

Report of **The Director of Resources**

Report to **The Corporate Governance and Audit Committee**

Date: **9 November 2011**

Subject: **Small compensation claims made against the council**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of Main Issues

1. Most compensation claims made by members of the public against Leeds City Council are relatively small in value. However due to the large number of small claims they still represent a substantial cost to the Council.
2. The majority of small claims received are highways public liability claims, other Council services receive relatively few small claims.
3. A system of monitoring is in place for all claims against the Council which includes regular reporting to managers who can then consider what action is necessary to prevent further occurrences.

Recommendations

4. That the Corporate Governance and Audit Committee consider the information contained in this report and note that processes are in place which enable the services to monitor claims and make improvements in their procedures and practices to seek to prevent claims in future.

1. Purpose of this report

- 1.1 The purpose of the report is to provide information detailing the amount and type of small claims received by the Council and to illustrate the monitoring processes which have been put in place in order to enable services to take action, where possible, to reduce the numbers of small claims made against their service.

2. Background information

- 2.1 At the February 2011 meeting of the Corporate Governance and Audit Committee, information was presented relating to current significant insurance claims against the Council. At that meeting, Members requested that a further report be provided detailing the numbers of small compensation claims made against the Council.

3. Main Issues

- 3.1 Table 1 below shows small compensation claims paid in each of the last five years which had a value up to £2500 (excluding claims settled at nil).
- 3.2 The average value of these claims overall is £391. However, due to the numbers of small claims, the annual cost is around £150,000 to £200,000 each year. It should be noted that some claims in the 2010/11 year are still to resolve and are not included in the figures.

Table 1 - Public Liability Small Claims - £1 to £2,500 (as at October 2011)

Year	No. of Claims	Total Paid	Average per Claim
2006/07	407	£195,134	£479
2007/08	482	£203,211	£422
2008/09	311	£135,388	£435
2009/10	413	£152,999	£370
2010/11	287	£55,668	£194
	1,900	£742,400	£391

3.3 Table 2 below shows the same claims allocated to the council service against which the claims were made.

Table 2 - Public Liability Small Claims - £1 to £2,500 (as at Oct 2011)

(1st April 2006 to 31st March 2011)

By Directorate	No. of Claims	Total Paid	Average per Claim
Adult Social Care	22	£5,293	£241
City Development	4	£120	£30
Corporate Services	20	£7,848	£392
Highways	1,214	£442,121	£364
Childrens Services	48	£23,577	£491
Env and Neighbourhoods	161	£74,164	£461
Aire Valley Homes	81	£35,499	£438
ENE Homes	116	£46,319	£399
WNW Homes	140	£57,012	£407
Previous ALMOs	94	£50,047	£532
	1,900	£742,000	£391

3.4 It is clear that the vast majority of small claims are made against our Highways service and this is what would be expected with any local authority which has a highways responsibility.

3.5 During the period covered by the above tables, i.e. 1st April 2006 to 31st March 2011, a total of 6,725 public liability compensation claims which fall into the £1 to £2,500 value range were dealt with and successfully defended by Leeds City Council, with no damages paid to the claimants.

3.6 In relation to small compensation claims, there is an annual cost to the council of around £150k/£200k. Most of these claims are made against Highways although they are able to successfully defend approximately 78% of those claims.

3.7 Where claims have been paid, the Highways service need to look at the circumstances around each claim and consider whether its processes and procedures could be improved to prevent future claims.

- 3.8 Analysis of claims is carried out to ensure there is a good understanding of why claims have not been successfully defended and to seek to identify improvements to procedures to reduce claims in future. One example of this analysis work, carried out earlier this year is included at Appendix 1. It enables the Highways service to understand those situations where the council has been found legally liable to pay compensation and to consider what remedial actions may be taken. The data which supports this analysis is included at Appendix 2 and includes a summary and a detailed list of the claims which were paid during the period covered by the scope of the report (1st April 2008 to 31st March 2010).
- 3.8 In addition to specific projects which are carried out periodically, as per the example mentioned above, the corporate insurance team provides both quarterly and annual reports to the service Heads of Finance, of compensation claims made against specific council services. .

