



**Author/Lead Officer of Report:** Gillian Charters,  
Interim Head of Highway Maintenance

**Tel:**

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**Report of:** Monitoring Officer and Executive Director, Place  
**Report to:** Cabinet  
**Date of Decision:** 21<sup>st</sup> October 2020  
**Subject:** Report of the Local Government & Social Care  
Ombudsman regarding Street Tree Removals &  
Streets Ahead Contract.

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
- Expenditure and/or savings over £500,000	<input type="checkbox"/>	
- Affects 2 or more Wards	<input type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? Environment, Streetscene & Climate Change		
Which Scrutiny and Policy Development Committee does this relate to? Environment and Economic Wellbeing		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		
<i>"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."</i>		

**Purpose of Report:**

This report summarises the findings of a formal report by the Local Government & Social Care Ombudsman (attached to this report as Appendix A) regarding a complaint made by Mr G about the removal of street trees from the road where he lived, as part of the Council's 'Streets Ahead' programme of works delivered by its contractor, Amey Hallam Highways plc.

The report details the recommendations to the Council arising from the report. The report includes an outline of the steps already taken to improve transparency in relation to decision making. Cabinet are recommended to recognise the failings of the Council and provide a full apology. Cabinet approval is also sought for the creation of a public archive of SCC street tree related material to be held within the City Archives in perpetuity.

**Recommendations:**

- a) Cabinet endorses the publication of a public unreserved apology accepting the findings of the Local Government & Social Care Ombudsman investigation.
- b) Cabinet notes that the Cabinet Member for Environment, Streetscene and Climate Change has provided a private apology to the family of Mr G recognising the failings of the Council in its communications with him;
- c) Cabinet notes that the Street Tree Partnership Working Strategy details the new, transparent decision process for tree removals, and the additional information requirements from the contractor in submitting the recommendation
- d) Cabinet notes that the Highways Maintenance (Streets Ahead client team) and contractor will receive additional training in the Council's complaints procedure;
- e) Cabinet notes the work that is being done to embed openness and transparency across all of the Council's services
- f) Cabinet approves the funding for Sheffield Archives Service to establish and manage the creation of a complete archive of SCC tree related material to be held within the City Archives in perpetuity.

## Background Papers:

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: <i>(Insert name of officer consulted)</i> Chloe Parker
		Legal: <i>(Insert name of officer consulted)</i> Andrea Simpson
		Equalities: <i>(Insert name of officer consulted)</i> Annemarie Johnson
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	<b>EMT member who approved submission:</b>	<i>(Insert name of relevant Executive Director)</i> Laraine Manley
3	<b>Cabinet Member consulted:</b>	<i>(Insert name of relevant Cabinet Member)</i> Councillor Mark Jones
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	<b>Lead Officer Name:</b> Gillian Charters	<b>Job Title:</b> Interim Head of Highway Maintenance
	<b>Date:</b> 20.10.2020	

## 1. Report of the Local Government & Social Care Ombudsman regarding Street Tree Removals & Streets Ahead Contract.

1.1 This report summarises the findings of a formal report by the Local Government & Social Care Ombudsman (the Ombudsman) (attached to this report as Appendix A) regarding a complaint made by Mr G about the removal of street trees from the road where he lived, as part of the Council's 'Streets Ahead' programme of works delivered by its contractor, Amey Hallam Highways plc.

### 1.2 Ombudsman Findings

#### 1.2.1

The Ombudsman investigation has found fault causing injustice in the way the Council handled Mr G's complaints.

1.2.2 The Ombudsman recognises and welcomes the steps already taken by the Council to improve how it consults and makes decisions around street tree removals.

1.2.3 The Ombudsman makes a number of recommendations which are detailed in this report, together with an overview of the report findings for Cabinet to consider.

### 1.3 Scope of the Investigation and Discretion applied by the Local Government and Social Care Ombudsman.

1.3.1 The investigation covers a time period from summer 2015 through to the Council's final reply to the most substantial of Mr G's complaints in December 2017. The removal of the trees on Mr G's road took place in November 2016.

1.3.2 The Ombudsman notes the discretion they applied to not duplicate or trespass on findings made by the High Court. And as such the investigation did not consider:

- the legality of the Council's PFI contract;
- the overarching policy set out in the Streets Ahead Strategy;
- the extent of consultation around the contract;
- the procedure for appointing the Independent Tree Panel or its remit;
- the extent to which the Council considered the environmental impact of its strategy; and
- the extent to which the Council considered the impact of planning law or local planning guidance when implementing its strategy.

1.3.3 The Ombudsman also decided it was not an effective use of resources to carry out further investigation into the matters listed below, which the Council did provide responses to Mr G about:

- Council policies around tree replacement species;
- a particular flexible paving product;
- the standards the Council follows when assessing desired footway gradients;
- whether the Council contractors damaged individual trees along his road, raised in his correspondence between August 2016 and June 2017;
- the damage to kerb stones reported in July 2017;
- the condition of tree pits installed by the Council contractors; and

- the substance of Mr G's first complaint in January 2016 about the survey sent to households on his road.

1.3.4 The Ombudsman also used discretion not to investigate the extent of information about the Council's PFI contract now in the public domain. It has been noted that since Mr G first raised this matter the Council has put much more information on its website. The Ombudsman consider it would be for the Information Commissioner's Office (ICO) to take a view on whether the Council could publish more information; for example, where small portions of the documents remain redacted. The Council has provided supplementary information to the Ombudsman of its new direction and approach.

#### 1.4 Outcome of Investigation

1.4.1 Through investigating the complaints raised by Mr G, the Ombudsman found numerous examples where the Council responses to Mr G did not meet the principle of being open and accountable, that is that the Council was not clear and open about policies and procedures and did not ensure that the information it provided was clear, accurate and complete.

1.4.2 The investigation found that even though there were a considerable number of detailed requests from Mr G and that the Council was also responding to a large volume of other correspondence relating to the issues, the delays in responding to Mr G were not acceptable and caused injustice.

1.4.3 When taking the decision to undertake tree removals at Rustlings Road in November 2016 at 5am, the investigation found that the Council did not consider the distress or outrage this may bring. And despite the pressures the Council was operating under with the ongoing opposition to the Streets Ahead programme, the investigation found that the decision to undertake the removals in this manner was a disproportionate response.

1.4.4 Having established the Independent Tree Panel (ITP) procedure to reassure citizens it was acting in good faith when carrying out its Streets Ahead Strategy, the Council undermined the work of the ITP in the way it published the panel's report (interpreted by the Ombudsman as being to avoid scrutiny) and misrepresented the advice received from the ITP about a diseased tree.

1.4.5 The Ombudsman considers a more transparent approach from the Council would have caused less distress to Mr G and many others and would not have resulted in the undermining of public trust in the Council's policy.

#### 1.5 The Council's New Approach and Commitment to Transparency

1.5.1 The Ombudsman recognises in its report, since the events of the complaint and scope of its investigation, the positive steps that Council has taken to make significant changes to how it approaches street tree removals as part of the Streets Ahead programme.

1.5.2 The publication of the Council's Review of Tree Investigations in December 2019 is also welcomed and demonstrates the Council has indeed taken the lead responsibility to reflect on the information it receives and publishes in relation to street tree removals.

1.5.3 At the time the Ombudsman was concluding its report, the Council had yet not published the Street Tree Working Strategy, but it did recognise that this promised to embed more transparent decision making.

## 1.6 Remedies

1.6.1 Five recommendations have been made by the Ombudsman. The recommendations to Cabinet propose that these recommendations are accepted in full, and also reflect the work the Council has already commenced that contribute to their realisation. The recommendations also include some additional proposals beyond those made by the Ombudsman to further regain the trust of the public. The remedies proposed by the Ombudsman are discussed further below along with the Council's response to these.

### 1.6.2 Apology

*The Council should provide a public unreserved apology accepting the findings of this investigation which draw attention to general failings in the implementation of its 'Streets Ahead' policy. It should also provide a private apology to Mr G's family to include specific recognition of its failing in its communications with him;*

1.6.2a The Council accepts the findings of the investigations and has put on record an unreserved apology, issued on 14<sup>th</sup> October 2020.

The Council unreservedly apologises for mistakes made in its handling of a complaint about the way we removed street trees from Rustlings Road in November 2016 and accepts the findings made in the report of the Local Government & Social Care Ombudsman which draws attention to general failings in the implementation of the street trees elements of the Streets Ahead programme. We apologise for these failings.

