

**DERBYSHIRE COUNTY COUNCIL**

**REPORT OF THE ENVIRONMENT AND HIGHWAYS  
IMPROVEMENT AND SCRUTINY PANEL**

**Review Of Highways 3<sup>rd</sup> Party Insurance - 4 February 2004**

**MEMBERS**

**Councillor Mrs Janet Hill – Chair**

**Councillor Mrs June Beckingham**

**Councillor Lynton Bennett**

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**Councillor Ian Eames**

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## **Review of Highways Third Party Insurance**

### **1. Executive Summary**

#### **1.1 Introduction**

At its meeting on 30<sup>th</sup> April 2003 the Environment and Highways Improvement and Scrutiny Panel agreed that it would undertake a review of Highways Third Party Insurance. Members determined that the review should aim to identify opportunities to decrease the cost of insurance claims against the Authority. Ultimately this aim works towards the following Council objectives and goals:

- To improve transport choice and safety (to improve conditions of roads and pavements)
- To achieve best value in service effectiveness (to develop the efficient and imaginative management of assets)

This report summarises the work carried out by the Panel and puts forward a set of recommendations.

#### **1.2 Background**

Third party insurance refers to the process of insuring and defending claims made against an authority by a third party. With highways claims the claimant is usually a motorist, cyclist or a pedestrian.

Concerns regarding insurance claims have been generated by national and local trends. Nationally claims against local authorities are increasing, costs are rising and as a result money is being diverted away from providing services to residents. The cost of claims to Derbyshire County Council is approximately £2m per annum, of which 64% by value relates to highway claims.

Due to escalating insurance premiums the County Council's current insurance policy is limited to cover:

- A claim that exceeds £125,000
- Or where the total claims exceed an agreed figure. This figure is currently about £4.7m per annum.

The Council has to foot the bill directly for all other claims.

The issue of third party insurance was highlighted during a County Council review of risk management. The area of highways insurance was identified as being of prime importance because nationally 80% of claims made against councils relate to highway maintenance.

#### **1.3 Summary of Findings**

The condition of roads and footways is high on the public agenda. For a well-serviced and safe highway network it is imperative that Highway Authorities have an effective inspection and repair process.

In addition to a competent highway inspection and repair regime it is vital that a robust claims process is in place that deals with claims accurately and efficiently and seeks to reduce fraudulent claims.

The consequences of a more effective system should be a safer highway network and the reduction in the number of successful third party insurance claims. This will ultimately save Derbyshire County Council money.

Derbyshire County Council's present system has some scope for improvement. The system has been, and continues to be, updated to reflect social and legal changes and many of these changes require time for them to be applied consistently across Derbyshire.

A number of these changes have been designed to bring the County Council into line with the Code of Practice for Highways Maintenance which advises an approach based on risk management. In addition greater resources continue to be invested into improving the condition of roads within Derbyshire over the long term.

Scope for improvement however, has been identified through the consultation process and with regards to insurance claims the adage 'you are only as strong as your weakest link' is particularly pertinent.

### **1.3.1 Inspection and Repair Regime**

Highway safety inspections are undertaken to identify defects likely to create danger or serious inconvenience to users of the network. Information generated by the inspections can be vital in determining if a claim is successful or not.

To enhance the inspection and repair regime improvements need to be made to the training of Highway Inspectors, the use of technology to record and manage information, and prioritising resources.

### **1.3.2 Claims Process**

To improve the claims process modifications need to be made to the way the Council gathers information from claimants and Highway Inspectors, manages the information, and prepares witnesses for court.

Identified improvements should ensure that the Council's procedures follow the Code of Practice. The Courts, in considering whether the Highway Authority

has acted reasonably, will take compliance with the Code of Practice into account.

## **1.4 Conclusion and Recommendations**

To improve Derbyshire County Council's performance regarding Highways 3<sup>rd</sup> party insurance claims a number of improvements are needed. These are set out below.

### **Inspection and Repair Process**

Inspections need to be on time, accurate and consistent. Short-term maintenance should be kept to a minimum but when required it must be on time and documented.

The introduction of new highway safety instructions by the Environmental Services Department is welcome but the new policy needs to be supported by the following recommendations:

#### **1.4.1 Improve Training for Highway Inspectors**

Highway Inspectors perform a vital role in undertaking safety inspections. At present training for Highway Inspectors is inconsistent. Due to employee changes, not all Inspectors have benefited from previous training.

To improve the accuracy and consistency of inspections, the judgement of, and the understanding that Inspectors have of their role it is important that more training is given to all Highway Inspectors.

Recommendation:

- Continue to develop a training programme for Highway Inspectors. The training should encompass specialist training in court practices. This will enhance Inspectors' awareness of the legal process and their performance in court.