4. Corporate Considerations

4.1 Consultation and Engagement

There are no implications for consultation and engagement.

4.2. Equality and Diversity / Cohesion and Integration

There are no implications for equality, diversity, cohesion and integration.

4.3 Council Policies and City Priorities

- 4.3.1 Actions taken in defending claims is consistent with the Council value of Spending Money Wisely.

4.4 Resources and Value for Money

- 4.4.1 The cost to the Council of small claims is up to £200k per year. By identifying why claims cannot be defended and taking remedial action the Council can seek to reduce the cost of claims

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 There are no legal or Access to information issues arising from this report. The report is subject to call in

4.6. Risk Management

4.6.1 The process of analysing the reasons for small claims and the taking of remedial action is a process of risk management. This is carried out by service managers in relation to their own services using information provided by the corporate insurance team .

5. Conclusions

5.1 Small claims successfully made against the Council cost £150k to £200k per year. It is clear that work should continue in monitoring small compensation claims along with all compensation claims so as to understand the causes of accidents which give rise to those claims and take all reasonable steps to prevent further accidents.

5.2 Information is regularly supplied by the council's corporate insurance team to all council services to enable consideration of circumstances leading to claims and to enable remedial action to be taken.

6 Recommendations

6.1 It is recommended that Corporate Governance and Audit Committee consider the information contained in this report and note that processes are in place which enable the services to monitor claims and make improvements in their procedures and practices to seek to prevent claims in future.

7. Background documents

There are no background documents.

Appendix 1

An Analysis of Successful Claims Made Against Highways.

1. Background

- 1.1. Section 41 of the Highways Act 1980 places a duty on the local Highways Authority to maintain the Highways in a condition that is safe for users. The duty to maintain includes making repairs to defects in the carriageway or pavement.
- 1.2. However section 58 of the same Act provides a special defence against a claim for damages, due to a breach of this duty. This defence applies if the Highways Authority can show that it has taken all reasonable care to maintain the highway in a condition that is safe for users. To do this an Highways Authority must successfully operate a consistent, documented and regular inspection and maintenance scheme. Periods of time between inspections, and the time taken to remedy a defect once it has been detected, must, in all the circumstances, be reasonable.
- 1.3. It has been requested that successful claims made against Leeds City Council's Highways Department be reviewed, to see if there are any patterns to be identified as to why the s58 defence cannot be used to refute liability in these cases.
- 1.4. It was found, after reviewing individual cases in the calendar years 2008, 2009 and 2010, that the reasons provided by Zurich Municipal, the insurers, were either not present for sufficient cases, or were too broad and vague for the above purpose. It was therefore necessary to review cases in detail, and use the documentation supplied by Highways, on the LACHS (claims database) system. Judgement then had to be used to decide what was the reason that a s58 defence could not have been used in each case.
- 1.5. Detailed reports from Highways appear only to have been placed on the LACHS system from mid-2008 onwards, and so these reviews were restricted to cases after this time. The cases were selected randomly. There are fundamental differences in the nature of the incidents in the case of claims made against the Council on the grounds of resulting damage to property, and on the grounds of resulting personal injury. Therefore these types of cases were reviewed, and the results presented, separately.
- 1.6. The reasons for the claim failing to be refuted on the grounds of s58 were then categorised as follows:
 - 1.6.1. Category 1 defect not done in time – this means that the Council did know about this defect already, and that it was so hazardous that it needed repairing within 24 hours of the Council becoming aware of it. The defect was not then repaired in time.
 - 1.6.2. Category 2 defect not done in time – this means that the Council did know about this defect already, and that it was sufficiently hazardous that it needed

repairing within 14 days of the Council becoming aware of it. The defect was not then repaired in time.

