



**HIGHWAY AUTHORITIES & UTILITIES COMMITTEE**

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## **Introduction**

HAUC(UK) has been asked jointly by Hertfordshire County Council (HCC) and Three Valleys Water (TVW), to constitute a panel comprising both neutral utility and authority members to arbitrate on three separate disputed cases which have given rise to invoices from HCC to TVW.

The deliberations and judgement of the panel on the three cases follows.

## **Case 1 - Eastbury Road, Oxhey**

### **1. Facts**

1.1 A portable traffic signal and some associated equipment was dismantled by person or persons unknown. The situation was observed by a HCC NRSWA inspector who happened to be in the vicinity. The inspector considered the site to be dangerous to road users.

1.2 He called out a HCC's Term Contractors to make the site safe. He then contacted the undertaker responsible for the site – TVW. There was a subsequent conversation between the TVW contractor Renteq and the Inspector. Renteq indicated that they would attend site within two hours.

1.3 Some 40 minutes later HCC's Term Contractor arrived on site and made safe by dismantling all the guarding equipment and returning the road to full usage. It is assumed that this solution was possible because there were no works in progress which required guarding.

### **2. HCC Submission**

2.1 HCC argue in their submission that the level of danger at the site was of such magnitude that immediate action was called for.

### **3. TVW Submission**

3.1 TVW argue that the Inspections Code of Practice makes provision for a 2 hour response to be offered to undertakers in the prevailing circumstances.

### **4. Panel Decision**

4.1 There is a general duty of care imposed on authorities in relation to site safety, by the provisions of s.65 NRSWA. This duty is emphasised by the leading paragraph in Chapter 5 of the Code of Practice for Inspections. This in effect means that there are three categories of danger ; 'Lower Risk', 'Higher Risk' and 'Unacceptable Risk'

4.2 The restricted length of carriageway presumably only allowed one vehicle to pass safely and without the control of the portable signal two vehicles might enter the area simultaneously from either end. This potentially dangerous situation was exacerbated by the fact that events occurred during the hours of darkness.

4.3 Thus the Panel are of the view that the risk was unacceptable and HCC were justified in taking the course of action which removed any danger in the shortest possible time, and that consequently the invoice has been properly raised.

### **5. Comment**

5.1 One aspect of the conversations on site raises a possible associated matter. Although the Panel acknowledge that the actual content of the conversation is unknown, when the site inspector was



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contacted by the Renteq it should have been made perfectly clear, if it was not done so, that the HCC contractor had been called to site and would be making the site safe, so that a 2 hour visit by Renteq was not necessary.

## **Case 2 - Hermitage Road, Hitchin**

### **1. Facts**

1.1 During a TVW operation to replace a sluice valve the pipe burst and a considerable head of water escaped down Hermitage Road causing flooding. The police asked HCC to attend site. This they did and a gulley sucker was employed to unblock the drains.

### **2. HCC Submission**

2.1 HCC argue that because the accident occurred during the conduct of street works, then it is appropriate that the invoice should be raised under NRSWA s.65.

### **3. TVW Submission**

3.1 TVW contend that because the escape of water did not involve signing, lighting or guarding, then an invoice under s.65 was not appropriate.

### **4. Panel Decision**

4.1 The scope of s.65 NRSWA in this case is defined by part of the opening paragraph 65(1) - "that any part of the street ...obstructed by plant or materials used or deposited in connection with the works, is adequately guarded and lit"

4.2 The key words here are 'used or deposited'. These words in their normal usage refer to deliberate actions by the undertaker in relation to the conduct of the works. Clearly water escaping from a burst could not be so defined.

4.3 Consequently the Panel find that there is no liability under s.65 for escaping water and that therefore the invoice should be withdrawn.

### **5. Comment**

5.1 The panel note that HCC action and subsequent charges in relation to the escaping water should have been properly considered and invoiced under section 82 of NRSWA designed by Parliament for this very situation.

## **Case 3 - Elm Green, Hemel Hempstead**

### **1. Facts**

HCC received a complaint from a resident in connection with uneven paving slabs causing a hazard to pedestrians. HCC dispatched a team to site. The team re-levelled the offending slabs having noted that the problem was associated with recent work on a water valve.

### **2. HCC Submission**

The Emergency Response crew were of the opinion that the nature of the hazard necessitated immediate action to make safe. This activity should be re-chargeable under the provisions of NRSWA s.72(4) reinforced by the Code of Practice for Inspections.



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### 3. TVW Submission

TVW aver that documentation supplied by HCC in connection with the invoice describes the site as low risk and therefore the on site crew were not justified in taking immediate action.

### 4. Panel Decision

The situation is complicated by the fact the HCC invoice quoted an incorrect date. The potentially chargeable site activity actually occurred on January 18 2008 whilst the invoice quoted January 23. Documentation seems to suggest that the later Inspectors report (Jan 24) in fact relates to a subsequent visit and further (non hazardous) defect that are in fact unrelated to the any charges raised. This error in turn gave rise to the response from TVW as described above.

Despite this confusion the Panel decided to review the case as if the invoice had in fact been raised correctly (Jan 18).

First it is necessary to discuss the site photograph. HCC maintain that it was taken subsequent to the repair activity, whilst TVW allege that it was in fact taken prior to work being carried out. There is no firm evidence to support either position so the Panel are minded to disregard the photograph in their deliberations.

As is correctly stated by HCC NRSWA s.72(4) does indeed empower an authority to remove a 'danger' and recover costs. The Panel are minded to accept that professional judgement of a specialised crew should be accepted in determining the level of danger inherent in site. It should be noted however, that many authorities routinely take dated photographs of failures that may give rise to charges. The panel would recommend this practice.

However, the situation is complicated by the statement attributed to the Emergency Crew in the HCC submission, namely, that the decision to carry out an immediate repair was due, at least in part, to their inability to establish which water company were responsible for the works. This in the view of the Panel is unacceptable. It should be perfectly possible for a field crew to phone the office to check which company had issued the notice and get immediate advice.

Due to the complexity and uncertainty of the situation, on balance, the Panel recommend that the cost of the works should be shared between the parties in such proportions as can be agreed. In the absence of agreement a default of 50/50 is recommended.

### 5. Comment

The Panel noted with concern the unhelpful tone of a number of e mails and would recommend a senior manager summit between the companies to improve relations. If required HAUC UK would be more than happy to chair such an event.

### The Panel

Dave Turnbull NJUG (Chair)  
Bob Bayley JAG(UK)  
Marc Owen JAG(UK)  
Alan Rainford NJUG