

Report to: **Scrutiny Committee for Audit and Best Value**  
Date: **3 March 2010**  
By: **Chairman of the Project Board**  
Title of report: **Scrutiny Review of Highway Compensation Claims**  
Purpose of report: **To present the outcomes of the scrutiny review and make recommendations**

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**RECOMMENDATIONS:**

**(1) That the Committee notes the findings and conclusions of the review board's deliberations contained in the appendix to this report, and endorses the Board's recommendations:**

- **That a guidance note, explaining how the Council handles public liability claims, be reissued to all Members to ensure they are kept abreast of the law and County Council procedures.**
- **That the planned improvements in the process for handling highway compensation claims be endorsed.**

**(2) That no further scrutiny work be undertaken on this issue at present.**

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**1. Financial Appraisal**

1.1 The main financial considerations of the Project Board's recommendations are outlined in the appended report.

**2. Summary**

2.1 The Project Board comprised Councillors Paul Sparks and Nick Bennett. The appendix to this report contains the findings and recommendations of the Project Board which met on 28 January 2010. An evidence pack of supporting documentation is available on request from the contact officer.

**3. Recommendations**

3.1 The Committee is recommended to note carefully the findings and conclusions of the Review Board and to agree that no further scrutiny action is necessary.

COUNCILLOR PAUL SPARKS  
Chairman, Audit and Best Value Scrutiny Committee

Contact Officer: Paul Dean                      Tel No. 01273 481751  
Local Members:                      All

**BACKGROUND DOCUMENTS**

None

The Report of the Project Board – APPENDIX

**Report of the Compensation Claims Scrutiny Board**  
**28 January 2010**

**Members: Councillors Sparks and Bennett**

**Officers:** Richard Hemsley; Rawdon Phillips and Paul Dean

## **Background**

The Audit and Best Value Scrutiny Committee on 18 November 2009 established a scrutiny review board to consider:

1) Whether the most cost effective option for dealing with claims for compensation against the council is by using in-house expertise or engaging external specialists.

2) For highways and pavement compensation claims, whether there is sufficient information available to define the optimum balance between investment in highway maintenance as against meeting claims and accepting the costs of other associated impacts:

- Will doing more highways maintenance result in savings on compensation claims (and costs of processing) against the council and also lead to savings for social care and health services? Has anyone attempted to make a judgement as to the optimum level of investment in maintenance to manage these risks?
- Is there a need for an 'invest to save' for this and other preventative approaches which could reduce compensation claims?

## **Evidence**

The evidence for this review comprised:

- a presentation by Deputy Director of Corporate Resources (Richard Hemsley) and Insurance and Risk Manager (Rawdon Phillips)
- Responses to Freedom of Information requests dated May and July 2009
- Summary of relevant duties of the County Council under Highways Act legislation
- Comparison performance charts across 15 county councils in respect of public liability claims – highways
- Example incident report forms.

## **Report**

### **The law and liability for highways and other compensation claims**

The Highways Act (S.58) provides that if the Council has a regular inspection regime and responds to information provided by the public, repairing the highway as appropriate, the Council would not be liable for any injury or damage caused by a highway defect about which it was not aware. In effect this means that the Council only pays compensation for injury or damage when the system of inspection and repair has failed in some way, for example when:

- potholes or other serious defects are missed during inspections

- repairs are not carried out within a reasonable time, or
- information from the public is not acted upon within a reasonable timescale.

The Council's policy on highway inspections (contained in the Traffic Asset Management Plan) is robust as its validity has been tested in numerous court cases over the years. The policy sets out the response timescales for responding to notifications of defects which can range from two hours for more dangerous potholes to much longer periods for minor potholes or less trafficked routes. Generally speaking, the Council becomes liable for compensation if it fails to repair a specific defect within the stated response timescale, and that liability rests with the Council and not with a subcontractor engaged to undertake the work.

In the light of the recent snow and ice, a temporary policy has been introduced which relaxes the existing response times in favour of addressing defects on a route by route basis. This will enable the Council to address the current situation more efficiently and effectively whilst minimising overall risk to highway users.

### **Would additional investment in highways maintenance lead to a reduction in the amount paid out in compensation payments for injury or damage?**

The short answer is a counter intuitive 'no'; a fact supported by the evidence which demonstrates there is no clear correlation between investment levels in highway maintenance and the number and value of highway compensation claims paid out for injuries and damage.

Clearly, if all the highways in East Sussex were maintained perfectly then the Council would never be liable to pay any compensation; conversely if no investment was made then there would be escalating levels of compensation claims being met. The key point is that the reality lies between these extremes where there are a range of other factors which can influence the total amounts of compensation paid. Most notably, these include: the quality of record of keeping of highway inspections; the ability to gain speedy and accurate access to the maintenance data; and the overall effectiveness of planned highway maintenance.

When the Council receives a claim it acknowledges receipt, and informs the complainant if it has enough information to investigate the claim, within 21 days. It then either produces evidence to refute the claim or accepts liability, providing there is sufficient information, within 90 days.

The evidence indicates that basic improvements in administration and record keeping, using supporting technology, increases the Council's ability to process claims more efficiently and accurately and repudiate more of them; East Sussex currently repudiates over 77% of claims which is slightly above average<sup>1</sup>. Steps are being taken to improve the processes still further.

### **Handling compensation claims in-house or by an external agency**

Claims are processed by an in-house team reporting to the Risk and Insurance Manager in CRD. Sometimes the workload exceeds the capacity of the team in which case individual claims are allocated to an external agency, JLT (Jardine Lloyd Thompson), for processing. This enables an easy comparison of the relative costs and quality of work between in-house and external processing.

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<sup>1</sup> Compared to a basket of 15 county councils

The comparison shows that in-house processing is more cost effective than the external agency; so JLT is used on occasions when the in-house team has reached full capacity. There is no perceptible difference in the quality of the work nor is there any evidence that the outcome of any particular case depends on who processes it. The overall balance of work between in-house and external agency therefore appears to work effectively.

### **Highways claims process improvements**

A review of the arrangements for processing highways claims is underway. The aim is to enable the entire process from submission of a claims form by a member of the public through to completion of the claim to be carried out electronically. The initiative builds on the *Exor* highways management software system already in place and will enable records from that system to be accessed much more efficiently, without the need for duplicate data entry for example, to manage compensation claims.

### **Investment in highway improvements**

An increase in capital investment of £8.5m has been agreed and is designed to improve the condition of the County's road network in line with other local authorities<sup>2</sup>. This investment is estimated to save approximately £1m per year in the cost of reactive maintenance. Additionally, £1m has been allocated specifically to deal with the recent pothole damage following the severe December/January weather.

## **Conclusions**

The Board:

- 1) Recommended that a guidance note, explaining how the Council handles public liability claims, be reissued to all Members to ensure they are kept abreast of the law and ESCC procedures.
- 2) Endorsed the planned improvements in the process for handling highway compensation claims.
- 3) Agreed that no further work was needed on this issue for the time being by Audit and Best Value Scrutiny Committee.

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<sup>2</sup> ESCC's condition scores are currently lower than any other council; despite this, the number of compensation claims per km of highway is average across comparable authorities.