- 1.6.3. 28 day repair not done in time – this means that the Council has identified a repair that needs to be done within the next 28 days and that repair has not been carried out within the time limit.
- 1.6.4. Non-hazardous defect not repaired in reasonable time – this means that a defect has been identified by the Council, but that it has been classified as being non-hazardous. It therefore becomes part of the general maintenance system. However if an incident subsequently occurs that is caused by the defect, and the Council cannot prove that this was due to an unpredictable deterioration in the defect, for example, then this may make it impossible to apply the s58 defence. This outcome is more likely the longer the original defect is not repaired.
- 1.6.5. Failed repairs – this means that although the Council has been able to repair a defect, this repair has itself failed, preventing s58 from applying.
- 1.6.6. No repair order raised Category 1 – this means that although the Council has been notified of a category 1 defect, the Council has failed to raise a repair order at all in response.
- 1.6.7. Warning sign not in place or sufficient.
- 1.6.8. Employee negligence.
- 1.6.9. No system of inspection – this usually occurs where there is a minor path that has been adopted by the Council, but has been missed by the inspection system.
- 1.6.10. At trial - because of nature of defect, Council should have known about it – in these cases the Court has decided that the nature of the defect and its dangerousness, means that the Council should have known about it.

2. Findings

- 2.1. An appendix is attached showing the distribution of successful claims against the above categories of reasons as to why the s58 defence was inapplicable. The results are shown, as has been discussed, separately for claims involving damage to property and those involving personal injury.
- 2.2. Cases involving personal injury can be seen to involve far higher costs to the Council than those involving damage to property, as would be expected. On further investigation of these costs, a very large proportion are due to the involvement of third party legal representation, used by claimants on a conditional fee basis.

3. Damage to Property

- 3.1. In successful claims involving resultant damage to property, most incidents are due to potholes in the road damaging vehicles. By a large margin, the two most common reasons why a s58 defence cannot be relied upon in these cases are that a category 1 defect has been reported to the Council but has not been repaired in time, or that a previous repair done by the Council has failed.
- 3.2. In cases where a category 1 defect has not been repaired within the 24 hour deadline, all the cases in this sample occurred in the period mid-December to mid-February, that is, during the winter months. In the last two years, there has been heavy snow in the winter, with ice, snow and water getting into the structure of the Highways, and causing many more category 1 defects as a result. This increased workload appears to be the main reason why the deadline has been missed during this period.
- 3.3. In cases where failed repairs are the cause of the s58 defence being inapplicable, around 85% of individual incidents have taken place in the winter months. This could be explained by the fact that repairs carried out in the winter inevitably involve there being water in the environment, and it being impossible to exclude this from the repair itself. When water freezes it expands, damaging the fabric of the repair, and allowing subsequent bad weather to further damage it.
- 3.4. It should be noted that in the majority of the cases where a repair has failed, the failure of the repair has become known to the Council before a further incident has occurred. In many of these cases, it has then taken more than 24 hours to further repair this deteriorated repair. Often this has resulted in a cluster of incidents involving the same defect.
- 3.5. A small but significant number of incidents have occurred where a category 1 defect has come to the attention of the Council, but no repair order has been raised. Somehow the normal procedure for these incidents has not been followed. However, when the incidents, comprising 8% of the sample, are looked at more closely, they involve only two separate defects. One of these defects is the cause of ten of the eleven incidents, over a period of 28 days. This simply underlines the importance of the procedures being followed, and the potential cost of the system breaking down (£5496.34 in the case of the incidents sampled for this one defect).
- 3.6. The three categories of reasons given above account for 85% of all the incidents sampled. The remaining reasons are self-explanatory and of very low occurrence.