Cabinet member for Environment, Street Scene and Climate Change at Sheffield City Council, Councillor Mark Jones said:

"We fully accept the findings of this report and recognise that our approach to managing the city's street trees needed to change. We got some things wrong and whilst this report is reflective of a very different and difficult time, we are continuing to make real and significant progress towards a more transparent and collaborative future when it comes to managing our valuable street tree stock.

"Many of the actions outlined in the report are already underway, with the creation of a partnership group and the recent production of a new Street Tree Partnership Working Strategy for Sheffield. Whilst the report recognises this, we know we must do better and we are confident that through our new collaborative approach, we are now in a much more positive and favourable position to ensure our street trees are properly and effectively managed.

"The new working partnership street tree strategy recognises the many benefits trees bring to our urban environment and proposes a more open and inclusive way of working to ensure more transparent processes going forwards. What's more, we are already in the process of finalising plans to make all historic materials relating to street trees publically available via an online archive. In doing so, we can allow those who want to look over past documents to do so, but equally, we can all start to look

forward as we embark on a new, more constructive chapter.

“Through our new approach, we are committed to retaining trees wherever possible, planting additional trees, increasing canopy cover and building a diverse and resilient street tree stock with varying species and age profiles. We are also committing to engaging with stakeholders and the wider public about our plans for street trees in a more proactive way, to avoid any uncertainty about what we are doing and why. Engagement is key for creating a future-proof strategy that works for us all.

“In this specific case, we will be apologising to the complainant’s family and giving reassurances that we are already on the right path towards a more open and sustainable vision for how we manage street trees, not just for now, but for many years to come.”

1.6.2b The Cabinet Member for Environment, Streetscene and Climate Change, Councillor Mark Jones, has also written and sent a private apology to the family of Mr G recognising the Council’s failings in its communications with him.

1.6.3 Transparency

*The Council will share with the Local Government & Social Care Ombudsman the further detailed proposals it has for embedding transparency within its new tree strategy;*

1.6.3a The Sheffield Street Tree Partnership Working Strategy was approved by the Leader of Sheffield City Council through an Individual Executive Decision in March 2020. A designed version of the Sheffield Street Tree Partnership Working Strategy was published in July 2020. A public consultation on the working strategy ran for 12 weeks from 16th July to 8th October 2020. The feedback from the consultation will inform the development of a final Sheffield Street Tree Strategy by spring 2021. The Sheffield Street Tree Partnership, which is independently chaired by the Chief Executive of the Sheffield & Rotherham Wildlife Trust, will oversee the development of the final strategy.

1.6.3b As a working strategy it documents the ambition for Sheffield, with the Council working in partnership, to positively, actively and sustainably manage street trees both now and in the long-term.

1.6.3c Throughout the development of the working strategy, the agendas and minutes of the strategy development group meetings were published on the Sheffield & Rotherham Wildlife Trust website. The agenda and papers of the Sheffield Street Tree Partnership continue to be published on this website.

1.6.3d One of the actions in the working strategy is for the Council to review, refine and publish the decision process for the management of Sheffield’s street trees. An outline of the new decision process is documented including, increased requirements of the information received from the contractor with a recommendation to fell together with a street tree condition-impact matrix score (taken from the National BS 5837 standard) and decision process flow chart,.

- 1.6.3e This work has been progressed with advice and guidance from the Sheffield Street Tree Partnership and the decision process will be published on the Council website before the end of 2020. In addition, the Council's webpages on street trees are being revised to make it easier for the public to find information about the management of Sheffield's street trees. The Council is also publishing an online guide to help the public understand the Council's responsibilities in managing the city's street trees.
- 1.6.3f The Sheffield Street Tree Partnership will continue to oversee delivery of the actions in the street tree strategy and is looking to diversify its membership to broaden representation on the group.
- 1.6.3g Details of this work will be shared with the Ombudsman.
- 1.6.4 Contract approach  
*The Council will share with the Local Government & Social Care Ombudsman how it proposes to ensure its contracts and management agreements reflect its new street strategy;*
- 1.6.4a As demonstrated by the papers of the Sheffield Street Tree Partnership published on the Sheffield Wildlife Trust website, the contractor is proactively involved in the development of the new decision process.
- 1.6.4b The PFI contract will be updated to reflect the new decision process once agreed. The Council intends to make this public as part of the suite of contract documents openly available.
- 1.6.4c The Sheffield Street Tree Warden scheme is now live; being actively managed by the contractor, supporting volunteers with training and health and safety.
- 1.6.4d Details of how the Council will ensure that its contracts and management agreements reflect the new Street Tree Strategy will be shared with the Ombudsman.
- 1.6.5 Complaints Training  
*Consider further how it can ensure contractors and managers are aware of the need to signpost correspondence to the Council's complaint procedure whenever appropriate.*
- 1.6.5a The e-learning module for the Council's complaints process is being undertaken by all the Highways Maintenance (Streets Ahead Client) team and in addition a taught/facilitated session has been commissioned for officers that are responsible for investigating complaints.
- 1.6.5b The contractor's team have also had refresher training about the complaints process, including the staff that are responsible for tree inspections.
- 1.6.6 Lessons Learnt
- 1.6.6a *The Council consider if there are wider implications for how it delivers services and lessons it should learn as a result of how it implemented its Streets Ahead programme, in particular, how it can embed the principles of openness and accountability across all its services.*



The Council is committed to ensuring openness and transparency in the delivery of its services and as such are reviewing its interactions with the public through its customer experience programme. This includes digitisation of information and processes and enhancing its publication scheme. This work overlaps with a specific programme of works focussing on openness and transparency that also looks at the way the Council engages with the public, proposes additional training for staff and the simplification of language

## 1.7 Public Archive Proposal

- 1.7.1 If agreed by Cabinet, the Council will invest in the development of a public archive of SCC tree related material to be held within the City Archives in perpetuity. The scope and parameters of the archive will be determined by professional archivists but will specifically include the period of dispute and controversy including the judicial review and civil litigation and the period January 2015 to December 2018. It will be a detailed catalogue of all Council records in relation to the street trees element of the Streets Ahead programme and will be publicly accessible.
- 1.7.2 There will be a detailed Freedom of Information Act/ Environmental Information Regulations redaction scheme, setting out the principles of where redaction would be applied by the Archivists. The archive will be prepared and structured in such a way as to deliver FOIA/ EIR obligations by means of each document having been considered and appropriate exemptions applied.
- 1.7.3 The archive will look to answer the ongoing FOIA/ EIR requests which the Council continues to receive through providing information publicly and with appropriate exemptions already applied by archivists in accordance with the scheme.
- 1.7.4 The archive will be hosted digitally and it is proposed that digital preservation software will be included in the project. This ensures that any future obsolescence of the file encodings used for any of the documents does not prevent future access.
- 1.7.5 The Council has had previous experience and success in managing potentially contentious high public interest information it holds with the Hillsborough tragedy and Orgreave Miners Strike.
- 1.7.6 The archive project will take around five months to complete, if approved by Cabinet.

## 2. **HOW DOES THIS DECISION CONTRIBUTE ?**

- 2.1 This report has implications for the “In Touch Organisation” priority in Council’s Corporate Plan. The Council has considered its policy and procedure in light of the complaint and has proactively taken steps to ensure that no other customer is disadvantaged in the same way.

## 3. **HAS THERE BEEN ANY CONSULTATION?**

- 3.1 There is no requirement to consult on the proposal in this report. It has been prepared in response to a public report issued by the Local Government & Social Care Ombudsman on 14<sup>th</sup> October 2020 following his investigation of a complaint against Sheffield City Council.

#### **4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

##### **4.1 Equality of Opportunity Implications**

- 4.1.1 There are no equality of opportunity implications arising specifically from this report. Any changes to policy and process will include the evaluation of any potential equalities impacts.

##### **4.2 Financial and Commercial Implications**

- 4.2.1 The estimated costs of establishing the archive is £45,000, which includes: software costs to enable appropriate cataloguing and digital access, professional Archivist time, legal and project governance support costs.

##### **4.3 Legal Implications**

- 4.3.1 The Ombudsman has powers to investigate and report on complaints under Part III of the Local Government Act 1974. Where the Ombudsman has made a finding of maladministration section 31 of that Act requires that the report is laid before the authority, and that the authority has a duty to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Local Commissioner may agree in writing, to notify the Local Commissioner of the action which the authority have taken or propose to take

#### **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 No alternative options have been considered, the Council accepts the findings of the report and is pleased to demonstrate our progress and commitments to realising the recommendations from the Ombudsman report.

#### **6. REASONS FOR RECOMMENDATIONS**

- 6.1 The recommendations to Cabinet reflect the work the Council has already commenced that contribute to realising the recommendations of the Ombudsman and our commitment to open and transparent decision making.

