

From Cllr David Sparks
Chair, Regeneration & Transport Board

Rt Hon Sadiq Khan MP
Minister of State for Transport
Great Minster House
76 Marsham Street
London
SW1P 4DR

12th March 2010

Dear Sadiq

Section 81 New Roads and Street Works Act 1991 - charging utility companies for emergency repair to their apparatus.

I am writing to request action from your department to resolve an issue arising from the recent High Court ruling on Hertfordshire County Council's claim against Veolia Water with regard to the council's ability to charge utility companies for emergency repair work to faulty or damaged apparatus.

For a number of years, Hertfordshire and other authorities have been charging utility companies for emergency repair work believing this was allowed under section 81 of the New Roads and Street Works Act 1991. The Judge's ruling was that a literal interpretation of regulations 3 and 4 of section 81 should apply. This effectively means that councils will now only be able to recharge the costs of repairs to utilities in very limited circumstances. Veolia Water have advised Hertfordshire that they will no longer pay invoices for repair work except in strict accordance with the regulations. They have also said they will ask for repayment of all invoices previously paid not in accordance with those regulations. We believe that a number of other utility companies will follow suit. This will potentially cost councils £50-60 million per year with inevitable impact on other services.

It is clear - even to the Judge in passing his ruling - that a literal interpretation of regulations 3 and 4 does not reflect the objective of the statute and in reality provides an unintended loophole by which utilities companies can avoid the cost of repair to their apparatus.

Hertfordshire have received advice that they have strong grounds for appealing the decision. However this would be a lengthy and costly process with no guarantee of a

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successful outcome. In contrast, the simplest and fastest means of resolving this situation would be for government to lay amending regulations to reflect the policy intention of the Act. I am writing therefore to request that you pursue this action as quickly as possible.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'D. Sparks', written in a cursive style.

Cllr David Sparks
Chair, Regeneration and Transport Board