#### **1.4.2 Utilise Information Technology to Record Inspections and Repairs**

Most Inspectors currently record inspections on notepads and transfer them to inspection sheets, these are then filed. Repairs are recorded on continuation sheets, these are also filed.

This system results in the inconsistent presentation of inspection information, difficulty in accessing records and the loss of important files. The system needs to be modernised.

A number of Highway Inspectors are currently piloting the use of hand held computers to record inspections. This information is then downloaded to a database that officers have access to.

Utilising bespoke Highway Inspection software will limit the inconsistency of reporting, as information required is prescribed within the package. It will also improve the ability of the Highway Insurance Office / Loss Adjusters to identify an audit trail to defend claims.

Pending a successful outcome of the pilot it is recommended that:

- Inspections and inspection routes are recorded on hand held computers and transferred to a database.
- The database incorporates the work undertaken by the highway repair teams so that there is greater integration of the inspection and repair system.

#### **1.4.3 Prioritise Repairs According to Risk**

To repair all the defects reported by Inspectors would require additional funding for routine highway maintenance. The improved inspection standards outlined in the new highway safety instructions may also lead to more defects being detected.

Improvements need to be made to the prioritising of repairs to ensure that the most dangerous defects are repaired within the policy guidelines.

Recommendation:

- Highway Care Managers must continue to ensure that resources are focused on repairing defects that pose the highest risk to the public. Highway Inspectors will identify these defects.

## **The Claims Process**

To improve the Councils ability to defend highway claims and to reduce the amount of compensation paid to claimants the following recommendations are proposed:

#### **1.4.4 Undertake Joint Site Meetings with Claimants**

Joint site meetings between the claimant and a Council employee can lead to the claims process being speeded up and the reduction in the level of fraudulent claims. This can lead to smaller and fewer payments to claimants, and has proved cost effective in other Highway Authorities.

##### **Recommendations:**

- For a trial period of 1 year, employ a claims investigator to meet claimants on site and investigate personal injury claims. This post will be employed within the Highways Insurance Office and the outcomes will be monitored to examine the impact of the role.
- For a trial period of 1 year, engage a motor vehicle engineer to meet claimants on site and assess the validity of selected motor vehicle claims. The Highways Insurance Office will manage this service and the outcomes will be monitored to examine the impact of the role. The cost of this service will be charged to the insurance fund as part of the cost of settling the claim. This recommendation will not require the creation of an additional post.

#### **1.4.5 Raise the Threshold for Claims Assessed by Derbyshire County Council**

The present limit for non-injury claims that are determined by the Highways Insurance Office is £500. Claims above this figure are sent to the Council's loss adjusters who decide whether the claim should be defended.

##### **Recommendation:**

- Derbyshire County Council insurers be approached to seek an increase in the threshold for non-injury claims assessed by the Highways Insurance Office from £500 to £1000. This level should be reviewed annually.

#### **1.4.6 Improve the Management of Claims Information**

The current database used by the Highways Insurance Office to monitor highway claims is not sophisticated enough to enable trends in claim patterns to be identified or to analyse why compensation has been paid.

If the analysis of information is improved then inspection schedules can, for example, be amended so that high-risk locations are inspected and repaired prior to peak claim days.

**Recommendation:**

- Develop a new database that will enable greater analysis of information to be undertaken. Information obtained from the new database can then be used to support changes to the inspection, repair and claims process.

## **General Improvements**

### **1.4.7 Review the Inspection, Repair and Claims Process on a Regular Basis**

**Recommendation:**

All aspects of the process should be reviewed regularly to ensure that existing practices are delivering the desired results. Of particular importance is the need to:

- Consult service providers following a trial to see how improvements can be made. (See paragraph 7.3 for a list of key service providers)
- Keep all highway maintenance employees informed of the claims figures and repudiation rates. This reinforces the link between inspection and claims.

### **1.4.8 Promote the Success of Derbyshire County Council's Claims Process**

To deter claimants from submitting fraudulent claims against the Authority it is advisable that the Council promotes its record in defending claims:

**Recommendation:**

- Undertake promotion publicising Derbyshire County Council's success in defending claims.

## **1.5 The Next Stage**

The report will be presented to Cabinet for consideration. It is recommended that: -

- (1) the Chair of the Improvement and Scrutiny Panel presents the report to the Cabinet.



- (2) following consideration of this report it is suggested that, should the Cabinet agree to implement the recommendations, the Improvement and Scrutiny Panel receives a report at a date to be determined, to outline progress made.

## **2. Introduction**

Third party insurance refers to the process of insuring and defending claims made against the authority by a third party. With highways claims the claimant is usually a motorist, cyclist or a pedestrian.

