

MAYOR & CABINET		
Report Title	New Code of Practice for Well Managed Highway Infrastructure	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Executive Director for Resources & Regeneration (Highways and Transport)	
Class	Part 1	Date: 31 October 2018

1. Summary

- 1.1 The *Well Managed Highway Infrastructure: A Code of Practice (2016)*, (the New Code), supercedes three previous codes the “Well-maintained Highways”, “Well-lit Highways” and “Management of Highway Structures”. The Code no longer relies upon specific guidance and recommendations as in the previous codes but now adopts a risk based approach determined by each Highway Authority. Whilst published on 28 October 2016 it allowed a period of two years from the date of publication to enable Highway Authorities to implement the new approach. Lewisham has updated its highway maintenance management policies to adopt, as far as reasonably practicable, the recommendations within the Code in readiness for October 2018.
- 1.2 The Lewisham practices that have been updated include the highway management network hierarchy, which considers road usage and functionality and therefore reflects the level of risk across the network. In turn this has informed an update to the Council’s Highway Maintenance Code of Practice Manual, to a risk based approach to managing defects on the highway.
- 1.3 The adoption of the updated Highway Maintenance Code of Practice is cost neutral and is focused on reducing risk of personal injury and resulting personal impact and thus the impact of third party liability claims.
- 1.4 The previous code of practice was deemed to be best practice by the courts and by adopting such practices the Council has been able to defend claims against it by demonstrating a statutory defence (under S58 of the Highways Act 1980). Adoption of the New code will ensure that the Council can continue to do so.

2. Purpose of the Report

- 2.1 To appraise Mayor and Cabinet of the changes to the Authority's highway network hierarchy and highway inspection regime as recommended in the new Code

3. Recommendations

- 3.1 The Mayor is recommended to approve alignment of Lewisham's working practices to the Well Managed Highway Infrastructure: A Code of Practice (2016)

4. Policy Context

- 4.1 The Council, as Highway Authority, has a duty under Section 41 of the Highways Act 1980, to maintain the highway in a safe condition.
- 4.2 The Council's vision is to work together to 'make Lewisham the best place in London to live, work and learn'. The vision is set out in 'Shaping our future - Lewisham's Sustainable Community Strategy 2008-20' and the contents of this report are consistent with the Council's policy framework with particular relevance to the many economic, environmental and social improvement that rely on a modern transport system.
- 4.3 The goals, objectives, and outcomes for the Council's strategies for highways and transport reflect local policies and priorities and are also aligned with the Council's Corporate Priorities. In particular it impacts on the following Priorities of the Sustainable Community Strategy:
- clean, green and liveable
 - safety, security and a visible presence
 - strengthening the local economy
 - active, healthy citizens

5. Background

- 5.1 On 28th October 2018 the new Code becomes the primary reference for courts in highway liability claims.
- 5.2 The Code provides guidance to highway authorities in ensuring it is meeting its duty to maintain the highway as required by the Highways Act 1980.
- 5.3 The Code suggests that it should be used in conjunction with the UKRLG Highway Infrastructure Asset Management Guidance as the starting point against which to develop, review and formally approve highway infrastructure maintenance policy and to identify and formally approve the nature and extent

of any variations. The New Code intends that Authorities will develop their own levels of service and provides guidance to highway authorities to consider when developing their approach in accordance with local needs priorities and affordability.

- 5.4 Lewisham has a Code of Practice Manual outlining the authority's approach to highway maintenance, safety inspections and other highway related activity that ensures appropriate compliance with previous highway focused codes of Practice.
- 5.5 Lewisham has now updated its Code of Practice approach to align with the new Code (October 2018) and ensure risk is managed appropriately.

6. The New Code of Practice

- 6.1 The Well Managed Highway Infrastructure is a national, non-statutory code of practice which sets out a series of general principles for highway maintenance. It is endorsed and recommended by the Department for Transport and its production has been overseen by the UK Roads Liaison Group (UKRLG) and its Roads, Bridges and Lighting Boards. However, this new Code of Practice is less prescriptive and instead promotes the establishment of local levels of service through risk-based assessments.
- 6.2 This approach enables authorities to make their own decisions on how to ensure it is meeting its statutory duty under the Highways Act 1980 where this provides a duty to maintain highway maintainable at public expense.
- 6.3 The new Code removes all recommendations for frequency of safety inspections, defect sizing and assessing general asset condition instead promoting an integrated risk-based approach towards maintenance, including priorities, inspections and responses.
- 6.4 The new code encourages collaboration and co-ordination across authority boundaries. To assist with this The London Technical Advisory Group (LoTAG) proposed a highway network assessment criteria using road use and not road class, as per the previous code. This assessment method has been adopted across London.
- 6.5 Lewisham has assessed its network using the LoTAG criteria and worked with neighbouring authorities to ensure cross boundary consistency. The results have been used to set new road inspection frequencies.
- 6.6 Road use across the Borough will continue to evolve and network use will be subject to future reviews.

