

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

Date: **10 June 2014**

Report By: **Assistant Chief Executive**

Title of Report: **Review of Highways Public Liability claims**

Purpose of Report: **To update Scrutiny on the outcome of work to manage Highways Public Liability claims more effectively**

RECOMMENDATION:

The Committee is recommended to note the actions taken to improve the efficiency of the claims handling system and the steady improvement in outcomes.

1 Financial appraisal

1.1 In 2013/14 the Council received 1862 Highways Public Liability (PL) claims and paid out £985,000 to claimants. This was higher than previous years reflecting a large volume of claims following severe winter weather in 2012 - 2013 and 2013 - 2014. Over 80% of the claims received were for pothole damage but, despite their large numbers, they only accounted for a third of the total payouts made during the year.

2. Background

2.1 Over the last four years, £42m has been invested in improving the County's roads. Despite the investment, severe winter weather has taken its toll on road surfaces creating extensive damage. As a consequence of the poor road condition, the Council is receiving high volumes of Highways PL claims, most of which are for vehicle damage caused by potholes. After the icy winter of 2012 – 2013, the volume of claims received far exceeded the resources available to process them. At the end of 2012/13, a significant backlog had built up prompting a review of the way we manage and handle claims. The objectives of the Claims Review Board were to:

- reduce the backlog of claims;
- reduce the time taken to deal with claims; and
- increase the number of claims repudiated and consequently secure savings.

3. Summary of the actions taken and improvements made

3.1 In August 2013 there was a backlog of nearly 700 claims waiting to be handled. Additional officers were identified in the Highways and Legal teams to manage the work; external claims handlers were also employed to provide an extra resource at times of high demand. By November 2013, the workload was back to a manageable level.

3.2 The claims handling system has been reviewed and streamlined. Claimants can now submit claims via email, a new Sharepoint site is being used by Highways and Legal teams to store information, and removing unnecessary processes has speeded up the end to end process.

3.3 Customer expectations are being managed better through more realistic information on the Council's website about our responsibilities in maintaining highways and the claims defence available to us under s58 of the Highways Act. Claimants are also required to provide more information to support their claim. This brings the Council into line with practice in other authorities. A gatekeeper role has been introduced in Highways to ensure that claims are supported by the relevant documentation before they are processed.

3.4 The work of Highways Stewards has been refocused to ensure that all Highways inspection

work is carried out. A vigilant approach to inspections means that since October 2013 they have all been done on time. This is important because it demonstrates that we have taken reasonable steps to keep the Highways safe and provides evidence to defend claims successfully. Highways inspection records have also been improved which means that the evidence is more accessible.

3.5 Officers in the Highways and Legal teams are now working closer together; team meetings are being held to discuss issues and ensure that claims are well managed.

4. Assessment of impact

4.1 The work of the Claims Review Board is improving outcomes and helping to mitigate reputational risks.

4.2 The backlog of claims from 2012/13 has been successfully managed. However, the unpredictable wet winter of 2013 – 2014 has placed further pressure on the system. In the middle of May 2014 around 650 claims were outstanding. Despite the workload the Council is in a better position than this time last year. External claims handlers are being used extensively to support the in-house team and the volume of work is being contained at manageable levels with numbers now reducing. The situation is being closely monitored by the Claims Review Board.

4.3 Overall, claimants are receiving a more timely response from the Council because the system has been streamlined with some unnecessary processes removed. However, at times of peak demand we are still failing to acknowledge claims and reach an initial decision within the timeframes stipulated by Civil Procedure Rules. We are addressing this by providing better in-house resilience to provide short-term support at busy times.

4.4 The repudiation rate (the percentage of claims that are successfully defended) is gradually improving. Over the last year the repudiation rate has increased from around 60% - 65%. This means we are paying out on fewer claims. Over time, the improvements to the way we are managing customer expectations, and the better evidence now available to us from full compliance with inspection schedules should see the repudiation rate increase further.

4.5 Forecasting the volume of claims we receive is not an exact science. We know that more claims are likely to arrive over the winter but numbers are unpredictable influenced by the weather and road conditions. A flexible approach to claims handling will always be necessary. The work of the Claims Review Board has generated a greater awareness of the importance of managing claims well both to provide a better experience for claimants and to reduce the reputational risk to the Council of incurring unnecessary delays.