Concerns regarding insurance claims have been generated by national and local trends. Nationally claims against local authorities are increasing, costs are rising and as a result money is being diverted away from providing services to residents. The cost of claims to Derbyshire County Council is approximately £2m per annum.

The issue of third party insurance was highlighted during a County Council review of risk management. The area of highways insurance was identified as being of prime importance because nationally 80% of claims made against councils relate to highway maintenance.

### **2.1 Review Terms of Reference and Council Objectives**

At its meeting on 30<sup>th</sup> April 2003 the Environment and Highways Improvement and Scrutiny Panel agreed that it would undertake a review of Highways Third Party Insurance. Members determined that the review should aim to identify opportunities to decrease the cost of insurance claims against the Authority. Ultimately this aim works towards the following Council objectives and goals:

- To improve transport choice and safety (to improve conditions of roads and pavements)
- To achieve best value in service effectiveness (to develop the efficient and imaginative management of assets)

A copy of the project brief is shown in Appendix 1.

To develop the review a Member Working Group was established. The working group comprised Councillor Mrs Hill and Councillor Mrs Sanders. To aid understanding and to identify best practice the working group has consulted widely with local authorities, private sector companies, external experts, and offices employed by Derbyshire County Council. A full list of consultees is shown in Appendix 2.

### **2.2 Acknowledgements**

Members of the Environment and Highways Improvement and Scrutiny Panel would like to thank all those who have assisted with the development of this review.

### **3. Background**

#### **3.1 National Trends**

Statistics show that both the number of highway claims against local authorities and the cost of claims to local authorities are increasing.

A presentation by the Head of Investigations and Risk Management at the Transport Research Laboratory included the following alarming statistics:

- 8 X increase in the number of claims in the last 10 years
- The direct cost of claims is rising by 9% per annum<sup>1</sup>

Figures vary as to the exact cost of highway claims to local authorities. Figures produced by Zurich Municipal Insurance (ZMI) showed that the cost of highway claims rose from £12.7m to £41.5m between 1982 and 1990<sup>2</sup>. ZMI put the current cost insurance payments to be £150m and a total overall cost of insurance claims to be £1.2bn<sup>3</sup>.

The increased number of claims nationally is having knock-on effects with regards to officer workloads and maintenance spend. A House of Commons Transport Committee report estimated that in local authorities in Britain, 47,376 workdays were spent per year processing and dealing with claims.

The report also contains information from the Asphalt Industry Alliance. They estimate that in England in 2002, 32% to 36% of the road maintenance budget is used on reactive, short term, maintenance. This figures represents a significant rise over previous years and reflects the changing systems employed by local authorities in an attempt to reduce insurance liabilities.<sup>4</sup>

In addition to the money that claims are costing councils, a failure to maintain footpaths imposes large costs to the NHS and the national economy from tens of thousands of trips and falls.

##### **3.1.1 Conditional Fee Arrangements**

The abolition of legal aid for personal injury claims and the consequent introduction of Conditional Fee Arrangements (CFA's), also known as no-win no-fee arrangements where lawyers work for nothing but claim their costs and top-up "success fees" when they win, has contributed to the rise in the cost and number of claims and has created a more litigious society.

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<sup>1</sup> Presentation by Paul Forman, Head of Investigations and Risk Management, Transport Research Laboratory, to Derbyshire County Council, 2003

<sup>2</sup> Kindred Associates Report on Highways Liability Claims – The Issues, 1995

<sup>3</sup> Information provided at 3<sup>rd</sup> Party Claims Conference, 19<sup>th</sup> November, Kirklees MC

<sup>4</sup> House of Commons Transport Committee, Local Roads and Pathways – 5<sup>th</sup> Report of session 2002-03, vol 1

Research conducted for the Local Government Association and Zurich Municipal revealed that 81% of the 212 councils in England and Wales think the introduction of CFA's has increased their costs of handling compensation claims, and 87% said that the number of claims had risen. In addition 68% said the number of fraudulent claims had increased too.<sup>5</sup>

The average cost of a "slip and trip" claim is now put at £5,000 but councils are managing to successfully defend more cases with some authorities successfully defending over 80% of cases. However, it still costs money to investigate and repudiate the claims.<sup>6</sup>

### **Case Study – West Yorkshire**

Reporting to the House of Commons Transport Committee Kirklees Metropolitan Council reported that the five West Yorkshire Districts spend over £6,750,000 on insurance premiums alone. This is compared with £16,295,000 on Principal Road maintenance.<sup>7</sup>

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<sup>5</sup> No win, no fee compensation claims hitting council budgets – LGA, 31/07/03

<sup>6</sup> ALARM attacks lack of anti-fraud measures, LGC, 15/08/03

<sup>7</sup> House of Commons Transport Committee, Local Roads and Pathways – 5<sup>th</sup> Report of session 2002-03, vol 1

## 3.2 The position in Derbyshire

Within Derbyshire the number of highways claims against the Council has increased consistently from an average of 400 in the mid 1980's to 1,075 in 2002/03. The past five years has seen a large percentage increase in the number of claims, however, much of this can be attributed to Derbyshire County Council taking over Highways Agreements from district councils.

