membership resources

Briefing 07/17 March 2007

Third party claims

Legal case studies of third party claims against Highways Authorities

Key issues

72% of Authorities have shown a reduction in non-repudiated third party claims
The briefing provides examples of some recent successful cases
A legal case study on manhole covers, which has implications for Highways Authorities.

1. Introduction

Since 1999, third party claims have increased and there has been a vast amount of work done by Local Authorities to curb this trend. A major cause of this increase has been the introduction of Conditional Fee Arrangements (CFAs), commonly known as 'no-win, no-fee' in 1999. The success fees charged in CFAs have increased the number and cost of compensation claims to public service providers, including Highways Authorities, and the council taxpayer. A survey by the LGA and Zurich Municipal of 212 councils in England and Wales in 2003 revealed that 81% of councils said the introduction of CFAs has increased the annual cost to their authority of handling compensation claims. The number of compensation claims against 87% of councils has also increased, and 68% said the number of tenuous or fraudulent claims has increased since the introduction of CFAs.

More recently, there have been a number of high-profile cases where Highways Authorities have been successful in curbing claims. APSE Performance Networks has demonstrated that for 2003-2006, 72% of Authorities have shown a reduction in non-repudiated third party claims compared to 2002-2005. This briefing focuses on some of the more recent successful cases, as well as a case for consideration by Highways Authorities.

2. Legal Cases

a. Non-compliance with CFA Regulations 2000: Ahmed v Bury MBC

The Claimant's solicitors claimed total costs of £11185.86 in respect of a claim arising out of an highway tripping accident in which a minor was involved. Liability was ultimately not in dispute.

The Councils solicitors raised the issue that the CFA was invalid because the Claimant's solicitor had failed to comply with s4(2)(c) of the CFA Regulations 2000. This relates to "whether the legal representative considers that the client's risk of incurring liability for costs in respect of the proceedings to which agreement relates is insured against under an ***existing contract of insurance***".

The Claimant's solicitors finally agreed to accept the insurance premium only and paid the Councils costs in respect of the detailed assessment proceedings.

b. Not proving that the claimant sustained the accident as alleged: Hussain v Blackburn with Darwen BC

The Claimant brought a claim where he alleged that he had sustained injury on the 9 August 2003 having tripped in a defect surrounding a manhole cover as he was attempting to cross a road. The defect was obvious and had been marked for repair by the Council.

The issues in the case ultimately came down to whether the Claimant could prove that he sustained his accident as alleged on his own evidence. There were several discrepancies within his account regarding the route he had taken and how he came to fall. Further suspicions were raised given that the Claimant did not attend his GP for medical treatment until 4 weeks post accident which coincided with him having instructed a claims management company to pursue his claim.

In a robust judgment dismissing the claim, the trial judge stated that

"*plainly the Claimant is a most unimpressive witness. His own account of the accident circumstances is so awful that I am simply not satisfied with a word of what he is saying*".

The Claimant was ordered to pay the Defence costs in full.

c. Section 58 defence (the accident spot was subject to routine annual inspections): Gomersall v Hull City Council

The claim arose as a result of a tripping accident on 31 August 2004 in which the Claimant sustained a fractured wrist. The claim was defended to trial on Section 58 defence; the accident spot was subject to routine annual inspections. The last pre-accident inspection took place on 30 April 2004 and the defect was not recorded. The Claimant relied on a lay witness who claimed she had notified the Council of the defect in the weeks prior to the Claimant's accident though the Council had no record of such a complaint.

Originally, the Judge found in favour of the Claimant; he considered the Council had failed to make out the Section 58 of the Highways Act 1980 defence. The Judge was of the opinion that the Council had incorrectly categorised the accident spot as suitable for annual inspections; he considered six monthly inspections to be appropriate. However,

the Judge found for the Council on appeal – the inspection had taken place 4 months prior to the accident and he considered 6 monthly inspections to be appropriate.

d. The Authority is not a Highways Authority: Milburn v Wear Valley DC
The Claimant alleged that he had fallen due to a missing flagstone in a housing estate. It was established that though the Council was the owner of the pathway, they were not a Highways Authority and the pathway fulfilled the necessary criteria to be classified as a highway maintainable at the public expense. The Judge agreed that the Council had no duty to inspect or maintain the accident spot as it was not a Highway Authority and the only circumstances in which the Council could be found liable for the Claimant's accident was if the defect had been caused by inadequate or poor service rather than not doing anything.

It is unclear from the case study whether the Claimant then went onto prosecute the Highways Authority in this case.

e. Manhole covers and implications for Highways Authorities
A recent case has put into question the appropriate standards of inspection of manhole covers. The case found for the Claimant who had put her foot down a manhole on a busy street. The cover had tilted and evidence was that the defect could only be identified when trodden on. The Council had a monthly system of inspection on foot which was purely visual. The intervention level was a trip of 19mm or above. The claim was defended under Section 58 of the Highways Act on the basis that the system was reasonable even though incapable of discovering this particular defect.

The Judge found for the Claimant on the basis that this was a busy thoroughfare and the risk of serious harm presented by a manhole was great due to its depth and the presence of electric cables. In these circumstances, periodic inspections of manhole covers were required to check that those manhole covers were secure. The Council appealed on the basis of this posed too high a burden upon them, but failure to produce any such evidence meant the defence failed.

In another case, the opposite decision was reached, because the manhole cover was in a fairly remote country location

3. Conclusion

The above cases demonstrate some clear examples of successes in defending Councils against third party claims. Key factors in the curb of claims have included the management of repairs to ensure that the highway remains safe and available to the public for use, training and development of staff and effective performance management and quality systems. A robust system of inspection and repair which covers the entire network within the highway area is fundamental to the ability to successfully defend public liability claims.

Case study (e) above will be of interest to Highways Authorities and whether there is a current system in place to inspect manhole covers and if not, whether a system needs to be introduced for town centres and other busy thoroughfares.

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