

Report to: **Audit, Best Value and Community Services Scrutiny Committee**

Date: **5 November 2013**

Report By: **Director of Communities, Economy and Transport**

Title of Report: **Update on the effectiveness of the risk controls put in place to reduce the Council's exposure to risk from potholes.**

Purpose of Report: **To update Scrutiny on the progress made in mitigating the risk of on-going pothole damage to the County's road network.**

**RECOMMENDATIONS: The Committee is recommended to:**

- (1) read this report in conjunction with the report on Future Levels of Investment in Highway Maintenance presented to Cabinet on 15 October 2013;**
- (2) consider the actions taken to repair potholes and risk mitigation measures put in place following last winter; as well as the progress made to reduce the risk of pothole formation through the development of the Highways Asset Plan to inform future levels of investment; and**
- (3) agree to the presentation of a report on the outcomes of Claims Review Board at a future meeting.**

**1. Financial Appraisal**

1.1 Highway maintenance is funded through both annual capital and revenue allocations. The net revenue budget for highway maintenance is £15.7m per annum of which approximately £2.05m is allocated to pothole repairs.

1.2 In recent years the County Council has increased its Capital Investment in road maintenance from historic levels. Since 2010 we have invested some £42million to improve the condition of roads across the county and reduce the risk of potholes forming. This has enabled us to resurface 280 miles of carriageway (14% of the county's road network), resulting in a significant improvement in road condition, reducing the risk of potholes. A further £15million per annum is allocated in the Medium Term Financial Plan over the next couple of years

1.3 In response to the severe weather last winter the County Council deployed over three times the usual number of repair gangs between January and June 2013 to deal with an unprecedented number of potholes. This cost an additional £500,000 in the last quarter of 2012/13 and a further additional £730,000 in the first quarter of 2013/14.

1.4 As a consequence of recent severe winters and the formation of potholes, third party claims related to pothole damage have been significantly higher in recent years, and the County Council has paid out **£113,928** in 2012/13. To date during 2013/14 **£195,998** has been paid out in highways compensation.

**2. Supporting Information**

2.1 The report to Cabinet last month on Future Levels of Investment in Highway Maintenance described a step change in the County Council's approach to highway maintenance, moving away from a largely reactive and high cost service to an efficient, planned service based on Asset Management principles. The report also described the Highways Transformation project launched in July 2011 and the development of a Highway Maintenance Asset Plan. This Asset Plan has now been developed and is being used to inform both current and future levels of investment and prioritisation of maintenance.

2.2 The Cabinet report concludes that one of the biggest symptoms of historic under-investment is the formation of potholes and in particular the extent of damage caused by winter weather. The

efficient and effective reduction of the risk of potholes is best achieved through long term investment plans based on an asset management approach. To ensure decisions on levels of investment, including policy changes, are not taken in isolation, the report concludes that this should be considered through the RPPR process.

### **3. Background**

3.1 Recent cold and icy winters have taken their toll on the County's road network despite the £42m capital investment over the past four years. As a consequence, between January and the end of June the County Council deployed additional resources in response to over 55,000 potholes.

3.2 The formation of such large numbers of potholes was not unique to East Sussex; the experience was repeated across the country, but particularly in neighbouring authorities who reported similar numbers of pothole and high numbers of compensation claims. In 2009/10, the Audit and Best Value Scrutiny Committee carried out a Scrutiny Review of Highways Compensation Claims that looked at how the Council handles all public liability claims for highways and footpaths. This report is attached as Appendix 2.

### **4 Risk and Control**

4.1 The risk associated with potholes was reported to Cabinet last month in the Q1 Council Monitoring Plan as the number two risk to the County Council. The risk was described as:

*"The recent severe winter caused significant damage to many of the county's roads as a result of an unprecedented number of potholes. Whilst these have now been repaired, there remains a risk that if another cold severe winter is repeated next year we will experience similar numbers of potholes and further damage to the county's roads. As such the County Council's ability to manage high numbers of potholes and resultant impact on the Council's reputation remains at risk. Similarly the Council's ability to cope with the associated high volume of liability claims remains a risk."*

4.2 The risk controls put in place to address the risk associated with potholes are contained in Appendix 1.

### **5. Conclusion**

5.1 The benefits of long term investment have been demonstrated by the general improvement in road condition. Continuing this investment is best informed by the recently developed Asset Plan, and through the Council's RPPR process.

5.2 A number of risk mitigation measures have been put in place to reduce the risk of pothole formation, improve insurance claim handling and safeguard the Council's reputation. However it should be noted that some of these are long term mitigation measures and there remains a risk of continued pothole formation, particularly if we experience another severe, icy winter.

### **6. Recommendations**

6.1 Audit, Best Value and Community Services Scrutiny Committee is recommended to consider the actions taken to repair the unprecedented numbers of potholes following the last winter and risk mitigation measures put in place since then; as well as the progress made to reduce the risk of pothole formation through the development of the Highways Asset Plan to inform future levels of investment.

6.2 The Committee should consider whether it would like to look at the report of the Claims Review Board at a future meeting.

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Local Member: All

### **BACKGROUND DOCUMENTS**

None

## Risk Controls

The following risk controls have been put in place to address the risk associated with potholes.

The County Council's investment in the county's road network continues and the investment over the last four years has resulted in an improvement in the overall condition of our principal and non-principal roads. (A, B and C roads) The level of investment and the improvements in road condition that have resulted were described in the report to Cabinet last month. This report recommended that future levels of capital investment be informed by the newly developed Asset Plan and that this be considered alongside other Council priorities through the RPPP process.

Many of the roads that were affected by the recent winter weather have now been patched or resurfaced / surface dressed significantly reducing their vulnerability to future bad weather. We are continuing this programme of patching ahead of the winter to ensure as much of our road network is sealed as is possible.

The development of a Highways Asset Plan and associated 10-year investment programme is now complete which will inform longer term plans to continue the improvement of the road network, particularly to our 'C' roads and Unclassified roads. The creation of a ten year Asset Plan has highlighted and quantified work which can be used to shape investment plans against condition over a given period of time. This provides for evidence-based decision-making, to be considered as part of the RPPR process.

Following the winter on 2012 / 2013 the volume of Third Party Liability 'pothole' related claims received by the council far exceeded the resources available to process these claims. Consequently a Claims Review Board was established to address both the claims backlog caused by the high volume of claims and to improve the claim process itself, both for the claimants and to improve the council's ability to repudiate claims.

As a result of the review, additional resources have been identified in both Legal Services and the Highways team to facilitate better claims investigation, and external claims handlers, Jardine Lloyd Thompson, have been employed to provide an additional resource. The claims investigation process has also been streamlined.

It is also proposed that a new, improved claim form be introduced, further relevant information placed on the council's website and claimants be directed towards fault reporting facilities as part of the claim process. It is intended that these actions will improve the claim process for claimants, reduce the time taken to investigate claims and maximise the council's ability to repudiate claims.

Delays in handling pothole claims can have a detrimental impact on the Council's reputation. While it is accepted that a repudiated claim is rarely appreciated by a claimant, the actions highlighted in this report, including reducing the number of claim incidents, via a reduction in pothole formation and improved pothole repair, improving the claim process, including reducing the time taken to investigate a claim, the Council will be able to mitigate some of this reputational risk.

Longer term improvements are also anticipated through the future highways maintenance contract which will consolidate our Asset Management approach to maintenance and enable greater efficiencies (i.e. more repairs for our money) through longer term programmes of maintenance. The Economy, Transport and Environment Scrutiny Committee has established a Reference Group to provide an overview of the development of the highways contract until it is agreed.



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.

