

1. Objective

- 1.1 This document is designed to provide a formal process for both Highway Authorities (HAs) and Statutory Undertakers (SUs) to follow when they are found to be in disagreement with regards to street works matters within the Anglian HAUC area.
- 1.2 Anglian HAUC encourage members to ensure that all avenues of resolution are explored, including escalating the issue to local management for settlement, before requesting a review from AHAUC, HAUC (UK) or an independent adjudicator.

2. Reference and Definitions

2.1 References

New Roads and Street Works Act 1991 (NRSWA),

Traffic Management Act 2004 (TMA),

Chapter 13 of the Code of Practice for the Co-ordination of Street Works and Work for Road Purposes and Related Matters, Third Edition (Blue Code),

Chapter 8 of the Code of Practice for Inspections, Second Edition (Pink Code),

Section S1.11 of the Code of Practice for the Specification for the Reinstatement of Openings in Highways, Second Edition (Yellow Code),

Chapter 10 of the Code of Practice for Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works), First Edition (Green Code).

2.2 Definitions

ESCALATION: to become or cause something to become greater, more serious, or more intense.

MEDIATION: the process of resolving disputes between people or groups by referring them to a third party, either agreed by them or provided by law, who makes a judgment.

ADJUDICATION: to make an official decision about a problem or dispute.

3. Appeals Procedure

- 3.1. Dispute parties can reserve the right to request an appeal from the next stage Panel and should set out their reasoning in an open report.
- 3.2. Should both parties agree to accept judgement at any stage of the process it will be deemed inappropriate to take further recourse to the next level of this process.

4. Scope

- 4.1 Chapter 13 of the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters, Third Edition 'Blue Code', sets out the framework for Dispute Resolution. The provisions set out in Chapter 13 shall form the basis for the resolution of disputes and the purpose of this document is not to usurp the code but to outline the process that will be followed within Anglian HAUC.
- 4.2 This agreement sets out the local, regional, national or independent dispute resolution process and supersedes all prior local conciliation agreements, arrangements, understandings, etc. which have been agreed between street authorities and undertakers within Anglian HAUC. It does not override any requirements of the New Roads and Street Works Act 1991, Traffic Management Act 2004 and any associated Regulations or code of practice procedures.
- 4.3 In the event that a dispute has occurred the following provisions shall apply, and these provisions are structured around a 4-stage process:

Stage 1 – Escalation

The parties shall use all reasonable endeavours to resolve the dispute locally and should always try to settle disputes without having to refer them to stages 2, 3 or 4 of the process. Every effort must be made to resolve the dispute by escalation to the appropriate level of management within respective organisations for settlement. Where the two parties are unable to agree and reach an impasse, then the next stage of the dispute resolution process should be invoked.

If they consider that the issues are relatively uncomplicated then stage 2 of the process shall apply and the matter should be referred to AHAUC for arbitrary measures.

If the issue is considered more complex and of national importance then it is recommended that the Joint AHAUC chairs should refer the dispute direct to HAUC (UK) to invoke stage 3 of the process.

Stage 2 – Mediation (AHAUC)

In the event of the parties being unable to reach agreement in stage 1, stage 2 of the process shall apply unless referred directly to HAUC (UK) for a stage 3 review. In the event that the AHAUC Panel are also unable to agree or that the issues were found to be more complex than initially thought, then stage 3 of the process shall apply and the Panel chair would apply to HAUC (UK) to appoint an arbitrary review Panel.

Stage 3 – HAUC (UK)

Where after following stages 1 and 2 the parties are unable to agree, or if it is found that the issues are of a particularly complex nature, stage 3 of the process shall apply, and the matter should be referred HAUC (UK). In the event that this Panel are also unable to agree, and had reached a similar position to previous stages, or if the issues are of a particularly complex nature, stage 4 of the process should apply and the HAUC (UK) joint chairs should appoint an independent adjudicator.

Stage 4 - Adjudication

If agreement cannot be reached by the three stages above, the joint chairs of HAUC (UK) will refer the dispute to an independent adjudicator. **It should be borne in mind that the decision of the adjudicator is deemed to be final.**

- 4.3 For the avoidance of doubt each party must make available all financial, technical and other information relevant to the issue in dispute.
- 4.4 Each party must bear its own costs and share equally any fees or expenses should the matter be referred to the Arbitration or Adjudicator Panels.
- 4.5 In accordance with Chapter 13 of the 'Blue Code' if the review members consider that one party has presented a frivolous case the Panel may award all costs against them.

5. Stage Details

5.1 Stage 1 - Escalation Procedure

5.1.1 All disputes shall initially be discussed between the parties in an attempt to find a resolution acceptable to both.

5.1.2 The general obligations of the parties involved at stage 1 are as follows:

- (a) To gather detailed evidence relating to the dispute.
- (b) To identify the reasons / root causes of the dispute.
- (c) To establish the basis of a dispute case and its reasonableness.
- (d) To exchange views and evidence relevant to the dispute
- (e) To organise and engage in meaningful discussion at local level, canvas the opinion of senior managers/officers within each organisation as to the legitimacy of the dispute
- (f) To produce a set of agreed minutes, countersigned by both parties, as a true record of these discussions. These must be retained by both parties and made available to the Review Panels if referred to stages 2 or 3.