In addition, Cabinet is asked to approve the new archive project which will allow open access to our records and correspondence in relations to our past approach and decisions.

**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
Sheffield City Council  
(reference number: 17 004 913)**

**18 September 2020**

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## The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Mr G            The complainant

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## Report summary

### Highways and transport: Highway repair & maintenance

Mr G complained about the removal of street trees from his road as part of the Council's 'Streets Ahead' programme of works delivered by its contractor, Amey Hallam Highways plc.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

We welcome steps already taken by the Council to improve how it consults and makes decisions around street tree removals. But to remedy this complaint we ask that it:

- provides a public unreserved apology accepting the findings of this investigation which draw attention to general failings in the implementation of its 'Streets Ahead' policy. It should also provide a private apology to Mr G's family to include specific recognition of its failings in its communications with him;
- share with us the further detailed proposals it has for embedding transparency within its new tree strategy;
- share with us how it proposes to ensure its contracts and management agreements reflect its new street tree strategy; and
- consider further how it can ensure contractors and managers are aware of the need to signpost correspondents to the Council's complaint procedure whenever appropriate.
- consider if there are wider implications for how it delivers services and lessons it should learn as a result of how it implemented its Streets Ahead programme. In particular, how it can embed the principles of openness and accountability across all its services. It will write to us with any further action it proposes in this regard.

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## The complaint

1. We have called the complainant 'Mr G'. He complained to us further to extensive correspondence with the Council about matters related to its 'Streets Ahead' programme concerning the removal and replacement of street trees. The programme included the proposed felling and replacement of 11 trees along Mr G's road, of which seven were felled. Mr G complained to us as he considered the Council delayed or failed to provide adequate replies when he raised enquiries or complaints which included (but were not limited to) the following.
  - Whether its decision to remove trees along his road (or in other cases) was in line with its own policy. The Council had described removal as a 'last resort' and said it would use various engineering solutions to retain trees wherever possible.
  - That it had not been fully open or transparent in documents released to the public about its contract with a contractor Amey Hallam Highways plc – 'Amey'. Documents later disclosed showed disparities between documents used by the contractor and the Council's published version of its 'Streets Ahead' policy.
  - That it had unreasonably removed trees from his road at around 5am.
  - That it had not pursued use of a particular flexible paving product, despite assuring him it would do so.
  - That it had not routinely follow best practice guidance when carrying out tree works.
2. Mr G said as a result the Council had removed trees from his road that it did not need to and this applied also to other locations in the City. The way in which it removed trees from his road caused distress. It caused him further distress the Council had not responded more positively to his contacts about its tree removals and put him to time and trouble in pursuing complaints.

## The Ombudsman's role and powers

3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
5. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. We may decide not to start or continue with an investigation if matters have been raised within a court of law. (*Local Government Act 1974, sections 24A(6) and 34B(8), as amended*)

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6. We investigate complaints about ‘maladministration’ and ‘service failure’. In this report, we have used the word ‘fault’ to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as ‘injustice’. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
  7. We provide a free service but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
    - fault has not caused injustice to the person who complained; or
    - the injustice is not significant enough to justify our involvement; or
    - it is unlikely we could add to any previous investigation by the Council; or
    - there is another body better placed to consider this complaint. (*Local Government Act 1974, section 24A(6), as amended*)

## **How we considered this complaint**

8. We issued this report after considering:
  - Mr G’s written complaint to us and supporting information he provided, including that in subsequent emails and telephone calls;
  - information provided by the Council either in the public domain on its website or in response to specific enquiries;
  - information in the public domain relevant to the complaint. This includes information released by South Yorkshire Police in response to Freedom of Information requests and published on its website; and a report by the Forestry Commission on alleged illegal tree felling; and
  - relevant law, guidance and policy documents as referred to in the text of the report.
9. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.
10. Sadly, before publication of this report Mr G passed away. However, we decided to proceed with publication of this report. This is because while Mr G’s concerns about the removal of street trees had features unique to his case they also engaged with issues of wider public interest.

## **What we found**

### **Legal and policy considerations**

11. The Council has a duty under Section 41 of the Highways Act 1980 to maintain highways. This includes maintaining the pavements and verges.
12. In 2012 the Council entered a Private Finance Initiative (PFI) contract with Amey to deliver a highway maintenance programme over the next 25 years, known as the ‘Streets Ahead’ programme. As part of the contract Amey would produce and implement an annually reviewed five year tree strategy. Around January 2016 the Council published on its website a document called the ‘Streets Ahead Five-Year Tree Management Strategy 2012-2017’. The document version is said to be ‘version 7’ of the strategy first authored in 2013. The document described how as

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part of this programme the Council and its contractor would review the condition of around 36,000 street trees growing on pavements and footpaths. Paragraphs 14 to 23 below refer to this document.

13. The Council says the document provided: *“an indication of Amey’s approach to the highway tree maintenance required over a five year period”* and how they proposed to undertake it. It was *“not a contractual document”*. It was *“produced specifically for the website and was designed to be a public friendly document outlining the overall contractual approach in an accessible way”*.
14. The document said Amey would assess trees first by inspection from employees with expertise in trees and highways. The Council would then carry out its own inspection. The document said that while the contractor would identify trees for removal, the Council would *“verify this recommendation independently”*. It also stressed *“all tree removals and associated replacement proposals are subject to approval by Sheffield City Council”*.
15. The document describes the Council and Amey using an approach for assessing the condition of the trees using criteria known as the ‘six D’s’. It would remove trees if they were dead, dying, decayed, dangerous, damaging or discriminatory. A dangerous tree being one posing a risk to the health and safety of highway users. A damaging tree being one damaging the highway or neighbouring property/land. And a ‘discriminatory’ tree being one that affects someone’s ability to use the highway such as a wheelchair user.
16. The document said that *“the removal of street trees will only be considered as a last resort where there are no other practicable management options to ensure safety or prevent damage to surrounding structures”*.
17. The document also said that *“as part of our commitment to only removing a street tree as a last resort, whenever a tree is found to be either damaging or discriminatory we consider a list of engineering solutions to establish whether any of these can be employed to leave the tree in situ”*.
18. The document identified the following ‘engineering solutions’ for retaining a tree.
  - Installing thinner profile kerbs.
  - Ramping or reprofiling footway levels over tree roots.
  - Using flexible paving.
  - Removing displaced kerbs leaving a gap in the channel.
  - Filling in pavement cracks.
19. A sixth alternative listed is that of undertaking exploratory excavation *“prior to an ultimate decision being made on removal”*.
20. The document also listed eight ‘alternative solutions’.
  - Root pruning.
  - Root shaving.
  - Installing root barriers and root guidance panels.
  - Excavation underneath roots damaging the footway.
  - Using tree growth retardant.
  - Creating larger tree pits.
  - Undertaking heavy crown reduction or pollarding to stunt growth.



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- Doing nothing in cases where trees may be diseased or dying but have habitat value.
21. The document then goes on to list 10 'other solutions'. These include matters such as changing line markings on the road, building out a new kerb line, rebuilding or altering footways and so on. The document says to carry out these 'other solutions', "*additional funding would be required [...] outside of scope of the Streets Ahead contract*".
  22. The document says that tree maintenance work will be carried out in accordance with a list of relevant standards and legislation. This includes British Standard BS5837 and National Joint Utilities Group (NJUG) guidance.
  23. The document said Councillors and residents would receive notice of works before they began. The Council or contractor would fix notices to trees scheduled for removal two weeks before this took place. The only exception being in the case of trees considered to pose an urgent risk to health and safety which may need removal immediately.
  24. However, in November 2015 the Council introduced a new form of consultation on tree removals. It set up an Independent Tree Panel (ITP) to advise on its plans to remove individual trees. It stated at the time that it hoped to "*put people's views at the heart of our decision making*" and to "*reassure*" citizens about its decisions.
  25. The ITP would offer advice to the Council in line with its terms of reference. It would consider the case for removal following a survey of residents on a street-by-street basis. Residents received a street-plan identifying trees along their street planned for removal. They also received the brief explanation for why the Council had identified trees for removal. If a majority of residents on a street who responded expressed opposition to a proposed tree removal, the case went to the ITP. It had five members. Its Chair was an employee of the local Citizens Advice Bureau. Its other members included a highways engineer, an arboriculturist (an expert in the care and management of trees), a health and safety expert and another lay member who was a wheelchair user. The Council said it would "*conscientiously take account*" of the ITP's advice. But made clear that it kept the final decision on whether to remove trees.
  26. The ITP advice could extend to saying if it considered removal should not take place because of the availability of one of the 'engineering solutions' or 'alternative solutions' described above.
  27. A judicial review brought in 2016 sought to challenge the legality of the Council's approach to removing street trees. It argued the Council had carried out insufficient consultation; had not sought planning permission for removals (including taking account of the impact on conservation areas) and had not undertaken an environmental impact survey. The review failed on all counts. The Courts held the Council had no duty to consult on highway tree removals. It did not need planning consent to undertake highway maintenance. Nor did it need to produce an environmental impact survey before undertaking such maintenance. The Court held the Council's policy, including its introduction of the ITP, both lawful and reasonable.
  28. In 2018 the Council released the earlier versions of the five year tree strategy; the first was dated 2012 and then updated annually thereafter. The 2012 strategy set out how the contractor would inspect tree condition and undertake certain works on trees such as crown thinning. It did not mention the 'engineering' or 'other'

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solutions listed in the previously published five year strategy document described above.

