

To: Place Scrutiny Committee

From: Professional Lead – Risk and Insurance

Date: 14th July 2023

Insurance Claims – Highways

Claims submitted against the Council for injury or loss where the responsible department is Highways make up the majority of claims against the Council. These will be claims for alleged loss or damage sustained as a result of defects on the pavement or carriageway (e.g., “potholes”, broken kerbstones or broken steps)

In the years 2020 / 2021 and 2021 / 2022 around 60% of the liability claims submitted against the Council were for accidents on the Highway. This has increased in 2022 / 23 to 83.5%.

Policy Year	No. of claims received*	Number of claims which were repudiated	Number of claims not pursued by claimant	Number of claims where Council was not correct defendant or referred to a contractor	No of claims settled (liability admitted)	No of claims open (outstanding)
2020/2021	38	28	2	1	6	1
2021/2022	44	37	1	1	2	3
2022/2023	63	35	1	1	2	24

*where date of incident is in the policy year.

Claims can be submitted up to 3 years from the date of incident. Of the claims which were received between 1st April 2022 and 31st March 2023, 54% were reported within 30 days of the incident occurring. 80% of the claims received were within 90 days of the incident alleged to have caused loss or damage.

It is believed that the increase in claims in the 2022/ 2023 year is largely due to the introduction of an online claim form allowing members of the public to submit a claim in a simpler, more efficient and customer friendly way.

Blaenau Gwent CBC as Highway Authority has a duty under Section 41 of the Highways Act 1980 "to maintain the highway". However, a highway authority will have a statutory defence if it can prove it took such care as was reasonable in all the circumstances to ensure that the section of highway was safe. In the majority of claims, the key issue will be whether the council had instituted a reasonable system of inspection and maintenance.

Section 58 (2) of the Highways Act sets out the matter that the court would need to consider when assessing whether the defence will succeed.

This would include:

- The character of the Highway and the traffic that might be expected to use it
- The standard of maintenance appropriate for a highway of that character and used by such traffic
- The state of repair in which a reasonable person would expect to find the highway in
- Whether the highway authority knew, or ought to have known, that the condition of the highway to which the cause of action relates was likely to cause danger.

Policy Year	Cost of settled claims (including legal if relevant)	Legal Costs of repudiated claims.	Estimated Costs of outstanding claims	Total estimated cost of claims (including outstanding reserves)	Average cost per claim (settled cost / number of claims)	Original reserve assigned to claims.
2020/ 2021	£7563.00	£1480	£10,000	£19,043.00	£1,260.50*	£259,791.90
2021/ 2022	£733.16	£0	£21,497.53	£22,230.69	£366.58	£223,688.63
2022 /2023	£179.99	£0	£126,991.90	£127,171.90	£89.99	£302,714.10

**There is a £6000 Personal Injury claim in the 2020 2021 year which has elevated the average claim cost. If this removed the average claim cost is £202.40.

The Council currently handles claims in respect of damage to vehicles up to £1000 "in house" all other claims are currently handled by the claims handlers appointed by

the Council's insurers. 35 of the 63 claims (56%) of the claims received in respect of the 2022/2023 policy year had reserves of under £1000.

The Risk and Insurance team invest significant effort into defending claims and relies on the cooperation of colleagues on the front line to maintain the policies and practices which allow claims to be defended. In the current legal environment, the financial burden of defending claims rests with the Authority unless Fundamental Dishonesty is proven (the burden of proof being extremely high) against the Claimant. This results in a financial cost to the Council even when a claim is successfully defended.

The ability to defend claims against the Council can also have an effect on the Council's risk profile and the premium charged by insurers.

Excess on Public and Employers Liability Insurance Policy

The Council arranges insurance to cover its insurable risks. The Council currently has cover placed with 5 different insurers with a range of excesses, from £0 on third party motor claims to £250,000 for each public and employers' liability claim. Insurance cover is renewed annually with a full competitive tender every 3 – 5 years.

The cost of the Councils liability insurance premiums over the 3-year period was:

	2020/21 £	2021/22 £	2022/23 £
Liability Insurance Premium (including Insurance Premium Tax)	577,632.16	449,120.00	462,593.60

Up until the 2021 / 2022 policy year the Council's deductible in respect of its public and employers' liability policy was £100,000. Renewal terms received for the 2021 /2022 policy year showed a substantial increase in the premium being offered by insurers (an increase of 13.3%).

The Council's insurers had applied such increases across all customers, their reasoning being that there had been an increase in the value of claims settlements across the board and that losses, both man made and from natural catastrophes remained very high.

Options were sought from insurers on various levels of excess which would reduce the premium considering the Council's claims history. Following an analysis of claim trends, the decision was taken to increase the excess to £250,000 per claim and achieving the financial benefit of a lower premium than originally quoted.

The Excess / deductible at £250,000 means that the Council will pay the first £250,000 of any claim.

