

**Briefing Note**  
**How we are holding utility companies to account.**  
**Budget Panel 15<sup>th</sup> July 2008**

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The Council have a statutory duty to coordinate and monitor the work of the utility companies under the New Roads and Street Works Act 1991. The Traffic Management Act was introduced in 2004 to tackle congestion and disruption on the road network. The Act places a duty on local traffic authorities to ensure the expeditious movement of traffic on their road network and those networks of surrounding authorities. the Act gives authorities additional powers to better manage moving traffic enforcement and the coordination of street works.

The main impact of the Traffic Management Act in relation to our ability to levy charges are the changes in notice requirements and the issuing of fixed penalty notices or FPN's for offences, the option of the highway Authority to operate a permit scheme and an amendment to the S74 overstay charges whereby we cannot make a cumulative charge per day for cones or barriers left on site if they are cleared within 24 hours. Time extensions to utilities work programmes are only granted in accordance with requirement under legislation where there are 'reasonably unforeseen engineering difficulties'. Utility companies are required to submit a detailed report when applying for a time extension to their works and officers will only grant such requests when they are satisfied that it is justifiable. In recent years the number of time extensions granted has been significantly reduced.

Since we are now taking a far tougher stance, utilities are now improving the management of their works and it is becoming increasingly difficult to levy fines. Often when charges are made, these can be significant and the utility companies will contest the interpretation of the NRSW Act, and therefore we are now prudently allowing a provision for bad debt.

*The improvement in the management of works by utility companies have been mainly due to the charges levied for any delay or non-compliance, which have acted as a deterrent to reduce any unnecessary inconvenience to residents, businesses and the travelling public. Any surplus revenue generated is used towards improving the boroughs road network.*

In recent years the charges levied are as follows;

2005/6 Fines £222k,  
2006/7 Fines £351k,  
2007/8 Fines £316k,

Utility companies are required to reinstate the highway to the National specifications within the NRSW Act and where these are unsatisfactory, a defect notice is served and they are required to carry out remedial work at their own expense. Defect notices are charged at £50 per visit, the number of defect notices, served will depend on the performance of the utilities.

We also carry out random sample inspections, 10% in each of the following categories, and 30% of all works;

- a) during works
- b) six months following completion (by which time a permanent reinstatement must be completed)
- c) at the end of guarantee period (2 or 3 years depending on excavation depth).

Additional inspections are also carried out as a result of third party complaints.

We introduced 100% inspection of category c) end of guarantee period, and a programme of core sampling approximately 12 months ago (in accordance with our improvement plan), however, we found a very low failure rate from the category c) inspections and have therefore resumed the 10% random inspections, and there has been an average of 25% failure of cores samples requested by NRSWA engineers who believe the reinstatement may be defective within the last six months which has now been reduced to approximately 5% in the last month. We cannot charge defect inspections for signing and guarding or for defects to apparatus such as cabinets or inspection covers etc., and now that utilities have improved, would forecast approximately £20k per annum from defect notices. Utility companies are now photographing the reinstatement process, using improved materials and carrying out their own core sampling programme.

To improve efficiency the planned reorganisation of Transportation will bring the Traffic Manager and Network Engineer functions into the Highways team. These officers work very closely with our NRSWA team in planning the changes required for the earliest implementation of the TMA to improve the coordination of works.

The TMA has also extended the period of restriction under section 58 of the NSW Act from 1 year to 3 years following major improvement work carried out by the Council, although this applies only to the renewal of main services and emergency or urgent work where there is a loss of service not be affected. Officers serve a notice three months in advance for major carriageway resurfacing, footway upgrade or other improvement schemes and work with the utilities to coordinate works, for example, the water main was renewed in Wembley Hill Road prior to planned resurfacing.

The annual cost to the Council of coordinating and monitoring utility work is approximately £338k, comprising of £238k for staff including their travel expenses, and £100k for overheads. We forecast a similar income from utility fines this year but clearly this will depend on the performance of the utility companies in terms of their compliance, and the implementation of the permit scheme later this year.

In preparation for the changes in notifications and the issuing of fixed penalty charges we have updated our Symology software and arranged for the appropriate staff training to ensure that we are ready to 'go live' as early as practicable. We are also in the first 'tranche' of London Boroughs that will introduce a permit scheme later this year. The advantage to the Council is that permits will need to be issued to all utilities for working on the public highway for which a charge can be levied to cover the cost of the service and this should improve the planning and coordination of works. Unfortunately, it is a largely a case of interpretation of the TMA and this has resulted in extensive negotiation between Utilities Companies and the London boroughs whom are all understandably vigilant in defending their interests.

The consultation for the London Permit Scheme (LoPS) is currently in progress and there have been many queries raised regarding the permit costs by utility companies. We have representatives regularly attending meetings and the results of the consultation are currently under discussion.

Most utility companies have raised concerns over the monitoring and parity aspects of the scheme and where these have been challenged a response will be required from all boroughs. We of course will ensure that there is parity and permits will also be issued for our work on the public highway.

The Department for Transport (DfT) approved permit matrix may be challenged by National Joint Utilities Group (NJUG) and it is increasing likely that Councils will have to defend their proposed permit fees in order to proceed. It is now also likely that the introduction of the permit scheme may now be moved from October to November due to the requirement for a twelve week consultation period with the Secretary of State, and following one month notification for intent to use permits to be issued.

If the Councils that intend to introduce a permit scheme can prove that the consultation has answered all queries and the Secretary of State is satisfied the scheme should go ahead as planned, however, if the utility companies decide to take legal action there may be a completely new consultation process. If a new consultation process is required it is likely that the permit scheme will be further delayed and not start until Feb / March next year.