5. Next steps

5.1 The Claims Review Board will continue to monitor progress and ensure further progress is made.

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BACKGROUND DOCUMENTS

None

1. Introduction

1.1 In November 2013 the Audit, Best Value and Community Services Scrutiny Committee received a report on the progress made in mitigating the risk of on-going pothole damage to the County's road network (Appendix 2). The report explained that cold and icy winters have taken their toll on the County's roads despite a £42m capital investment over the past four years.

1.2 As a consequence of the poor road condition, the Council is receiving high volumes of Highways PL claims, most of which are for vehicle damage caused by potholes. After the icy winter of 2012 – 2013 the volume of claims received far exceeded the resources available to process them. At the end of 2012/13 a significant backlog had built up prompting a review of the way we manage and handle claims.

2. Background

2.1 During 2013/14, 1862 Highways PL claims were received by the Council, an increase on 2012/13 when 1567 were received (Table 1). The heavy rain experienced over the last winter has created larger potholes than seen in previous years when freeze/thaw was the main problem. Damage to vehicles therefore tends to be greater which impacts on both the volume and financial size of the claims received. Payouts on pothole related claims tend to be low relative to personal injury claims. However, handling the large number increases the Council's workload significantly and places pressure on the system. Pothole damage claims can also have a high profile and present a reputational risk to the Council.

Table 1 Highways Public Liability claims 2012/13 and 2013/14

	Number of Highways PL claims received			Total value of payouts on Highways PL claims £000		
	Pothole related	Other claims*	Total claims	Pothole related	Other claims*	Total claims
2012/13	1288	279	1567	114	575	689
2013/14	1571	291	1862	360	625	985

* Examples include personal injury claims (slips and trips), vehicle damage from kerbing or iron works on the highway, flooding claims or subsidence claims.

3. 2012/13 outstanding claims

3.1 In August 2013, 672 claims were waiting to be dealt with by the in-house claims handling team who were overwhelmed by the workload. The significant backlog of claims meant that claimants were not receiving a good service with many waiting over 90 days for a response from the Council. As a result of the review the following actions were taken to reduce the backlog:

- additional resources were identified in both Legal Services and the Highways team to facilitate better claims handling and investigation; and
- external claims handlers, Jardine Lloyd Thompson (JLT), were employed to provide a further resource at times of high demand.

3.2 By the end of November 2013, these actions had reduced the outstanding work from 672 to a manageable 266 claims, 72 of which were being handled by JLT.

4. Improving the process

4.1 Between September 2013 and January 2014 further measures were introduced to improve the claims handling system and prevent large volumes of claims building up again. These include:

- managing customer expectations better through more realistic information on the Council website about our responsibilities in maintaining highways, the defence available to us under s58 of the Highways Act and the percentage of claims which are successful;
- a revised claim form requiring more prescriptive detail and documentation from claimants;
- introducing a gatekeeper role to weed out inappropriate or incomplete claims before they are processed;
- improved information management to enable swifter action to log and repair reported defects on roads and pavements;
- streamlining the claims handling process, including electronic submission of claims, the use of a Sharepoint site for storing records accessible to both the Highways and Legal teams and removing unnecessary or duplicate processes;
- enhanced, more user friendly management information; and
- the introduction of Highways and Legal team meetings to ensure that issues are discussed and claims are well managed.

4.2 Section 58(2) of the Highways Act, allows the Council a defence against claims if it can evidence it has taken reasonable action to keep the Highways safe. This means inspecting highways and repairing defects within the timescales and criteria set out in the Council's Transport Asset Maintenance Plan (TAMP) which specifies:

- the frequency that Highways should be inspected; and
- the time within which known defects (potholes) should be repaired – shown below.

Repairs are prioritised according to their size and location	
A and B roads	
More than 100mm deep and more than 300mm wide	– two hours
40mm to 100mm deep and more than 300mm wide	– five days
Less than 40mm deep	– one month
C and unclassified roads	
More than 100mm deep and more than 300mm wide	– five days
40mm to 100mm deep and more than 300mm wide	– six months
Less than 40mm deep	– 12 months

4.3 During 2013, there was a renewed focus on the role of Highways Stewards in meeting the inspection requirements of TAMP. This included:

- setting clearer priorities and expectations for the Highways Stewards' team to ensure that all inspection work was completed. Since October 2013, all inspections have been carried out on time; and
- improving highways inspections records so that information on which a defence can be prepared is readily available and accessible.