4. Personal Injury

- 4.1. In successful claims involving resultant personal injury, these, in the vast majority of cases, involve pedestrians in tripping incidents. The reasons why a s58 defence could not be used in these incidents to refute liability, are much more diverse than those for claims involving damage to property, and are different in character.
- 4.2. The most common category of reason found for the section 58 defence not being applicable was that a non-hazardous defect had already been noted, usually during an inspection of a footpath. This category has then been described as not having had such a defect repaired in a reasonable time, however this covers a complicated and varied set of circumstances. The liability appears to depend on various, interlinked factors such as the length of time since the notification of the defect, the cause of the defect and the nature of the defect at the time of the incident, which may have deteriorated considerably from that initially reported. The reasoning appears to be that the longer the period between the non-hazardous defect being noted and the incident taking place, the more the Council should have been aware of the possibility of the defect deteriorating.. If the nature of a defect is such that it is likely to deteriorate over time, then the Council should have kept closer observation of the defect over time to register when it becomes hazardous. Finally, the Council should have been more aware of the actual deterioration of a defect it has already noted. However, it is not possible to further analyse this 'non-hazardous' category without documentation with the actual line of reasoning used by decision makers.
- 4.3. Defects that are brought to the notice of the Council, but are not deemed hazardous enough to warrant *immediate* repair are the ones that result in the highest number of successful claims against the Council for personal injury generally. Category 2 and 28 day repairs that have not been repaired in time together account for another large block of successful claims, and costs, on top of the non-hazardous claims described above.
- 4.4. Second to the above as a reason for section 58 not being applicable, is that repairs previously done have deteriorated causing a hazard. Half of these cases are in fact involving cyclists on the carriageway.
- 4.5. The second *most costly* single category, resulting in personal injury is that there was no system of inspection in place at the site of the defect, at the time of the incident. These mainly consist of minor pathways that are not used much, but are the responsibility of the Council to maintain.
- 4.6. Category 1 defects reported to the Council, but not repaired within 24 hours of the report, comprise both 12% of the numbers of claims in the sample, and 12% of the cost. Interestingly, these are not limited to winter claims, like in the case of the damage to property cases, but instead occur mainly in the spring. All but one of the incidents were in the period February to May.

4.7. Other points of interest include; -

- 4.7.1. The most costly single case was a case that went to Court. This was due to costs of third parties, such as the claimant's legal representatives.
- 4.7.2. The three 'employee negligence' cases are actually mainly regarding damage to property (e.g. damage to a wall or a gate), brought about by an employee's actions, and individually cost relatively small sums.
- 4.7.3. The 'Other' category includes a wide range of reasons such as boards not being strong enough, when they were used to bridge a hole in the pathway, while work was being done to a defect being missed probably because the new regulations were misunderstood.
- 4.7.4. There are three cases where the Highways department documentation maintains that the section 58 defence applies, and, without the decision makers reasoning, it has not been possible to work out why this has been overruled.

5. Conclusion

- 5.1. There is a clear divide between claims involving property, mainly on the carriageway, and personal injury cases, mainly on the pathways.
- 5.2. Claims involving damage to property on the carriageway tend to involve urgent repairs that are required, or repairs that have failed following an urgent repair. These urgent repairs are required mainly in the winter months, which is also when repairs are most likely to break down. The question arises about how much more resource can be applied to this problem, and whether the benefits of doing so would outweigh the costs,
- 5.3. Claims involving personal injury are much more costly to the Council. Here, it appears that minor defects are becoming more hazardous over time, and in between inspections. Unfortunately, these minor defects seem to be, naturally, of lower priority, and are left until they become immediate hazards and are responsible for the largest number of incidents that can be successfully claimed against the Council. It may be that procedures could be followed that allow these minor defects to be more regularly checked in an attempt to detect deteriorations in those already noted.

Appendix 2 – Details of Claims Referred to in Appendix 1

Highways - Summary of successful claims for damage to property

Reason for Failure of s.58 Defence	No. of successful claims	Cost
Category 1 repair not done in time	48	£22,260.51
Category 2 repair not done in time	7	£4,551.03
28 day repair not done in time	2	£606.22
Non hazardous defect not repaired in reasonable time	6	£2,524.58
No repair order raised (Cat. 1)	11	£5,972.22
Repairs failed	58	£28,681.40
Warning signs/safety measures not in place or not sufficient	3	£2,316.09
Highways contend s58 applies	3	£1,219.76
Total claims looked at	138	£68,131.81

Average cost per claim =

£494