Inspectors' assessment of severity and risk which takes account of considerations such as the location and volume of use. It should be noted that the time periods quoted are for SCC, other authorities may use different time periods for rectification of defects. This service ensures that our Highway Safety Inspection resources are deployed to the highest risk locations and situations, however as shown above, other methods are employed to deal with less immediate risks with longer timescales for resolutions.

Issues with regards to debris on the carriageway would generally be dealt with under the fourth item above, in response to reports from members of the public. The resolution to this type of

enquiry could either be that SCC will arrange clearance of the debris or they may liaise with the local borough council who provide street cleansing activities.

### **Guidance to Inspectors**

As stated in our witness statement, the pavement on the A217 where the incident occurred, had been inspected by foot on 22<sup>nd</sup> November 2022, just prior to the accident and no safety defects meeting our intervention level were identified.

Within SCC's Highway Safety Inspection standards and procedures policy, there is a "Trees and Vegetation" defect category which relates to "Fallen debris causing obstruction to passage or vision". The inspection carried out on 22/11/22 did not identify any defect under this category because the Highway Safety Inspection Team interpret the policy reference to 'fallen debris' as being an instance of an individual substantial tree, branch or hedge that has recently fallen and causing a definitive obstruction.

Instances such as the situation on the pavements of the A217 in November/December 2022 where there has been a narrowing of the footway due to seasonal vegetation growth/detritus, are considered as street cleansing or general maintenance issues rather than as "safety defects" which require an immediate response. These situations are generally identified through reports from the public.

Where members of the public report issues to us, a Highways Customer Officer will attend and may report issues such as this as "maintenance issues" which are passed on to our maintenance team to carry out routine maintenance. This location was reported by a member of the public in January 2023 and following a review by the Highways Customer Officer, work was requested to remove debris and cut any encroaching vegetation overhanging the footway. This is the work which was carried out in January 2023, as mentioned during the Inquest.

SCC believes that our current inspection processes are in line with the legal requirements and with the risk-based approach encouraged by national guidance. Following the receipt of the Prevention of Future Deaths report however, we have reminded our inspectors to consider the risk that narrowing/obstruction situations may pose, particularly to vulnerable users of pavements, such as wheelchair users or those with push chairs etc and to request maintenance works where needed, or to raise as an immediate risk for a quicker response where they consider such a risk to be very serious or life threatening.

### **The current inspection regime**

The footway Hierarchy, which determines the inspection frequency, is established through a data led exercise and footways (pavements) are assessed according to the Council's Hierarchy Definition Policy which can be found [here](#).

As outlined in the policy document the datasets used to determine hierarchy include shops, businesses, transport hubs, schools, industrial areas and other community facilities. Once the data exercise has been undertaken, each area is reviewed by local engineers to sense

check the outcomes of the data exercise and to recommend any amendments based on their local knowledge.

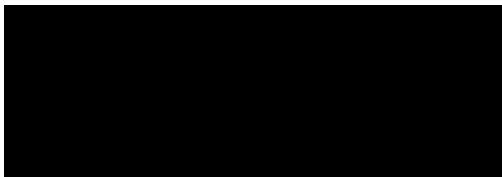
Footways have four levels of hierarchy. The highest is a primary walking route (Category 1) which is inspected monthly, then a secondary walking route (Category 2) which is inspected every three months, link footways (Category 3) which are inspected every 6 months and finally local access footways (Category 4) which are inspected annually.


The footway running along Brighton Road has been assigned as a Category 4 (link footway) in our policy because it does not meet any of the criteria for a higher category. For this footway to have its hierarchy increased it would have to provide access to 5+ shops in the local vicinity, which it does not, and there are no other drivers to warrant it being recategorised as a Category 3 footway; namely – Linking local access footways, small retail shopping outlets typically +5 shops, large schools and Industrial outlets, +500 pupils or equivalent pedestrian movements.

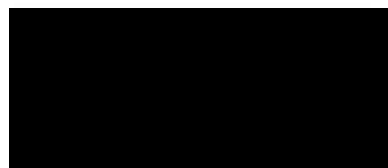
SCC considers the footway hierarchy for this section of the A217 Brighton Road to have been correctly assessed as Category 4 which is subject to an annual walked inspection, however we will respond to any reports of issues from the public at any point during the year.

SCC hopes that the above demonstrates that SCC is managing our pavements in line with our legal responsibilities and national guidance. As described, we have mechanisms in place to respond to issues with debris on pavements outside of our Highway Safety Inspection process, and we have given due consideration to the recommendations made by providing further reminders to our Inspection Team around consideration of risk to vulnerable users posed by debris on pavements.

Yours sincerely,



  
Interim Head of Paid Service



  
Director of Highways and Transport