

Cabinet Committee on Performance Improvement

Meeting to be held on 30 January 2014

Electoral Division affected: All

Highways Compensation Claims

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Executive Summary

A report was presented to the Committee at the meeting held on 22 November 2012 in respect of claims relating to highway defects. This report is an update to the earlier report.

For the insurance year 1 June 2012 to 31 May 2013 1937 files were opened in respect of public liability highway claims.

Of those claims received on average:

- 52% are the result of personal injury
- 43% are the result of vehicle damage
- 5% are the result of property damage / loss of property

Approximately 33% of all public liability highway claims closed in the same period were paid out on either because they were settled on Counsel's advice or were lost after trial.

Recommendation

The Cabinet Committee on Performance Improvement is recommended to note the contents of this report.

Background and Advice

Employers' liability claims and public liability claims, including claims relating to highways, are dealt with by the County Secretary & Solicitor under the terms of the County Councils insurance arrangements. The County Council is self insured up to a £1m per claim; the team that deal with the claims within legal services are subject to a performance audit by the insurance and have recently achieved an 'excellent' rating for the claims handling.

A report on Highway Compensation Claims was presented to the Committee on 22 November 2012 in respect of the number of claims received in the previous 5

insurance policy years. The statistics for the 2012/13 insurance years have been added to the table below.

TOTAL NUMBER OF CLAIMS

Policy Year	Number of incidents	Total amount paid to date	Number paid out on	Number closed with no payout	Number ongoing
2007/08	1339	£2,938,602	425	896	18
2008/09	1252	£4,212,816	408	822	22
2009/10	1366	£3,680,705	475	833	58
2010/11	1520	£3,667,168	531	858	131
2011/12	1362	£1,743,939	284	819	259
2012/13	1833	£599,081	295	621	917

Analysis

It can be seen from the above statistics that the number of claims received in 2012/13, where the incident related to the 2012/13 insurance year, increased by almost 35% compared to 2011/12. An increase in the receipt of claims was anticipated due to changes that were implemented in 2013 to the amount of costs recoverable by Claimant solicitors and the introduction of fixed fees*. However on examining the type of claim received in 2012/13 there was a 273% increase in the number of vehicle damage claims received (generally wheel and tyre claims), up from 317 in 2012 to 871 in 2013. These claims are routinely submitted directly to the County Council by unrepresented members of the public so these claims rarely have a related claim for solicitor costs.

Due to the period in which claims can be brought [3 years for personal injury claims and 6 years for other claims] apart from scrutinising the number of claims received, it is difficult to predict any future trends as the claims on-going in any one year relate to a number of insurance years and are subject to the Council being able to defend claims due its system of highways inspection. The weather can also have an impact on the number of claims snow and ice claims are prevalent in winter.

Compensation

The amount of compensation paid out on each claim varies as damage claims will depend upon the invoices submitted by the Claimant for the repair to the vehicle with a reduction for wear and tear. Similarly, the compensation for personal injury claims will depend upon the specific facts of the claim, e.g. the nature of the injury, the medical treatment/care required and the prognosis and, in some cases, the Claimants occupation. However of the claims for compensation paid out in 2012/13, related to that year, 79% were for £500 or less, 16% were for £2000 or less with the remainder being for £5000 or less.

Prior to the settlement of any claim Counsel's advice is obtained on the value of compensation and, in accordance with the County Council' Scheme of Delegation, any proposed settlement of claims for compensation, or costs, higher than £39,000 are approved by the Leader of the Council. In cases that proceed to trial and the

Claimant is successful, the trial Judge will decide the amount of compensation awarded to the Claimant.

Costs

Claimant's costs are difficult to predict as the costs will depend upon the nature of the claim and the fixed costs regime that was introduced in 2013 only applies to new claims received after 29 July 2013. As at 31 May 2013 488 claims were still outstanding from the previous insurance years.

Of the claims for compensation paid out in 2013, that were received in the 2012/13 insurance year, only 36 (15%) had a related claim for Claimants costs. Of the 36 claims, 25% of costs paid to the Claimant's were for £5000 or less, 64% were for costs of £10,000 or less and 11% were for £15,000 or less. Claims for costs are scrutinised and are subjected to negotiation. Law Cost Draftsmen are instructed in the high value claims for costs.

If the amount of costs payable cannot be agreed between the parties the claim for costs can proceed to a detailed assessment hearing but this will increase the claim as further costs will be incurred.

*Prior to 1 April 2013, Claimants could enter into conditional fee agreements with solicitors which meant that if their claims against the County Council were successful, a success fee was payable to the Claimants solicitors by the County Council, of up to 100% of the Claimant's solicitors actual fees for dealing with the case. The consequence of these agreements was that the costs relating to a claim were disproportionate to the amount of compensation paid. The cost of any insurance premium was also recoverable from the County Council.

Since April 2013, conditional fee agreements in respect of the recovery of Claimant costs from the County Council are no longer permitted. However, a 10% increase in general damages was introduced. In July 2013 fixed costs were implemented which are based upon what stage the claim is settled. Personal injury claims are processed through a MOJ portal where costs are fixed at two levels for claims up to £10k and up to £25k. Costs for claims that fall outside of the portal are also fixed but include a % of the compensation agreed. It is anticipated that over time when the new cost regime is fully established the total costs payable in respect of claims will significantly reduce. However, if the County Council successfully defends a claim after trial the County Council's costs cannot be recovered from the Claimant.

Consultations

N/A

Implications:

N/A

Risk management

The process of claims management is considered to be robust. The legal team dealing with the claims is audited annually by the County Council's insurers to confirm that all the relevant procedures and processes of the Insurers are complied with.

Before offers of settlement are made, as appropriate, Counsel's advice is sought on the value of claims in accordance with caselaw. The settlement of claims for compensation of a value over £39,000, and associated legal costs over that amount, are approved by the Leader of the Council.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
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Nil

Reason for inclusion in Part II, if appropriate

N/A