29. A July 2013 version of the five year strategy document (revision number 5) contains the comment that *“the removal of highway trees will only be considered as a last resort where there are no other management options available to ensure safety or prevent damage to surrounding structures”*. The document also says that *“where necessary additional decay detection equipment will be used to confirm any recommendations”*. The same statements appear in the strategy documents dated 2014 (revision number 6) through to 2016 (revision number 8).
30. Revised version 7 of the document dated November 2015 contains differences from the document published on the Council website in January 2016. There is no reference to the ‘six D’s’ criteria or the engineering or other solutions available to retain trees as set out in the version on the website.
31. Since the events covered by this complaint the Council has made changes to its approach and policy towards removing and replacement of street trees. We consider those changes later in this report.

### **Chronology of events on Mr G’s road**

32. In August 2014, Amey undertook an initial inspection of trees along Mr G’s road. This identified 11 trees needing removal. One because it obstructed the carriageway, one because of disease and nine because of damage to the highway. For example, roots lifting the pavement or causing damage to kerb stones between the pavement and roadway. The notes of the inspection are brief but say the contractor did not consider it could preserve the nine trees damaging the highway without damage to their roots. The contractor did not keep a photographic record of their inspection. However, Mr G kept photographs which we have considered as part of this investigation.
33. The Council says that further to Amey’s recommendations, it undertook its own inspection in September 2014. It says this was not a full arboricultural survey, as that formed part of Amey’s initial surveying. But it kept a record of its inspection on a spreadsheet next to the contractor’s proposals. The spreadsheet was later updated as it refers to inspections undertaken in 2016 (see below). But otherwise the only comments are that the Council agreed with its contractor’s proposals, i.e. it provides no further reasoning for the decision to remove the 11 trees identified.
34. In December 2014 the Council sent leaflets to households on Mr G’s road. It advised that various roadshows were taking place which would show residents what plans it had for trees in their area. The Council says it did not receive any representations at that time objecting to the proposed removal of trees on Mr G’s road. Mr G says that residents from his road who attended this roadshow were not made aware of the extent of tree removals planned. He says the roadshow also covered other matters such as street light replacement.
35. Around May 2015 the Council posted notices on the 11 trees identified for removal. Mr G and other residents contacted the Council and its contractor. A manager from Amey agreed to a site visit where they considered concerns residents had about the proposed removals. They planned a ‘street walk’ but when the manager arrived they were met by many local residents with multiple questions. So, the manager returned the following evening when a street walk took place with fewer local residents including Mr G. Mr G wrote to his local MP a few days after this site visit, which provides his account of what happened. His letter said that residents believed 10 of the 11 trees did not need removal. He said

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- in most cases trees could be retained with engineering works such as enlarged tree pits or narrower kerbs. Mr G said the manager seemed confused about which trees the contractor had identified for removal. He said they could also offer little explanation for why they had identified those particular trees.
36. The Council's contractor did not keep notes of either visit. But in later correspondence to Mr G the Council said the visit was "*fraught*" with around 30 people present. In this environment the contractor had become "*confused*" about which trees it had scheduled for replacement. Mr G disputes that the numbers present caused confusion, as the street walk only involved around 10 to 12 local residents whom Mr G says all conducted themselves in a calm way.
  37. Further to the visit the Council agreed to delay removal and in three cases consider engineering solutions instead. It wrote to residents in July 2015 explaining more about the background to the proposed works and answering various questions about its Streets Ahead programme. The letter included the statement that "*if trees can be retained following footway excavation and further examination, this would always be our preferred option*". The letter said the Council and its contractor considered "*all practical solutions*" for saving trees "*at the time of the survey and subsequent reviews*". The letter also said the Council could "*validate*" the existence of three 'broken bone' claims its contractor had referred to in communications with residents. It also said residents of the street had reported "*trips and falls*". But later information released by the Council established there had been no reported incidents or injuries on the road in recent years.
  38. In October 2015, the Council's contractor undertook some exploratory digging around the three trees it had identified as being potentially suitable for engineering solutions. A press release issued at the time described these trees as being "*on the borderline*" for retention. Further to that exploration the Council agreed to retain the trees finding the roots "*sufficiently deep*" that they could be retained using engineering solutions, installing new tree pits. Mr G considers there was little difference between these three trees and others identified for removal. He says they were of similar age and did not cause greater displacement to the gradient of the pavement or kerb line. As previously noted, he took photographs in support of his analysis. He also provided calculations of the pavement ramping gradients needed to build over spreading roots. He says all of these fell within the Council's stated tolerance levels for pavement gradients. Mr G also referred to a meeting he had with Councillors and officers in November 2015 where he drew attention to these matters and advocated for use of a particular flexible paving product. The Council told Mr G at the meeting it would consider this product before proceeding with any tree removals along his road.
  39. In comments on the draft of this report, the Council said: "*photographs cannot be relied upon in determining the highway engineering position*" and that Mr G was not qualified to give a professional opinion. In response, Mr G pointed out he was a qualified architect who had designed many road projects and had detailed knowledge of highway design matters.
  40. In December 2015, following the introduction of the ITP, the Council sent surveys to around 100 households who live on Mr G's road, consulting them on its plans to remove the remaining eight trees identified for removal. Around two thirds of households responded to the survey and around 90% of those who responded objected to the Council's planned removals.

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41. The ITP received information about the location of trees identified for replacement, survey responses and the primary reason for the Council identifying the need for removal and replacement. The Council says it would only provide further information if the ITP requested it. The ITP terms of reference said it would take account of *“all available evidence”* but the decision on what evidence it needed in each case rested with it.
  42. Before the ITP undertook any inspections, Mr G wrote to the Council asking for the opportunity to present evidence. He understood from correspondence with a local Councillor that a statement he gave would be passed to the ITP. The Council has disputed this although Mr G has provided an email from a council officer saying they had passed on information from him to the panel chair. However, when the ITP inspected in July 2016 and Mr G approached its members, he found they had only been provided with records from the Council.
  43. After undertaking its inspection of Mr G’s road, the ITP wrote to the Council in July 2016 advising its view that it could retain six of the eight trees identified for removal. It advised the Council should remove one tree growing at an angle into the highway. It advised another should be removed because of substantial damage to the pavement *“making it impassable to some people”*.
  44. In five cases the ITP identified which of the ‘engineering solutions’ it considered appropriate. This included options such as minor ramping of the footway, installing tree pits, thinner profile kerbs, root pruning and pavement repairs. In three cases the ITP noted the solution it proposed had been used for other trees on the road. In one case it qualified its advice, recognising that its proposed solution may compromise the safety of the highway close to a bus-stop.
  45. In the case where the Council had recommended removal because it found a tree diseased, the ITP recognised the tree showed signs of ‘reduced vitality’ and fungal growth. However, it considered the tree *“may recover”* and the Council should monitor it instead as it *“was not causing any significant, unmanageable damage”*.
  46. After receiving the ITP advice the Council says that it carried out a review of what it would cost to undertake the recommended engineering solutions. The review found that in three cases there was no cost to making the changes advised by the ITP. However, the review found the ITP advice could not be followed for other reasons. For example, because of adjacent utilities preventing a tree pit or because roots prevented installing narrower kerbs.
  47. In other cases, the Council considered the recommended work feasible but costed it at around £50,000. In general comments on this review the Council says that: *“It should be noted that just because an engineering solution appears, on the face of it, to be applicable to a particular situation, it does not automatically mean that it is possible to implement it”*.
  48. The Council also sought further advice from two independent arboricultural consultants on the diseased tree. The first consultant found the tree to have *“minor but rectifiable defects or in the early stages of physiological stress”*.
  49. The second consultant undertook a tomograph; a survey which uses ultrasound to assess the condition of a trunk and identifies levels of decay. The consultant identified the tree had a historic impact wound but there were signs of new growth around the edge of that. Also, that there had been utility works nearby with the *“potential”* to damage roots. But the consultant said while the tree was having