Claims are for personal injury and non-injury claims and they include incidents on footways, carriageways, and public rights of way.

The annual cost of claims to Derbyshire County Council is approximately £2m. Highway claims account for 64% of all claims by value. The annual costs per year fluctuate because claimants have up to 6 years to submit a claim following the alleged incident.

Derbyshire County Council's percentage repudiation rate on highway claims appears to be quite good. The level of claims that are successfully defended ranges from between 70% to 80%. The figure appears to be higher for claims under £500 that are dealt with internally by Derbyshire County Council, and lower for claims over £500 and personal injury claims where liability is determined by the Council's loss adjusters, Gallagher Bassett. This is to be expected because claims over £500 may well be complicated and issues of liability may not be clear-cut.

Comparative information that is available is not always particularly meaningful. Claim levels vary according to factors such as the urban/rural mix, the length of road network, and the type of roads within the authority. In addition one or two large personal injury claims could alter figures dramatically.

Information from benchmarking groups suggests that Derbyshire County Council is an average performer with a fairly high number and cost of claims.

### Insurance Cover

Due to escalating insurance premiums the County Council's current insurance policy is limited to cover:

- A claim that exceeds £125,000
- Or where the total claims exceed an agreed figure. This figure is currently about £4.7m per annum.

The Council has to foot the bill for all other claims.

Improvements that reduce the amount of money spent on claims could be spent on improving services delivered by the Council across Derbyshire. Improving the repudiation rate by 10% could save the Council £500k over 3 yrs.

#### 4. The Legal Framework

Section 41 of the Highways Act 1980 imposes an **absolute duty** on the Highway Authorities to maintain the highway.

Allegations that an authority has failed in their section 41 duty form the basis for 90-95% of highway liability claims. If lack of repair causes or contributes to the accident then the Highway Authority will be liable for that accident unless it can establish a statutory defence under section 58 of the Highways Act 1980.

##### **The Defence**

Section 58 allows a special defence and introduces “reasonableness” into the equation. Section 58(1) says ‘... it is a defence...to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.’

Section 58(2) says ‘...the courts shall in particular have regard to the following matters: -

- a) The character of the highway, and the traffic which was reasonably to be expected to use it;
- b) The standard of maintenance appropriate for a highway of that character and used by such traffic;
- c) The state of repair in which a reasonable person would have expected to find the highway;
- d) Whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;
- e) Where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed.’

As can be seen from the above, the authority must have been seen to act ‘reasonably’ and so needs to have suitable written policies and be able to prove that it has adhered to them.

Recent amendments to the legislation have imposed a duty on Highway Authorities to prevent ice forming on the highway. Section 111 of the Railways and Transport Safety Act 2003, effectively amends Section 41 of the Highways Act 1980 by the insertion of a sub-section which states:

“In particular, a highway authority are under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow and ice”.

This section of the Act came into force on 31 October 2003.

There is another statutory duty that could give rise to claims. Under Section 39 of the Road Traffic Act 1988, a highway authority must carry out studies into accidents, and must, in the light of those studies, take such measures as appear to be appropriate to prevent such accidents. The authority can decide to do nothing but needs procedures that record the reasoning for a 'do-nothing' action.

Appendix 3 summarises the process for establishing liability.

## **5. Good Practice Guidelines - Reducing Compensation**

The payment of most highway claims can be avoided. To reduce compensation paid local authorities need a good system. The better the system the lower the accident rates, the less claims you will pay.

### **5.1 Prevention – Highways Maintenance**

The best way to reduce the number of claims is to ensure that footways and carriageways are in a good condition. This decreases the likelihood of accidents and claims.

Findings from a House of Commons Transport Committee report revealed that there is a clear link between levels of investment in road maintenance and the quality of our local road network. Information within the report revealed a simple fact: when maintenance expenditure is cut the condition of the road network deteriorates.<sup>8</sup>

Resources need to be invested into good, long-term maintenance. It is advantageous to keep short-term patching repairs to a minimum, as they do not last as long as full resurfacing and do not address the underlying structural problems of the road network. However, patching is a recognised method of dealing with minor or small-scale deterioration and can deal with many of the defects reported by Inspectors or the public.