- 6.7 Highway maintenance practitioners must now make maintenance decisions assessing the probability of an accident. The decision to fix a highway defect is now based on the severity of the defect coupled with the roads position in the network hierarchy rather than just the defect dimensions.

7. Update to the Asset Management Strategy

- 7.1 Lewisham developed an Asset Management Strategy (AMS) in 2015. This strategy includes a suite of documents on Policy, Strategy and Code of Practice Manual. These form the strategic decision making process (asset need) through to operational practice to ensure Lewisham is delivering a safe highway network.
- 7.2 The Asset Management Strategy is updated periodically and performance monitored to help inform decisions and funding need along with identifying risk of dangerous defects occurring.
- 7.3 The AMS also responds to a number of the recommendations with the Code and as such provides a vital link between decision making and actions on repairing defects. The AMS and associated documents will be disclosable documents in claim situations. In adopting the new Code we have reflected and improved on the following:
- Identified key elements of the Asset Management Strategy to be updated
 - Improved highway network management hierarchy;
 - Reviewed Safety Inspection Manual (Appendix A), and;
 - Identified further areas for improvement.

8. Next steps

- 8.1 Following these key changes to Lewisham's working practices, to further align with the new Well Maintained Highway Infrastructure Code of Practice, a broader review of the Asset Management Strategy will now be undertaken across the full suite of component documents to maximise alignment with the 36 recommendations set out in the new code.

9. Legal Implications

- 9.1 The Council as the highway authority for highways maintainable at the public expense has a statutory duty to maintain those highways under the Highways Act 1980. In particular a highway authority is under a duty to ensure as far as is reasonable practicable that safe passage along a highway is not endangered by snow or ice.
- 9.2 The term maintenance includes repair. Although no standard of repair is prescribed in the Act, case law has established the nature of the standard as

being that the highway has to be maintained in such a state of repair that is reasonably passable for the ordinary traffic of the neighbourhood without danger caused by its physical condition. Section 58 of the Highway Act 1980 prescribes, in addition to any other statutory or common law defence available, a special defence for highway authorities faced with an action for damages arising from a failure to maintain a highway maintainable at the public expense. The authority has a defence in such proceedings if it is able to prove that it 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. The burden of proof is therefore on the authority to establish that it has taken such reasonable steps. The Section then goes on to specify a number of matters to which the court must have regard in deciding whether or not the authority has established its defence. Although the court must have regard to those specified matters, it may also have regard to any other relevant matters. Demonstrating that the Council maintains the public highway in accordance with a practice that is in accordance with the New Code will therefore support the Council in sustaining such a defence.

- 9.3 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.4 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 9.5 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.
- 9.6 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.7 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

9.8 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

9.9 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

9.10 <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

10. Financial Implications

10.1 No additional maintenance costs are anticipated as a result of the new working practices. Spend will, however, be monitored to check once implemented.

10.2 In that last three years Lewisham have averaged 100 highway insurance claims per year with a repudiation rate of 78% and an average liability pay out of £45,635 p.a.

10.3 Lewisham would also see a possibility of not being able to defend serious incidents of personal injury too. This may result in increased insurance premiums or excess levels to an unaffordable level. A recent out of court settlement for a single personal injury in a different local authority was £1.8m.

11. Environmental Implications

11.1 None

12. Equalities Implications

12.1 The Equality Act 2010 became law in October 2010. The Act aims to streamline all previous anti-discrimination laws within a Single Act. The new public sector Equality Duty, which is part of the Equality Act 2010, came into effect on the 5 April 2011.

12.2 The Council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the Council's work on equalities and help ensure compliance with the Equality Act 2010.

12.3 The new Code of Practice and subsequent review of Lewisham's documentation relate to the maintenance of physical assets on the basis of risk, and therefore does not give rise to any significant equalities implications.

13. Crime and Disorder Implications

13.1 There are no specific crime and disorder implications resulting from this contract strategy report.

14. Background documents and originator

Short Title Document	Date	File Location	Contact Officer	Exempt
Asset Management Strategy	22 April 2015	4 th Floor, Laurence House, Catford, SE6 4RU	Geoff Tice	

If you have any queries on this report, please contact Geoff Tice Tel No. 0208 314 2246, Transport, 4th Floor, Laurence House, Catford, SE6 4RU

Appendix A – Safety Inspection Manual