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*“early stage changes” it was “within normal safe limits for decay” with a remaining lifespan estimated in excess of 20 years.*

50. The Council proceeded with its plans to remove the eight trees. It says that it initially tried to do this before November 2016 but could not do so because of protest. We asked the Council to clarify when this was. It said *“it is difficult to be precise with dates of failed attempts as these have not been documented as such. We have attempted the recovery of vehicle tracking information in order to supply dates but unfortunately records are not kept longer than a 12 month period”*. It also says Mr G’s road had become *“symbolic”* as a focus for protestors.
51. Mr G disputed this description and that the Council made any effort to remove trees before November 2016. He said Council policy was not to remove trees until it had given its response to the ITP advice. So, had it attempted this, it would have been contrary to that policy because the Council did not respond to the ITP advice until the day of the felling, i.e. in November 2016 (see below).
52. In mid-November 2016 the Council obtained a Temporary Road Traffic Regulation Order lasting for 18 months to cover Mr G’s road and around one hundred others. This would prevent vehicle parking to obstruct tree removal works. It did not prohibit parking of vehicles on the roads at other times. It did not say when removals would take place at any of the locations listed.
53. At the end of November 2016, the Council published its response to the ITP recommendations. It placed this on its website at around 4.30am, on the day it scheduled contractors to remove the trees. It says it did this because it believed protest groups had software which alerted them to the Council publishing its responses to the ITP online. It anticipated *“intensified protest”* when it published its response to the ITP advice.
54. The Council gave its reasons for rejecting the ITP advice as follows. In the case of the diseased tree the Council summarised that it had been subject to further investigation. It said research indicated past history of vehicle strike, utility works damaging roots and that a tomograph had highlighted *“a reasonably large volume of the stem is expected to undergo change”*. The Council said its contractor *“would not accept liabilities on this tree given their historic knowledge”*. It said given these factors, *“we are of the opinion the tree should be replaced now”*.
55. In the remaining cases it gave its reasons as follows: *“After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be in the order of £14 to £16 million. The Council does not have such additional funding available and many solutions would be of a short-term nature”*.
56. On the day of the removal, contractors arrived around 5am. Residents did not have advance notice of the removal. Contractors arrived with the police who knocked on residents’ doors to have vehicles removed that blocked access to trees. Those that did not or could not move their vehicles had them towed away. At a meeting of full Council in December 2016, the Cabinet Member for Infrastructure and Transport said it did not give notice of removal to residents as *“part of the decision not to give advance notification of the works due to the expected protestor actions and the impact that could have on worker and public safety”*. Emails sent to the police in advance of the removals described protest

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groups following contractors from their depot and disrupting removal work through peaceful protest when they arrived at their destination.

57. A press release issued by the Council at the time said it had started the work at this time *“on the advice of the police to make sure it could be done safely”*. However, an email sent by the Council at the time which was later put in the public domain said the police *“had no input into writing the plans or finalising start times and merely provided operational support based on our plan”*.
58. Information released by South Yorkshire Police under Freedom of Information and published on its website show at least one person reported their car stolen, not realising the Council had towed it away. Others complained of having had no notice of the road closure. Mr G also pointed out that despite the temporary road traffic regulation order giving residents access to and from their houses, some were prevented from leaving during the works.
59. The Council has provided a redacted version of its operation plan for the day of the removals drawn up with the contractor. We note that this included placing notices advertising tree removals on two streets two miles away from Mr G’s road (one to the east and one to the south). The Council says this is because its contractor also intended removing trees on those roads on the same day. We also note the contractor had instructions to remove branches overhanging residents’ gardens first (before 7am) with no consent being sought for this from residents affected. Mr G provided us with footage of tree removals taking place in the dark with contractors working over gardens and branches falling outside designated safety zones.
60. The Council felled seven of the eight trees scheduled for removal. It could not remove one tree as a resident sat in their garden and so prevented it. This was one of the trees the ITP advised the Council could retain.
61. Just over a week later, the Council issued a further press release apologising to anyone affected by events on the day it removed the trees. It also apologised for not publishing its response to the ITP sooner. It committed in future to publishing its response to the ITP before beginning work to remove trees and not to start arboriculture work before 7am. However, in November 2017 the Council later changed its position on working before 7am saying it had *“no option”* further to continued protests about its ‘Streets Ahead’ programme of works. In December 2017 it again began operations around 5am on removing trees in another part of the City.

### **Mr G’s correspondence and complaints**

62. Mr G was in lengthy correspondence with the Council pre-dating the removal of trees from his road. He complained in January 2016 about administrative matters connected with the tree survey. This included pointing out the survey contained no deadline for a response and problems responding online. It also did not make clear how the Council measured if a majority of responses did not agree with the plans (i.e. was it a majority of all those who responded or a majority of all households consulted).
63. In March 2016 the Council sent a generic response to Mr G’s complaint, as it did in other cases where it had received complaints about its Streets Ahead programme. The Council said it would not reply to Mr G’s complaint until outstanding legal proceedings were resolved.

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64. The Judicial Review concluded by the end of April 2016. The Court refused leave to appeal at the end of July 2016. But Mr G did not receive a reply to his complaint.
65. Mr G's second complaint followed from separate correspondence begun in November 2015. He wrote to the Council asking whether Amey had to consider the 25 potential 'solutions' to avoid tree felling as part of its contract (noting the published 'Streets Ahead' strategy document was not part of the contract itself). Mr G also referred to earlier questions submitted online including wanting to know more about the arboricultural inspections carried out by the Council; its tree replacement scheme and the standards set out in the Streets Ahead strategy. Mr G also asked for more details of the contractor's structures and requirements.
66. The Council replied in May 2016. It said the 'engineering solutions' and the 'alternative solutions' were included as part of the contract. It said there was a *"fully independent verification process carried out by qualified tree inspectors from within the Council"*. It provided some brief details on tree replacement and said contractors followed national standards around matters such as footway ramping gradients and identifying tripping hazards.
67. Mr G replied in July 2016. He questioned the response and raised questions about tree replacement. He also said some of the statements made by the Council appeared to contradict a presentation it had given in 2015.
68. The Council made a further brief reply to Mr G in July 2016. When, in September 2016, he sought to extend the correspondence further the Council said discussion would not be productive. It said *"our views will never coincide"* and that the Council was *"comfortable with its position"* on the matters he had raised. Mr G had continued to express concerns around its contract, inspections, tree replacements and pavement ramping gradients. Mr G also introduced that there had been no claims for personal injury linked to highway trees along the road where he lived. He also asked the Council about the particular flexible paving product he had referred to in November 2015, used by Amey in other parts of the UK.
69. Still considering he had not received an adequate reply Mr G made his second complaint via a Councillor in early October 2016. The following month he also posted a copy and delivered a hard copy by hand to the Council offices. When Mr G later telephoned the Council it confirmed receipt, but he did not receive a reply and so he made a further complaint about that also the following February.
70. The Council replied to Mr G's complaint in August 2017. It said that because the Council considered it had previously answered Mr G's enquiries, officers had assumed there was no need to reply further to his outstanding correspondence of September 2016. However, the Council apologised for the delay replying and offered some further comments in response including:
- that it expected its contractor to respond to complaints as part of the service it provided in handling highway maintenance issues;
  - that it wanted to be helpful but was being *"systematically bombarded with persistent enquiries from a small number of activists"*; it said they *"would not accept the accurate and truthful responses provided to the many and highly complex enquiries"*;
  - that it had answered his enquiries around whether 'engineering solutions' to retain trees were included in its contract with the contractor;

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- that it had answered his enquiries around tree replacement;
  - that it had answered his enquiries around the guidance followed by the contractor when working around existing trees;
  - that it had answered his enquiries around the standards used by the Council when considering matters such as acceptable pavement gradients and trip hazards;
  - updating him on responses to requests for information to be put in the public domain;
  - that it had considered all his comments about the benefits of a particular flexible paving product; it gave examples of where it had installed flexible paving products in different locations around the City;
  - that it followed best practice when installing new tree pits.
71. Mr G replied to that letter both in writing and at a meeting with Council complaint officers in October 2017. He made the following points, that he:
- had not received an explanation for the delay in replying to his complaint;
  - did not consider himself an activist or engaged in any systematic campaign against the Council; but he considered replies to his correspondence had not always been “*wholly accurate or appropriate*”;
  - had not been provided with information showing the PFI contract required the contractor to follow the engineering solutions referred to in the Council’s published Streets Ahead strategy document;
  - had not seen the original inspection reports which led to the Council identifying trees for removal on his road; he also wanted an explanation for why the Council had not used engineering solutions referenced in the Streets Ahead policy;
  - had various questions around the policy and guidance followed by the Council when it came to planting new trees;
  - had not received recognition that his complaints about damage to trees during street-works showed the Council’s contractor had not followed protocols despite receiving assurances to the contrary (especially the NJUG guidance);
  - had not received a satisfactory response to his queries around how the Council measured pavement gradients, trip hazards and so on;
  - considered the Council had not answered his enquiries about using a particular flexible-paving product; he said both a senior officer and Councillor had said they would make enquiries about this but had not done so;
  - considered there remained problems with how the Council installed new tree pits, referring to one on his road; and
  - still had various questions about the relationship between Council and contractor and around information in the public domain.
72. In December 2017 the Council gave its final response to Mr G. We summarise this as follows.
- That it could not add to its earlier explanation for why Mr G had not received a reply sooner; the Council had not responded initially believing it had answered Mr G’s enquiries.