5.1.3 In the interests of maintaining good working relationships AHAUC consider it important that neither party should invoke stage 2 or 3 of this Dispute Resolution Process until communication and discussion at the appropriate levels has been thoroughly explored and exhausted without reaching agreement.

5.2. Stage 2 – Mediation (AHAUC) Procedure.

5.2.1 If stage 1 is not successful, either party may submit a written argument to the joint chairs of AHAUC setting out full reasons of the dispute and the justification for invoking stage 2 of this process.

5.2.2 Following written notification from either party the joint chairs shall arrange either to refer the dispute to stage 3 or convene a review Panel in accordance with section 13.3.1 of the Blue Code. The Panel will meet with the aggrieved parties **within 5 days** or at a deferred date that had been agreed beforehand with both parties. This meeting date, venue and time must be confirmed in writing.

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- 5.2.3 The parties shall provide any supplementary information or evidence as may be requested by the joint chairs to enable the Panel to review the case.
- 5.2.4 The Panel will consist of the joint chairs of AHAUC and two additional representatives, one from each side of AHAUC.
- 5.2.5 In the event that any member of the Panel has a conflict of interest, or is unavailable, they must declare this to all parties involved and nominate a replacement from the respective side of AHAUC.
- 5.2.6 All members of AHAUC are eligible to sit upon the Panel as non permanent members unless they opt out. It is recommended that appointees are chosen at each January AHAUC meeting in order to share the workload of the retrospective members and organisations proportionately.
- 5.2.7 The Panel shall be informed of the dispute parties' nominated representative prior to the meeting and should ensure that these representative(s) are adequately knowledgeable of obligations under the New Roads and Street Works Act 1991 and the circumstances surrounding the dispute.
- 5.2.8 The Panel shall convene on the agreed date and each party be given the opportunity to present their evidence and call representatives as necessary to the Panel. In the event that any of the parties fail to attend the agreed meeting without reasonable justification the dispute hearing shall proceed and the decision of the Panel shall stand.
- 5.2.9 The Panel shall take the opportunity to offer reasonable challenge and/or seek further clarification and take time to consider the evidence in private, to agree a unanimous decision on the merits and determine their view on the dispute. They will then facilitate a discussion between the parties with the aim of advocating a mutually satisfactory agreement.
- 5.2.10 If possible the decision of the Panel will be given verbally at the time and the conclusions must be confirmed in writing within 2 weeks of the dispute hearing. It is strongly recommended that both parties accept the result of the Review Panel recommendations as binding.
- 5.2.11 The Panel chair will record the stage 2 review on the "Dispute Resolution Report" (*Appendix 1*) and this will be held on record by the AHAUC Secretary. A précis of the review will be reported at the next AHAUC meeting by the Panel Chair as a standard Agenda item "**Dispute Reviews**".

5.2.12 A true record of the reviews undertaken by AHAUC will be posted on the AHAUC web site consisting of:

- Reference Number
- Date of Review
- Parties involved
- Section or Area of Dispute
- Decision of Panel
- Panel members

5.2.13 If the AHAUC Arbitration Panel fails to facilitate an agreement or the issue before them is considered to be too complex, then the matter will be referred to the HAUC (UK) Dispute Resolution review Panel in accordance with the procedure set out in section 13.3.2 of the Blue Code.

5.3. Stage 3 – (HAUC UK) Procedure

5.3.1 To invoke a HAUC (UK) Review Panel the chair of the AHAUC review meeting must submit written argument on behalf of the dispute parties to the joint chairs of HAUC (UK) setting out full reasons of the dispute and the justification for invoking stage 3 of the dispute process. This report will include all copies relating to dispute and that of the AHAUC Review Panels decision.

5.3.2 The HAUC (UK) Review Panel will be in accordance with the procedure set out in section 13.2.2 of the Blue Code, and following written notification the appointed Panel chair shall arrange a meeting with the aggrieved parties **within 10 days** or at a deferred date that had been agreed beforehand with both parties. This meeting date, venue and time must be confirmed in writing.

5.3.3 If the HAUC (UK) Review Panel fails to facilitate an agreement or the issue before them is considered to be too complex, then the matter will be referred Stage 4, Independent Adjudication in accordance with the procedure set out in section 13.4 of the (Blue Code).

5.4. Stage 4 – Adjudication Procedure.

5.4.1. If Stage 3 does not provide an agreed resolution, or if the matter is considered to be too complex to be dealt with by the HAUC (UK) Panel, then the matter will be referred to Independent Adjudication in accordance with the procedure set out in section 13.3 of the (Blue Code).

- 5.4.2. Each party must make available all financial, technical and other information relevant to matter in dispute in which the independent adjudicator can make judgement upon the matter before them.
- 5.4.3. The costs of adjudication will be borne equally unless the adjudicator considers that one party has presented a frivolous case, in which case costs can be awarded against them.
- 5.4.4. The decision of the adjudicator is deemed to be final.

APPENDIX 1 - AHAUC Dispute Resolution Report

Date:	Reference No:
Description of area of Dispute:	
Parties in Dispute	
Panel Members	
Report	
Decision:	
Signed: Panel Chair Parties in Dispute	



Dispute Resolution

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