To reduce claims, funding for highway maintenance should be determined by a risk management approach. Authorities should categorise carriageways and footways allowing for network hierarchy (road classification), whether they are urban or rural, the volume of traffic using the footway or road, inspection and incident history, and the character of the road. Authorities should then allocate resources and prioritise maintenance standards. The authorities system should be documented in a Highways Maintenance Strategy.

#### **• Case Study - Liverpool**

In 2001/02 Liverpool City Council spent £3.2m more than it had budgeted for on highways public liability provision – making the total cost around £6m.

Reported in the Liverpool Echo, Cllr Paul Brant blamed the increased claims on a decision to reduce the highway budget:

“It is financial lunacy. They tried to save money by cutting back the highways budget but they are now having to spend huge amounts in compensation.”<sup>9</sup>

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<sup>8</sup> House of Commons Transport Committee, Local Roads and Pathways – 5<sup>th</sup> Report of session 2002-03, vol 1

<sup>9</sup> Trip up claims cost millions, Jenny Watson, Liverpool Echo, 28/09/2002



## 5.2 Prevention – Inspection and Repairs

It is inevitable that ongoing, short-term repairs will be needed to keep the fabric of the highways in good condition. Included within a Highways Maintenance Strategy should be inspection and repair policies that lead to the provision of accurate, timely and relevant information on the condition of the highway network, and sets standards for repairing defects. This is a crucial component of highway maintenance and plays a key role in proving a Section 58 defence.

Adopting systematic procedures for identifying defects in the highway and implementing timely repairs can reduce incidents, inconvenience to the public and financial loss.

A presentation by Ian Ross-Bain, from loss adjusters, Gallagher Bassett and Bill Sulman from Insurance Brokers, Heath Lambert to the Improvement and Scrutiny Panel outlined the need for the policy to be effective in three areas.

- In the boardroom – (policy must be considered and consistent)
- On the street – (it must be implemented and integrated)
- In court – (action must be documented and understood)

The new Code of Practice for Maintenance Management<sup>10</sup> outlines the essential ingredients for an effective inspection and repair regime that will enable an authority to prove that Inspectors have been there, seen it, repaired it, or that it did not need doing. They include the following:

### 5.2.1 The frequency and mode of inspections

Safety inspections are designed to identify those defects likely to create danger or serious inconvenience to users of the network or the wider community and therefore require immediate or urgent attention.

The Code of Practice states the parameters that need to be specified for a safety inspection regime. They are:

- a) Frequency of inspection
- b) Items of inspection
- c) Degree of deficiency
- d) Nature of response

#### 5.2.1.1 Frequency of Inspection

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<sup>10</sup> Delivering Best Value in Highway Maintenance, Code of Practice for Maintenance Management, IHT, 2001

The frequencies for safety inspections should be primarily based upon the network categories and traffic use. In addition, trends, incident and inspection history, and characteristics of the highway should be considered. Inspections will also be generated by reports from the public.

The Code of Practice provides the following frequencies, based upon network categories and use, as a starting point.<sup>11</sup>

<b>Feature</b>	<b>Category</b>	<b>Frequency</b>
Roads	Strategic Route	1 month
	Main Distributor	1 month
	Secondary Distributor	1 month
	Link Road	3 months
	Local Access	1 year
Footways	Prestige Area	1 month
	Primary Walking Route	1 month
	Secondary Walking Route	3 months
	Link Footway	6 months
	Local Access Footway	1 year
Cycleways	Part of Carriageway	As for Roads
	Remote from Carriageway	6 months
	Cycle Trails	1 year

#### **5.2.1.2 Items of Inspection**

An inventory of features on each highway is important. It points Highways Inspectors to the items that need to be inspected and aids consistency in the inspection process.

#### **5.2.1.3 Mode of Inspection**

Inspections are normally undertaken from slow moving vehicles. Authorities are now moving towards two person teams, one to drive whilst the other inspects.

In heavily used urban areas this mode may not be effective in obtaining the necessary level of accuracy. Walked inspections should be used in these circumstances. The policy should indicate the most appropriate mode of inspection for the prevailing conditions.

#### **5.2.1.4 Degree of Deficiency**

When Inspectors note defects it is imperative that they are able to assess the risk the defect poses to the user.

<sup>11</sup> Delivering Best Value in Highway Maintenance, Code of Practice for Maintenance Management, IHT, 2001, p68

The Code of Practice defines defects in two categories:-

Category 1 – Those that require prompt attention because they represent an immediate or imminent hazard or because there is a risk of short-term structural deterioration.

Category 2 – All other defects

This information must be reported promptly to the maintenance teams.