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- That it had commented about the role of activists to provide context about why it was “*struggling to answer concerns made by residents in a timely way*”.
  - That its contractor had various strategies to meet the aims of the PFI contract including using the list of engineering solutions.
  - It went over the process followed by the Council and its contractor when identifying trees for removal and replacement; including the role of the ITP.
  - It provided extensive comments on tree replacement covering how the PFI contract provided for monitoring of that.
  - It clarified the Council followed NJUG guidance where possible; it said that since Mr G first complained about damage it had carried out re-training and on-site compliance checks which were “*highly effective*”.
  - It clarified where it had used flexible paving products but it confirmed it had not had meetings to discuss the specific product Mr G referred to.
  - It provided more comment in response to points made by Mr G around construction of tree pits.
  - It answered Mr G’s questions around working relations between Council and contractor.
73. As implied from the above exchange, Mr G also engaged in separate threads of correspondence with the Council. One line of correspondence began in July 2015 when the contractor undertook trenching work outside Mr G’s house. Mr G said it damaged tree roots and did not follow guidance. Then in August 2016 Mr G made a separate complaint about damage he said the contractor caused to tree roots when responding to an issue with highway drainage which required it to remove kerb stones. The contractor denied this, although it acknowledged an initial reply saying it had consulted an arboriculturist around these specific works was incorrect. However, it said that in response to future contacts of this type that it would ensure an arboriculturist was present on site.
74. In June 2017, another strand of correspondence began when Mr G sent an email to the Council to advise that trees not removed by the contractor had suffered damage when the contractor laid new pavement surfaces. Mr G implied the damage was mainly minor but questioned the contractor’s use of heavy machinery and asked what independent oversight of works was undertaken by Council arboriculturists. He said such works contravened the NJUG guidance and BS5837. He also said such damage contradicted the earlier replies to his correspondence promising contractors would take more care.
75. In its replies the Council’s contractor acknowledged causing minor tree damage through use of mechanical equipment. It said an arboriculturist had inspected and considered any damage superficial. It explained measures taken to try and prevent a repeat.
76. Another strand of correspondence began in July 2017 when Mr G submitted a complaint after contractors disturbed kerb stones leaving them out of line. He said this was a potential hazard for cars and a trip hazard for pedestrians. He also noted the Council had cited disturbance to kerbs as a reason for tree removal initially, so it was ‘very upsetting’ the contractors had left the kerb stones out of alignment.

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77. In response, in August 2017, the Council's contractor said it had noted the problem reported by Mr G. It would align, repair or replace the kerb stones and it completed that work in September 2017.

### **The Council's new approach**

78. Further to the removal of trees on Mr G's road, the Council's policy for removing street trees continued to generate public protest with much local and national media coverage. During 2018 the Council entered mediation talks with a group campaigning against the extent of tree removal in the City. Following those talks the Council said it had agreed with the campaign group:
- that it would not remove a significant number of healthy street trees and would retain those indefinitely;
  - for trees needing removal and replanting, this would now happen over a longer ten-year period;
  - where a tree remained due for removal a further assessment/investigation would take place before work began to confirm this remained the only practical and/or economic course of action;
  - the outcome of these assessments/investigations would be published on the Council website; and
  - that some streets and trees would be treated as special cases.
79. The Council says this meant it would only remove healthy street trees *"if no other practical solution can be found"*. It said it wanted to *"retain trees indefinitely, where possible, using a much more flexible combination of highway adjustments, enhanced monitoring and maintenance"*. Amey agreed to fund various further works to help retain trees, not included as part of the original contract. The Council said in July 2019 that 191 of 309 street trees previously identified for removal had been retained. While 91 awaited further inspection and 26 required *"bespoke solutions"*.
80. As part of this new approach the Council re-inspected the single tree on Mr G's road which had been identified for removal but which it could not remove in November 2016. It has now retained the tree, with its contractor fitting thinner profile kerb stones.
81. In December 2018, the Council issued the Sheffield Trees and Woodland Strategy 2018-2033. The strategy sets out the Council's aim to maintain a resilient and healthy tree stock across the City. The strategy does not encompass highway trees, which it said would be the subject of a new 'sub strategy'. It said the new strategy for street trees would *"explore a number of issues such as the long term number of street trees, species selection, management and maintenance and community involvement"*.
82. In July 2019, the Council announced work had begun to develop this new street tree strategy. The strategy would be developed in partnership with the campaign group, the Council, Amey, independent experts and the Woodland Trust. It would have an independent chair.
83. In December 2019 the Council also published a 'Review of Tree Investigations – Lessons Learned and Actions'. This report completed in August 2019 followed a detailed review of a sample of trees re-inspected under its new approach. It was co-authored by the Council, Amey and representatives of the campaign group. Among the 'lessons learned' the report noted:

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- inspections found assumptions that tree roots caused pavement damage were sometimes incorrect; visual inspections for ‘damaging’ or ‘discriminatory’ trees were inadequate;
  - the Council and Amey had simplified reasons for wanting to remove some trees and obscured the real reasons through a lack of detail;
  - that using flexibility in the contract to allow for a greater deviation of kerb lines would allow more growth for street trees;
  - that more soil excavation around trees and use of tree pits would reduce future maintenance; and
  - that where there were shallow roots, minimal pavement width or flagstones, flexible materials might provide the best solution.
84. Commentary in the report also noted that ‘engineering solutions’ referred to by the Council in the published tree strategy document were not “*specified in the contract [to Amey] and some would not be allowed or considered*”. The review also found that “*in some cases*” where the Council had previously rejected advice from the ITP, this was wrong as its advice “*would have been appropriate to follow*”.
85. The report listed 14 action points the Council and Amey would take including:
- making more detailed inspections in cases where tree roots may be damaging highway surfaces as inspections had shown roots were not always the cause of damage; making more detailed inspections in all cases where trees were considered ‘damaging’ or ‘discriminatory’;
  - providing clearer description and evidence when recommending tree removal; making public risk assessments carried out on trees which may protrude beyond the kerb line and so cause a hazard;
  - ensuring the Council’s developing strategy for street trees and its contract with Amey would be well aligned;
  - allowing kerb deviation to the maximum allowed by the contract where “*applicable and practicable*”; giving more consideration to retaining trees by allowing gaps in the kerb stones edging the highway;
  - that Amey would identify sites where flexible materials could be used;
  - that Amey could put forward proposals to the Council to retain trees outside the scope of its contract; and
  - to consider more soil removal around trees to allow for growth and consider more use of more enlarged and edged tree pits.
86. In March 2020 the Council approved its Partnership Street Tree Working Strategy. The strategy identifies the following six key outcomes to be delivered through a policy of ‘promoting and enhancing’ Sheffield’s street trees. It will:
- sustainably and carefully manage street trees in accord with best practice;
  - ensure the resilience of street trees through the type and age of new trees planted and management of existing stock;
  - increase the value and benefits that flow from street trees;
  - contribute to a more equal distribution of urban forest across the city;
  - increase street tree canopy cover; and

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- involve the wider community in caring for and valuing street trees.
87. The strategy expands on each of these outcomes. In support of the first outcome the strategy says the Council and Amey will work towards an independent accreditation of street trees to ensure Amey comply with best practice in this area. The strategy also sets out how the Council will take decisions on individual trees acting on recommendations from Amey. Each removal and replacement will be on a case-by-case basis. The strategy says trees will only be removed where:
- they are dead, dying or have structural defects that make them dangerous;
  - a diseased tree in 'managed decline' has reached the same condition;
  - a tree causes unacceptable risk to a road or pavement user and that cannot be reasonably mitigated;
  - a tree causes damage to third party structures.
88. The strategy also promises greater transparency about decisions made using the approach set out above. There will also be updated contract method statements and management documents to reflect the changes. These actions are due to complete before the end of 2020.