5 Improving outcomes

5.1 The backlog of claims following the winter of 2012 – 2013 has been managed successfully. However, the unpredictable wet weather of 2013 – 2014 has placed further pressure on the system. As at 12 May 2014, 655 Highways PL claims were outstanding, awaiting a decision by the Council. Vigilant monitoring since February 2014 and extensive use of JLT has meant that despite the significant volume of claims received since the winter, the level of outstanding claims is being contained at manageable levels. It is important that the Council defends claims wherever possible to avoid reputational risk.

5.2 JLT provides a flexible resource during times of peak demand and are more cost-effective than increasing in-house staffing levels. When the in-house claims handling team transferred from Business Services to Legal Services in April 2013 it was with the expectation that they would handle 600 new claims per annum with the balance being out-sourced. The team has increased from 2.5 fte to 3.0 fte since then and has handled more than 1200 claims including Personal Injury

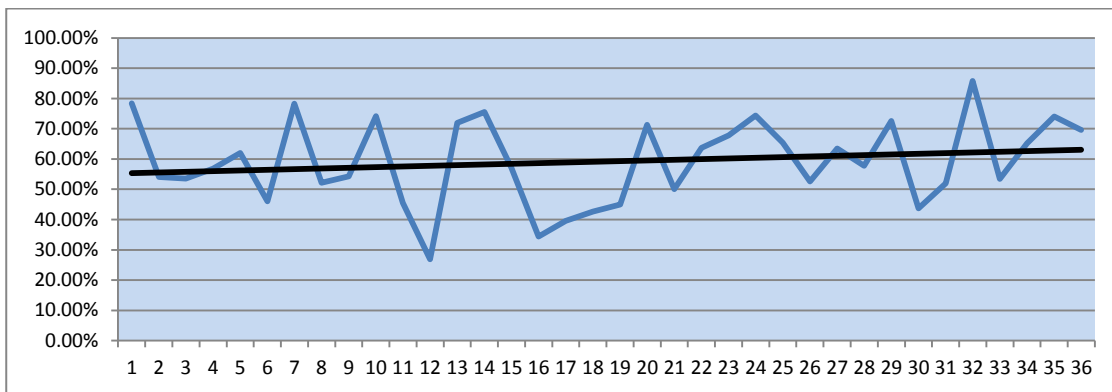
and Employers Liability claims, far exceeding their planned workload. The work of both the in-house claims handling team and JLT has been assessed as excellent by an independent audit.

5.3 New information on the Council website about how to make a Highways claim now includes information about our responsibilities in relation to Highways maintenance and the s58 defence. This brings us into line with many other authorities who have taken a more robust approach to information than we have done previously. Managing customer expectations in this way is likely to impact on the number of claims we receive. However, evidencing that impact in the short-term is hard to demonstrate; over a longer timescale it is anticipated that the volume of claims will reduce.

5.4 All claims should be acknowledged within 21 days and an initial decision reached within a further 90 days. These are the times stipulated for a response with Civil Procedure Rules. The volume of work in 2013 meant we failed to deliver on this standard. Since then the situation has improved with more claimants receiving a timely service. However, at times of peak demand, even with support from JLT, it is proving hard to meet the timeframe. The bottleneck is primarily in the Highways team where claims are received and reports prepared for JLT and the Legal team. The system is vulnerable at times of high demand or when staff are absent. Temporary staff are used to provide an additional resource but inevitably they require support and training which further impacts on the team. We are addressing this by developing better in-house resilience to provide short-term support at times of pressure.

5.5 The percentage of claims that the Council is able to defend successfully (the repudiation rate) has increased since 2011 (Figure 1). Over the last year the repudiation rate has improved from around 60% to 65%. This means that the Council is paying out on fewer claims. Over time the improvements made to highways inspections and record keeping should mean that the rate will improve further as more claims can be defended successfully. This is now being monitored monthly.

Figure 1 Repudiation rates 2011 – 2014



6. Conclusions

7.1 Managing Highways PL claims can be time-consuming and resource intensive. We know more claims are likely to arrive through the winter and into spring; however, volumes are unpredictable and hard to forecast. Whilst there will always be a need for a flexible approach, the changes introduced by the Claims Review Board are improving outcomes and helping to mitigate reputational risks. The workload is more manageable and repudiation rates are increasing. The Claims Review Board is working to ensure further progress is made.

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.**
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1. Financial Appraisal

- 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.
- 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
- 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.
- 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.
- **Supporting Information**
- 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.

- 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.

- **Background**

- 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.

- 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 2a.

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.

RUPERT CLUBB

Director of Communities, Economy and Transport

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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 recourses 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.

