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To: KCC Scrutiny Committee – 6 July 2018
Subject: **Highway Claims**
Classification: Unrestricted

Summary

This report provides the Scrutiny Committee with a brief overview of the approach to assessing highway liability claims – particularly those involving vehicle damage caused by carriageway defects.

1. Introduction

1.1 The Statutory Duty – Section 41 of the Highways Act 1980

The statutory duty to maintain the highway is contained at Section 41 (1) of the Highways Act 1980. This states:

‘The authority who are for the time being the Highway Authority for a highway maintainable at the public expense are under a duty to maintain the highway.’

For there to be a breach of Section 41, there must have been a failure to maintain or a failure to repair.

In order to establish a breach of Section 41, a claimant must prove that:

- a) the highway was in such a condition that it was dangerous,
- b) the dangerous condition was caused by the failure to maintain,
- c) the injury or damage resulted from failure.

When considering the impact of defects, KCC operates an investigatory level of 20mm for footways and 50mm for carriageways. Repairs will be considered for those exceeding these measurements but ultimately each defect must be assessed on its own merits and the assessment of dangerousness will take into consideration, factors such as the position on the highway and the speed and volume of traffic that uses it.

1.2 Section 58 of the Highways Act 1980

If a breach of Section 41 can be proven, it does not automatically follow that a claim for compensation will be settled.

Section 58.1 of the Highways Act 1980 states that;

'In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at public expense it is a defence to prove that the authority had taken such care as in all circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.'

In order to prove a Section 58 defence, a Highway Authority is required to establish two things:

1. That it has a reasonable maintenance policy; and
2. That the policy has been properly carried out.

The main elements of a reasonable maintenance policy are a reasonable inspection policy and reasonable timescales for repair. Kent County Council's Highway Safety Inspection regime forms a key aspect of its strategy for managing risks and liabilities. This strategy is outlined in its Safety Inspection & Condition Survey Manual and follows national guidance provided by the Well-Maintained Highways – Code of Practice for Highway Maintenance.

1.3 Inspection & Repair Criteria

In line with this guidance KCC undertakes a comprehensive system of inspections. These inspections are carried out at the following intervals depending on the classification of the road:

- Monthly
- Three-monthly
- Six-monthly
- Yearly

In addition to these inspections, KCC will respond to reports of defects that it receives from members of the public. When defects are identified and deemed to require repair, these will be programmed in line with priorities that have been adopted. These priorities are categorised as follows:

- P1 – Repair or make safe in 2 hours
- P2 – Repair or make safe by end of next working day
- P3 – Repair within 7 days
- P4 - Repair in 28 days
- P5 - Programmed works – repair within timescale of up to one year

The priority assigned to a defect will depend on several factors but ultimately is determined by a risk assessment that considers the severity of the defect against the likelihood of an accident.

2.0 Claims Assessment

- 2.1 When undertaking an assessment of a claim for personal injury or property damage, the Insurance Team will consider the inspection and repair priorities with a view to establishing whether KCC should be held legally liable.
- 2.2 It is of course regrettable when anyone using the highway network sustains personal injury or damage to their property, however the fact that a defect exists on the highway does not automatically constitute negligence.
- 2.3 The fact that the Highways Act requires maintenance to a reasonable standard, means that the Law recognises the network cannot always be kept in a perfect condition and acknowledges that defects will arise. When they do, the duty upon the Highway Authority is to respond to them within a reasonable time once reported or identified and the Council makes every effort to achieve this.
- 2.4 In view of this, if it can be established that inspections have been undertaken at appropriate intervals and that defects have been repaired in line with the priorities assigned to them, liability will be denied in accordance with Section 58 of the Highways Act.

3.0 Vehicle Claims Summary - 2018

- 3.1 The weather experienced at the beginning of the year and particularly the heavy snowfall on 27 February, caused significant deterioration to the network over a short period of time. As a result, the number of highway claims received has markedly increased on those seen in 2017.
- 3.2 Figures to date indicate that 1,286 highway related claims have been received of which 1,161 have reported damage to vehicles due a to defective carriageway surface. This is in comparison to 1,096 highway related claims for the entirety of 2017 of which 649 reported damage to vehicles.
- 3.3 The figures for 2017 were the lowest reported for 5 years and hence this indicates that the weather at the beginning of 2018 has been the significant cause of the deterioration to the network. Furthermore, KCC is not alone in seeing a sharp increase in claims – this has been experienced by all neighbouring authorities across the South East with many reporting higher numbers than Kent despite their smaller network.
- 3.4 In response to this deterioration, KCC has directed considerable resource to maintenance work and, at 15 June, nearly 25,995 potholes have been repaired and 69,510 sqm of resurfacing has been carried out.
- 3.5 Claims for compensation have continued to be assessed in accordance with the Highways Act. To date, liability has been denied for 663 claims and accepted for 164. £8,666 has currently been paid but a number of those that have been accepted have not yet been finalised. 416 claims are currently still waiting assessment.

- 3.6 Where liability has been denied, a primary reason is that the defect has been identified and repaired in accordance with KCC's repair priorities. Reports of defects have increased considerably in 2018 and it is not possible to immediately respond to all. As a result, a system of prioritisation must exist which ensures that the most serious defects on the most heavily used roads are attended to soonest.
- 3.7 In the main it is considered that KCC has achieved this – particularly in view of the demands imposed by the weather and taking into consideration the size of the Kent network which comprises of nearly 5,500 miles of road and 4,000 miles of footway.
- 3.8 On the occasions that requirements have not been met, liability has been admitted. This accounts for 20% of the 827 claims assessed to date – an increase on figures for 2017 of approximately 10%. This current increase is to be expected given the demand that has been placed upon the Council since the beginning of the year – something that has continued only recently with the flash flooding on 29 May.

4. Recommendation

- 4.1 Members are asked to note the content of this report.

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8 June 2018