## Conclusions

### Our jurisdiction and use of discretion

89. Mr G's complaint invited us to consider events going back to summer 2015, related to the removal of trees from his road. That made it a late complaint. However, we considered there were special reasons justifying investigation.
90. First, the Council did not offer a final reply to the most substantial of Mr G's complaints until December 2017. That was within 12 months of Mr G contacting us. It was not fair to penalise Mr G for delays on the part of the Council in completing its consideration of his complaint.
91. Second, we noted that complaint did not address all the matters we have set out in the narrative above. But we considered there were good reasons to investigate the removal of trees that took place on Mr G's road in November 2016. Because it was the decision to remove trees which underpinned Mr G's subsequent correspondence and complaint.
92. We did not consider the High Court judgement in March 2016 prevented us having discretion to investigate this complaint. However, we will use our discretion not to duplicate or trespass on findings made by the High Court. So, this investigation has not considered:
- the legality of the Council's PFI contract;
  - the overarching policy objectives set out in the Streets Ahead strategy;
  - the extent of consultation around the contract;
  - the procedure for appointing the ITP or its remit;
  - the extent to which the Council considered the environmental impact of its strategy; and
  - the extent to which the Council considered the impact of planning law or local planning guidance when implementing its strategy.

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93. We also considered there were matters where it was not an effective use of our resources to carry out further investigation. We used our discretion not to make further enquiries into the matters listed below. This does not imply we always found the Council's response to these matters satisfactory. But we considered that investigation would not result in a finding of fault causing injustice to Mr G; or else we would not seek a remedy for any injustice caused. This covers the Council's responses to Mr G's contacts about:
- its policies around tree replacement species;
  - a particular flexible paving product;
  - the standards it follows when assessing desired footway gradients;
  - whether its contractors damaged individual trees along his road, raised in his correspondence between August 2016 and June 2017;
  - the damage to kerb stones reported in July 2017;
  - the condition of tree pits installed by its contractors; and
  - the substance of Mr G's first complaint in January 2016 about the survey sent to households on his road.
94. In respect of the flexible paving product we note Mr G received assurances the Council would pursue enquiries into this. It is disappointing the Council did not do so or else explain why not to Mr G. But it was not part of Mr G's complaint that the Council failed to use a particular flexible paving product instead of removing trees from his road. His correspondence on this point with the Council was more general. The same considerations applied to the complaints about tree replacement species and Mr G's general concerns about the footway gradient standards adopted by the Council.
95. We consider Mr G raised an understandable concern about the Council's adherence to British Safety Standards and NJUG guidance when he identified damage by contractors to trees and kerb stones in the course of their work. He also alerted the Council to the contractor's failure to adhere to an earlier commitment to have an arboriculturist on site when carrying out street works close to trees. However, we considered the damage alleged was not significant enough to justify detailed enquiries. The same consideration also meant we did not pursue enquiries about the condition of tree pits along his road.
96. When Mr G wrote to the Council about its survey issued to households in December 2015, we consider he made some useful points in that letter, which could have informed future surveying of residents. For example, pointing out residents were not given a cut-off time for replying and not making clear what constituted 'a majority of households' for the purpose of referring a case to the ITP. But the Council has long since stopped issuing such surveys and whatever flaws Mr G identified they did not cause any injustice to him. Because the purpose of the survey was to decide if the Council should refer the planned removals to the ITP which it went on to do. However, we comment further on the Council's complaint handling, including its response to this complaint, below.
97. We also used our discretion not to investigate the extent of information about the Council's PFI contract now in the public domain. We note that since Mr G first raised this matter the Council has put much more information on its website. We consider it would be for the Information Commissioner's Office (ICO) to take a view on whether the Council could publish more information; for example, where small portions of the documents remain redacted.

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### Was the Council at fault?

98. There is nothing exceptional about a highway authority wanting to remove a street tree. Such removals take place daily, across the country without incident. Councils need to remove trees on occasion for the reasons envisaged in the Highway Act 1980. It is the Council's statutory duty to ensure its highways are safe and accessible for pedestrians and vehicles alike.
99. But the Council found itself in the unprecedented position here of carrying out tree removals in the pre-dawn hours, accompanied by a significant police presence, waking residents and removing cars without warning. It did so because by November 2016, it faced some opposition to its 'Streets Ahead' programme which had become organised and sought to frustrate contractors. Although we have not found any evidence the Council had previously sought to remove trees on Mr G's road as it has claimed.
100. We recognise there were multiple reasons for opposition. For example, concerns about the environmental impact of losing mature street trees or the perceived scale of removals. As we explained above these are not matters we have investigated.
101. We recognise the difficult position the Council found itself in. But we have investigated if poor administrative practice also contributed to the opposition the Council faced, which led to Mr G's complaint and many other expressions of dissatisfaction with its actions.
102. Our starting point has been to consider the guidance we publish on the "[Principles of good administrative practice](#)". These include the principle of being "*open and accountable*". We say this includes being open and clear about policies and procedures and ensuring information provided is clear, accurate and complete. We consider good practice includes being transparent. We find numerous examples of where the Council did not meet this standard.
103. First, when considering the decision to remove trees on Mr G's road. We consider one of the reasons why the Council's 'Streets Ahead' programme ran into public opposition lies in the lack of information it required from its contractors and officers at the outset, when identifying trees for removal. Also in the lack of information it gave explaining how it had then reviewed those decisions. The evidence for this is set out below.
  - There is a lack of information that explains why the Council and its contractors initially decided to remove 11 trees from Mr G's road. The notes of the contractor's inspections are brief and that of the Council's subsequent inspection briefer still. This fundamental lack of detail made it difficult for Mr G to understand why in most cases, the Council identified specific trees for removal on his road. This was especially after we considered Mr G's photographs of trees identified for removal and his analysis of footway gradients. In some cases, the photographs appear to show little difference between the condition of the pavement or kerbstones next to those trees removed from those later reprieved or those never identified for removal. While his calculations appeared to show the Council could grade footways within recognised limits to accommodate tree roots. In these circumstances, the more the Council could explain of its reasons for undertaking removals, the more likely residents would accept its judgement. Yet the Council failed to provide adequate reasons, meaning it would continue to have its judgement questioned. This included following the contractor's street walk in May 2015 which was an opportunity missed for the contractor to explain in more detail

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their reasons for identifying certain trees for removal. We do not accept the description of the street walk provided by the Council or that this would have prevented such reasoning being provided.

- There is also a lack of information around the Council's actions between May and October 2015 when it chose to retain, after exploratory digging, three of the 11 trees identified for removal. There are no records which explain why these three trees were selected for such works, but other similar trees were not. Nor why, given what the contractor found when it undertook that digging it did not subsequently reconsider its view in other cases. In nine cases the contractor said initially the tree could not withstand engineering works due to potential damage to its roots. Clearly that was wrong in these three cases. It does not follow the contractor was also wrong in the other six cases, but it would be reasonable to expect the contractor and Council to have revisited its initial decision in those cases following the exploratory digging. It could have explained in its letter accompanying the survey it sent to residents in December 2015 what different considerations applied to the six trees it wanted to remove from the three it decided to retain. But it did not do so.

104. Second, when considering the extent of information the Council put in the public domain related to its decision to remove trees from Mr G's road.

- The Council only published the ITP advice and its response on the morning of the day it removed the trees. The statements the Council made in November 2015, when it introduced the ITP procedure, show that it did so to reassure citizens it acted in good faith when carrying out its Streets Ahead strategy. But publishing a document in the middle of the night in the hope of deliberately avoiding scrutiny of its response could only undermine that.
- The Council drew a veil of secrecy over its consideration of the ITP advice. It undertook a review of the costs of proposed engineering solutions. It also consulted two arboricultural experts about the diseased tree. Yet it chose not to put any of this information in the public domain.
- The Council selected quotes from the further expert advice it received in response to the ITP letter. It consulted two specialist tree consultants to give it a view about the diseased tree. Their advice, in one case detailed and supported by technical surveying, supported the ITP position. They found that while the tree showed signs of disease there was no immediate need to remove it. Yet the Council's response to the ITP chose not to mention this. Its response suggested instead that the consultant reports justified the opposite conclusion. So, this went beyond a lack of information in the public domain. The Council instead misrepresented the advice it received.
- The Council cited cost as the reason for not accepting the ITP advice in cases other than the diseased tree. Yet this was not the reason its internal document suggested for rejecting the advice in all cases. Potentially there were also engineering reasons for rejecting the advice.
- The Council publicly said it conducted the removals the way it did based on police advice. That has been subsequently refuted by the documents published by South Yorkshire Police.