#### **5.2.1.5 Nature of the response – speed of repair**

Inspection and repairs must be tied in together. The Highways Agency requires that Category 1 defects be corrected or made safe at the time of inspection, if reasonably practicable. Repairs should be based on an assessment of risk with all Category 1 repairs undertaken within 3 days (24 hrs if possible).

The Highways Agency requires that Category 2 defects be repaired within planned programmes of work, with programmes being assigned to one of three levels of priority depending on the degree of deficiency, traffic and site characteristics. Non-priority repairs should be undertaken before the next inspection.

It is imperative that targets for repair times are achievable. To consistently fail to meet Council policy will be seen as a weakness in court.

#### **5.2.2 Recording and Keeping Information**

In defending an action, the Highway Authority will need to establish that it has acted reasonably, by the production of adequate documentation and evidence. It is vital that all stages of the inspection and repair process are recorded accurately and applied consistently.

Ian Gammans, from Zurich Municipal, believes that inspection records should include:

- |                          |  |
|--------------------------|--|
| • Route                  | • Defects found  |
| • Direction              | • Repair classification                                |
| • Date and time          | • Signature of Inspector                               |
| • Weather and road state | • Statement about no other defects found <sup>12</sup> |

#### **5.2.3 Training**

Inspectors are the key ingredients for an effective maintenance and inspection regime. It is therefore vital that Highway Inspectors are suitably qualified to undertake the role. The Code of Practice states that:

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<sup>12</sup> Ian Gammans, Zurich Municipal, Highways Liability Conference, Birmingham, July 2003

“Care should be taken that staff with appropriate skills are appointed to carry out visual surveys. Whilst engineering knowledge is not generally required, for visual surveys, it is important that Inspectors are able to work methodically, and to accurately record condition, according to defined defect definitions”.<sup>13</sup>

#### **5.2.4 Reviewing Inspection Regime**

Arrangements should be made to review the inspection, assessment and recording regime at regular intervals. Reviews should take into consideration:

- Comments and feedback
- Identified trends and perceived risks
- Changes in network characteristic and use

This regime should enable the Highways Authority to argue that it has acted reasonably. A presentation by the Head of Investigations and Risk Management at the Transport and Research Laboratory outlined the main vulnerabilities within a regime.

- Setting over ambitious policies
- Inconsistency in achieving policies
- Being able to demonstrate robust and rational prioritisation of works
- Failure to use “prior knowledge”
- Advising the workforce not to spot deficiencies
- Spending on discretionary powers rather than absolute duties<sup>14</sup>

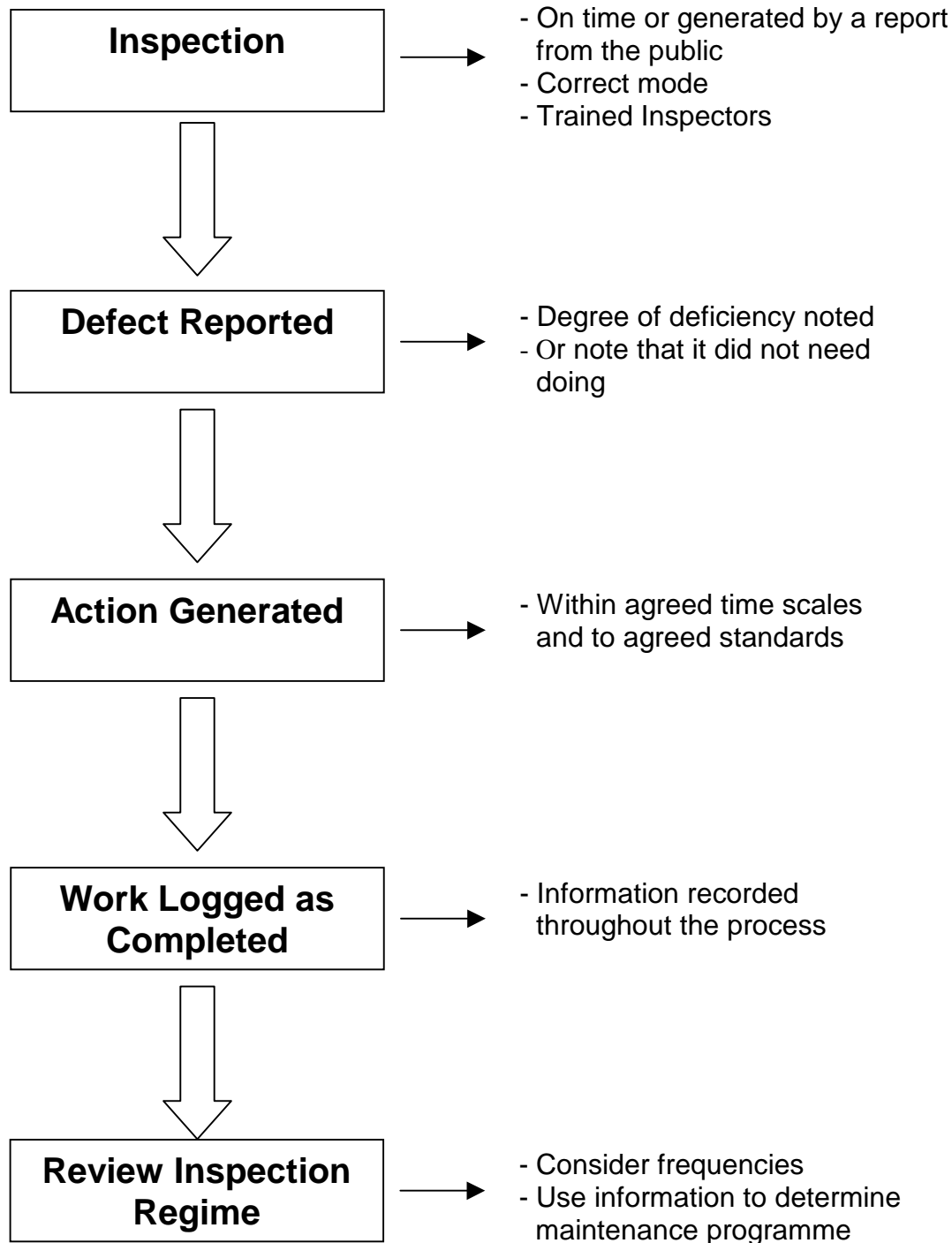
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<sup>13</sup> Delivering Best Value in Highway Maintenance, Code of Practice for Maintenance Management, IHT, 2001, p85

