

	<p style="text-align: center;">Performance and Finance Select Committee 21st March 2006</p> <p style="text-align: center;">Report from the Director of Finance and Corporate Resources</p>
For Information	Wards Affected: ALL
<p>Report Title: THIRD PARTY INSURANCE CLAIMS</p>	

1.0 Summary

- 1.1 The purpose of this report is to provide information related to claims from third parties resulting from trips and falls on uneven pavements as requested by this committee.
- 1.2 The council has a statutory obligation to keep the pavements and roads in a good state of repair and any damage or injury flowing from a failure to maintain them will result in a claim against the Highway Authority (Brent Council).
- 1.3 There are defences available to the Authorities; some relating to the behaviour of the claimant, others relate to the maintenance of the highway and the inspection system employed by the council.
- 1.4 Together with the charts and observations on the claims statistics (Appendix 1 to this report) the report shows that both the number of claims and the associated costs have been cumulatively decreasing year on year since 2001

2.0 Recommendations

- 2.1 The Performance and Finance Select Committee are asked to consider the report and endorse the recommendations proposed in paragraph 3.6 of the report.

3.0 Detail

3.1 Background

- 3.1.1 The Council handles a variety of claims from members of the public. This report pertains only to pavement claims which have traditionally accounted for approximately 65% of all third party claims received by the Council. This figure remained relatively static over the last 20 years. The changes in the

legal system which occurred in 2000 and the emergence of “no win-no fee” claims firms resulted in a marked increase in the number of claims, peaking in 2001 when 353 claims were received. The total estimated cost of the 2001 pavement claims was £1.2m. Since then the number and costs have reduced year on year to date. The figures for the year ending March 2006 are an estimated £199,707 costs with 119 claims presented. Every effort is made to ensure that the claims presented are genuine and payments are not authorised until sufficient evidence is offered to validate the claim.

3.2 Claims Handling Process

3.2.1 Initially all claims are handled in the Procurement and Risk Management Unit where claims are logged on to the Local Authority Claims Handling System (LACHS) software. The system has been written for Local Authorities and is used by many Authorities.

3.2.2 The system is used to manage the claims process and maintain the data from which the reports at Appendix 1 were drawn. The LACHS software is crucial to successful claims management. Brent invested in this system in 1993 and now has 13 years of continuous claims experience which is a key factor in managing risk.

3.2.3 The Insurance team gathers the supporting information required to handle the claim and the papers are then forwarded to the insurers, Zurich Municipal. The majority of the claims are dealt with by the insurers and after reviewing the documents a decision is made on liability. Where the case can be defended the claim is repudiated as are around 50% of claims. Where it is decided there is little chance of defending the claim a process of negotiation is entered into. Where litigation is involved or the issue of liability is unduly complicated a solicitor is instructed. Most of the claims are settled before legal action is commenced, however, about 5% proceed to court, adding additional costs to the claim.

3.3 Issues which impact claims

3.3.1 The council has the benefit of some defences it can employ when presented with a claim. The primary defence relates to the tolerances of the defect size. Prior case law has set the minimum actionable defect level as half an inch, claims resulting from a defect level proving to be under half an inch can be immediately repudiated. The other main reason for repudiation relates to the system of highway and pavement inspection, frequency of inspection and the timeliness of repairs identified by the inspection. It is accepted by the Courts that where the Authority has implemented a reasonable system of inspection it can rely on this as a defence. There is no legal regulations as such but best practice procedures are drawn up by the Local Authority Associations and do have variances for local conditions. An officer focus group made up of representatives from Transportation, Streetcare and the Insurance Unit meet on a quarterly basis to review the claims data provided by the Insurance team. The purpose of the Group is to promote best practice into the highways maintenance system. The data is also provided to the Transportation Unit who

use it to prioritise repair schedules. Proactive and targeted highway maintenance can greatly contribute to a reduction in the number of claims paid out. Increased investment in roads and pavements over the last few years has improved their condition and impacted on the level of claims.