105. Third, when considering information the Council put in the public domain around its Streets Ahead programme. The Council chose to make public a version of the five year tree strategy that did not follow earlier versions of that policy and did not reflect its policy in practice. We note the published document referred to

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assessments following the 'six D's' criteria, even though this never formed part of the strategy previously and was not part of its contract with Amey. However, we consider that reasonable, accepting the 'six D's' formulation is a useful way of summarising the grounds for which any highway authority may wish to remove a tree. Use of this terminology did not fundamentally undermine this document.

106. But what we find unacceptable was the Council's decision to describe its strategy as requiring Amey to follow the 14 engineering and other solutions listed in the document if a tree was found 'damaging' or 'discriminatory'. These were never part of its contract or those other versions of the tree strategy the contractor had worked to. The Council's December 2019 review acknowledges its contractor would never use some of the 'solutions' referred to. But the Council did not explain this in either its public communications or in its correspondence with Mr G. He questioned the Council repeatedly about whether the contractor had to follow the engineering or other solutions as a contractual obligation. He received misleading information from the Council in its replies.
107. The published version of the strategy also formed the basis of the instructions given to the ITP. The Council therefore embarked on a process of consultation and independent review that referred to a strategy containing elements that it had never followed and never intended to.
108. We find this led to the Council not using engineering solutions to retain trees on Mr G's road despite the ITP advice to do so and their availability. We note in three cases where the ITP advised retaining a tree the Council did not dispute the availability of an engineering or alternative solution. But rejected it on grounds of cost. Cost was not directly mentioned in the published strategy document as a reason for not carrying out an 'engineering solution' to retain a tree.
109. We see a recurring pattern therefore of the Council failing to be open and transparent in decisions taken under its Streets Ahead policy. First, in the decision making accompanying its initial decision to remove trees on Mr G's road. Second, in how it then responded to the ITP advice that it did not need to remove certain trees. Third, in producing a policy document for public consumption that did not reflect its actual working practices or contract.
110. Transparency goes to the heart of trust in decision making. It is at the heart of good administration. We consider one of the root causes of the significant loss of trust the Council suffered in carrying out its Streets Ahead policy, felt by Mr G and many others, lies in its lack of transparency, openness and on occasion, honesty.
111. But fault in this case is not confined simply to a lack of openness and transparency. We also find fault in the following matters.
- Undertaking tree removals at 5am. By November 2016 it appears the Council's focus was entirely on removing the trees it had identified without considering the distress such an operation might bring with it. Nor the outrage that would inevitably greet it. Whatever understanding we have for the pressures the Council was operating under, this was a disproportionate response.
  - Having an operational plan suggesting it resorted to subterfuge in putting up false notices advising of tree removals elsewhere on the day it removed trees from Mr G's road. We do not accept the Council's assertion that these notices formed part of the contractor's planned work for the day. This is because they appear on the operational plan describing tree removals from Mr G's road. This was deliberately intended to be carried out without prior notification to residents. So, it is hard to reconcile why the Council would give notice of street



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works to other residents of the city as part of such a plan. Nor why such a detail would appear on an operational plan specific to Mr G's road. We also note the plan aimed to remove tree branches overhanging private property before its actions could be challenged; something which potentially breached property owner's rights under civil law.

- Using a Temporary Road Traffic Regulation Order that deliberately did not identify when it would take effect for the multiple roads it covered.
- Not requiring its contractor to use their own "*decay detection equipment*", when disputing findings of a qualified expert who had used just that in consideration of the diseased tree. This is despite the contractor promising to use such equipment "*to confirm*" its recommendations "*where necessary*". If it was not necessary on this occasion, then it is hard to think of circumstances where the Council would ask for this.
- In its handling of Mr G's complaints. The Council did not reply at all to Mr G's complaint of January 2016 about the survey sent to residents of his road. We note the Council sent a holding reply and we consider the Council could reasonably delay its response as the Court proceedings may have changed how the Council consulted. But failing to then offer a substantive reply after the Court hearing completed was fault.
- Delaying for 10 months in answering Mr G's complaint made in October 2016. The Council could not deny Mr G access to its complaint procedure because its officers believed they had replied to his enquiries satisfactorily. A complaint procedure should allow citizens to challenge decisions taken by officers with which they disagree, so their decisions can be scrutinised.
- The Council responses also did not address the discrepancy between verbal statements made about accidents caused by street trees on Mr G's road and the information he obtained using Freedom of Information requests.

### **Did the faults cause injustice?**

112. We recognise that since the events of this complaint, the Council has re-considered its approach. In 2018, it began working with a campaign group and agreed to undertake a more in-depth inspection of trees identified for removal. It has since introduced a new strategy for street trees. All this has involved working in a far more open and transparent way including letting independent experts trusted by the campaign group participate in inspections or chair discussions. This also coincided with the Council releasing into the public domain far more of the contract agreements with its contractor. Its new approach has helped defuse tensions between Council and protestors. It highlights the benefits of working in an open and transparent way.
113. We further welcome the December 2019 publication of the Council's Review of Tree Investigations. This shows the Council has of its own accord reflected both on the information it puts in the public domain around tree removals and practical matters around inspections.
114. The new Street Tree Working Strategy also promises to embed in decision making more information about the reasons for tree removals and a commitment to make those reasons transparent. We note there is still more work to turn promised outcomes into practical policy, but we welcome the strategy considering it marks a further turn away from the flawed policy which led to this complaint.

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115. The Council has commented that it has concerns that our decision to issue this report may undermine the work it has done to build better relations with citizens and rebuild public trust. That is not our intent and we trust this recognition of the positive steps taken by the Council reflects that.
116. We cannot say that had the Council acted with more openness sooner that it would necessarily have led it to retain more trees along Mr G's road. But it would appear reasonable to conclude on balance that it would have done, especially in the case of four of the five trees felled contrary to ITP advice (we note here the ITP gave only qualified advice in respect of that tree close to a bus-stop). We note that as of July 2019 the Council had felled less than 1% of trees re-inspected under its new approach. This included the tree on Mr G's road which its contractors could not fell in November 2016.
117. We also consider a more open and transparent approach unlikely to have led the Council to undertake removals in the way it did. As it would not have undermined public trust in its policy to the point where it faced such opposition that it resorted to such an approach.
118. Mr G was caused distress by the Council following the approach to removals that it did. Both in the form of uncertainty, in not knowing if the removals could have been avoided and outrage at some of the actions of the Council described above. His distress will be shared by many others similarly affected.
119. Mr G also experienced unnecessary time and trouble in pursuing his complaint. We find Mr G clearly wanted to be helpful, informative and constructive in his engagement with the Council. Mr G usefully pointed out to the Council discrepancies between its published statements on tree removals and its practice. As well as raising reasonable concerns about how it carried out works. We consider many of the faults we identified could have been avoided had the Council engaged with the substance of his concerns at an early stage. We accept the Council's poor service to him was influenced by the large volume of correspondence it received from those aggrieved at the tree removals. We also accept the Council was under great pressure because of the growing protest at its actions and this extended to its complaint responses. We also accept Mr G's complaints were sometimes lengthy and required detailed consideration. But the delays in answering his complaint still caused him injustice.

## **Recommendations**

120. To remedy the injustice identified above we recommend that within three months of the date of this report the Council:
- provide a public, unreserved apology accepting those findings made in this investigation which draw attention to general failings in the implementation of its 'Streets Ahead' policy. It should also provide a private apology to Mr G's family to include specific recognition of its failings in its communications with him;
  - share with us the further detailed proposals it has for embedding transparency within its new tree strategy. Its reasons for decisions must be explained in sufficient detail for scrutiny. Officers should be encouraged to supplement reports with photographs and details of any specialist technical investigation undertaken. It could also take account here of the recommendations made in a

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Forestry Commission report into tree felling which identified several ways in which the Council's record of tree felling operations could be improved;

- share with us how it proposes to ensure its contracts and management agreements with Amey reflect its new street tree strategy; and
  - consider further how it can ensure contractors and managers are aware of the need to signpost correspondents to the Council's complaint procedure whenever appropriate. This includes circumstances where officers may consider there is little benefit in prolonging correspondence.
  - consider if there are wider implications for how it delivers services and lessons it should learn as a result of how it implemented its Streets Ahead programme. In particular, how it can embed the principles of openness and accountability across all its services. It will write to us with any further action it proposes in this regard.
121. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

### **Decision**

122. For reasons explained above we uphold this complaint finding fault by the Council causing injustice.

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