<sup>14</sup> Presentation by Paul Forman, Head of Investigations and Risk Management, Transport Research Laboratory, to Derbyshire County Council, 2003

**Ultimately the policy should ensure that the following process ensues:**

Figure 1



## 5.3 The Claims Process

Speed and accuracy is of paramount importance when dealing with a claim. It is in nobody's interest to frustrate efforts to obtain fair redress or compensation.

### Woolf Reforms -

Lord Woolf's reforms, introduced in 1996, imposed timescales on the claims process for all personal injury claims. Under the new protocols the claimant must send to the proposed defendant two copies of a letter of claim immediately sufficient information is available to substantiate a realistic claim. One copy of the letter is for the defendants, the second for passing on to his insurers.

It is important that all claims are dealt with within the timescales of the Woolf Protocol, otherwise judgement can be made against the Council by default.

Sufficient information should be given in order to enable the defendant's insurer/solicitor to commence investigations and at least put a broad valuation on the risk.

The defendant has 21 days to reply to the claimant and acknowledge the claim. If there has been no reply by the defendant or insurer within 21 days, the claimant will be entitled to issue proceedings.

The defendant ('s insurers) will have a maximum of 90 days from the date of acknowledgement of the claim to investigate. No later than the end of that period the defendant (insurer) shall reply, stating whether liability is denied and, if so, giving reasons for their denial of liability.

Failure to meet the deadlines for responding or providing evidence could lead

### 5.3.1 Pre-action Best Practice

The majority of claims do not go to court. To enhance the defence the following activities and guidelines can be considered to be 'best practice':

#### 5.3.1.1 Punctual and Accurate Information

Information from Inspectors to claims handlers must be accurate, consistent with Council policy, accessible and punctual. This will help an authority meet the deadlines set in the Woolf Protocol and will enable claims handlers to make a quick and informed decision as to whether the Council should defend the claim. The longer this decision takes the more it may end up costing the defendant.

*“Councils need to examine their procedures to ensure decisions are taken quickly so the sometimes punitive success fees charged by lawyers are kept to minimum where claims are not specifically defended.”<sup>15</sup>*

### **5.3.1.2 Joint Site Meeting**

A number of local authorities insist on a joint site meeting between the Claimant and an officer. The advantages of this are:

- It helps to identify the exact location of an incident
- Dimensions of any defect can be agreed
- It can deter fraudulent claims
- It can help identify serial claimants
- It can help inform the decision – defend or not
- It can improve relations with the claimant

### **5.3.2 Preparing for Court**

Few cases go to court. The cost of losing cases can be excessive. It is therefore in the local authorities best interests to ensure that it has a robust defence when it defends a claim in court.

To defend a claim the defendants must be able to demonstrate that competent Inspectors undertook inspections at an appropriate time (see paragraph 5.2.1.1), using an appropriate mode of inspection (see paragraph 5.2.1.3). That the inspection revealed that no dangerous defect was found, or that a defect was noted and the authority acted reasonably to secure the highway under section 58 of the 1980 Highways Act.