3.4 Other factors

- 3.4.1 Another key factor contributing to rising costs are the claimant's solicitor's fees which have risen 300% since 2000. The driver for this was the change in the legal system with the introduction of the personal injury protocol which in effect removed legal aid. It was replaced by the conditional fee arrangement which in some cases can result in fees as high as 100%, the average being 35% to 40%. This system is underpinned by an after the event insurance and there are indications that these insurers are making cover more difficult and will only back cases that have a good chance of success. Going forward it is expected that the number of claims will reduce as the insurance net is reduced.

3.5 Inter-Authority comparisons

- 3.5.1 From time to time articles in the press attempt to compare claims figures across London. However, typically the figures quoted do not make like-for-like comparisons as authorities tend to measure both numbers and costs of claims in different ways. Not all figures include solicitors and other finalised costs resulting in some costs appearing substantially lower than others with the same approximate number of claims. The figures relating to numbers of claims are also calculated differently across authorities. Some authorities report claims numbers for the duration that the claim continues to be open, whilst others report numbers of claims received in a twelve month period without adding consideration for claims cumulatively still open. Clearly there is a need for accurate benchmarking to be performed to obtain a true picture of the extent of claims cost and numbers and to learn from best practice across local authorities. Brent is currently working with other Boroughs in West London to establish such a position.

3.6 Recommendations

A number of actions are being taken to minimise the number and cost of claims and are set out in the recommendations below:

- 3.6.1 The Highway Focus Group should continue to monitor claims statistics and their link to the highway maintenance and inspection regime. The Insurance team will provide claims statistics, analysis and recommendations to each service area.
- 3.6.2 The Insurance team has instructed our insurers, Zurich Municipal, to check all claims against claimants presenting at other London boroughs they insure to assist in identifying potential fraudulent claims. The team will continue to work with our insurers to identify other ways to assess claims.

- 3.6.3 Work related to benchmarking of solicitors fees is also recommended, together with a robust approach to challenging solicitors requested fees where appropriate.
- 3.6.4 The West London Alliance are carrying out a number of projects on insurance and a benchmarking exercise on this type of claim is scheduled in the action plan.
- 3.6.5 The Council is also working with PricewaterhouseCoopers on a review of the claims handling process to ensure the Council is reflecting best practice in this area.

4.0 Financial Implications

- 4.1 The council operates an Insurance Fund in order to self insure its buildings and contents as well as to cover employee and third party legal liabilities and professional indemnity, though it does have insurance policies to limit the council's overall exposure. The authority has an excess of £271k on any particular claim and has a maximum exposure of £3.4m in any financial year. These arrangements are in place to minimise the council's costs as opposed to covering all costs through external insurance. Service areas are charged insurance premiums for buildings and contents. The level of the Fund is reviewed against the known and potential level of liabilities for claims.
- 4.2 The main strains on the Fund are as follows:
- (i) Damage to Buildings.
 - (ii) Tree Roots - This covers structural damage to third party properties. Estimated payments in 2005/06 are £700k.
 - (iii) Third Party Claims - Details of which are set out in this report.

The Council has budgeted to contribute £1.8m to the Insurance Fund in 2006/07. This is assessed each year to ensure all liabilities can be met. It is hoped that the pro-active measures being taken will continue to reduce the strain on the Fund.

5.0 Legal Implications

- 5.1 There are no direct legal implications arising from this report.

6.0 Diversity Implications

- 6.1 There are no apparent direct diversity implications arising from this report.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 There are no direct staffing implications arising from this report

8.0 Background papers

8.1 2006/07 Budget and Council report to Full Council, 6th March 2006.

9.0 Contact Officers

Alison Matheson, Head of Procurement and Risk Management, Finance and Corporate Resources, Tel. 020 8937 1363.

DUNCAN McLEOD
Director of Finance and Corporate Resources