To ensure that this process is presented effectively in court the following steps have been advocated:<sup>16</sup>

#### **5.3.2.1 Training for Witnesses**

Being a witness can be a trying experience. Preparing witnesses for court and training them in court practices can give them a greater understanding of their role and responsibilities, which can in turn improve their ‘performance’ in court.

This is particularly pertinent for Highway Inspectors who are often key witnesses and their evidence can help win cases. It is advisable that Inspectors are given appropriate training in court practices.

#### **5.3.2.2 Build Relationships**

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<sup>15</sup> Sir Brian Briscoe, LGA Chief Executive, ‘No win, no fee’ compensation claims hitting council budgets, 31 July 2003

<sup>16</sup> ‘From Trip to Trial – a step by step guide’, presentation by Penelope Marshall, Weightman Vizards & ‘A Witness Guide to Survival’, Suzanne Liversidge, Halliwell Landau, 19 November 2003 - Leeds

Familiarity and understanding are important assets in preparing a witness for trial. Witnesses can perform better if they have met the Council's legal representatives prior to the trial. This meeting gives the both parties the opportunity to go through the evidence and familiarise themselves with each other and the Council's position.

Prior to trial there should be regular communications between inspectors, claims handlers and the council's legal representatives.

#### **5.3.2.3 Debrief**

It is important to debrief staff after the trial to discuss how improvements can be made to the system. This should be undertaken whether the trial is won or lost.

#### **5.3.2.4 Record Keeping**

It is important that claims handlers, and if necessary the legal representatives, have access to the inspection computer system so that they can view the audit trail.

The information from the claims process should be added to the database so that within one system officers will be able to track a claim as it goes through the system. The database could also help to identify the number of claims, the cost of claims, location of claims, defects reported, claimants details and timescales. This information can be used to detect trends and result in a change in inspection regime or claims procedures.

#### **5.3.2.5 Advertise Successes**

To discourage fraudulent claims it is advisable to make claimants, and 'no win no fee' solicitors, aware of successes that a local council has had in court and its overall repudiation rate.

**It must be borne in mind throughout this process that if an authority consistently wins cases then the money saved can be re-invested into the infrastructure.**



## 5.4 Summary of Good Practice

When analysing best practice with regards to inspection regimes, and claims procedures, the Kindred Report on Highways Liability Claims concluded that Highway Authorities should implement the following:-<sup>17</sup>

- (a) Institute an inspection and maintenance system which meets criteria of reasonableness eg LAA Code of Good Practice on Highways Maintenance or better.
- (b) Implement an auditable system of highway inspection and maintenance records. Ensure that regularly updated printouts of computer based records are kept in the office.
- (c) Ensure staff are adequately trained to perform their tasks.
- (d) Institute a quick and efficient system for handling complaints and providing redress, without recourse to law.
- (e) Small claims can be expensive to administer. Consider allowing Highway Authority staff to negotiate the settlement of claims below £500 in value.
- (f) Adopt an auditable, standardised claims recording system that can be input to a highway claims monitoring system.
- (g) Establish a database of historical claims to identify trends, and key risk areas.
- (h) Potentially large claims should be reported to senior staff at the earliest opportunity.
- (i) Arrange a site visit with every claimant wherever possible.
- (j) Target high claim areas for maintenance and increased inspection frequencies. Once a decision is taken to carry out works, do them expeditiously.
- (k) Consider the preparation of a leaflet for claimants setting out highway related claims procedures, a Highway Authority's statutory duties, standard defence and explanation of the process.
- (l) Consider the integration of all street inspection systems – from cleansing to structural maintenance inspections.

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<sup>17</sup> Kindred Associates Report on Highways Liability Claims – The Issues, 1995, p38

## **6. Examples of Good Practice**

### **6.1 Sunderland City Council – Good Inspection Regime & Analysis**

To improve their inspection regime Sunderland City Council employ dedicated safety inspectors. All inspectors receive comprehensive training and work from explicit guidance notes based on the Code of Practice.

The system utilised by inspectors promotes the production of good records and enables information to be recovered quickly.

In addition the computer system allows the City Council to undertake detailed analysis of their claims. This analysis has enabled the Council to identify peak days and times of 'accidents'. In response to this information the Council has amended their inspection schedule so that high-risk locations are inspected and repaired prior to peak claim days.

Evidence indicates that the approach is reducing the number of claims.

### **6.2 Kirklees Metropolitan Council / Norfolk County Council – Good Claims Procedure**

To support a strong inspection and repair regime Kirklees MC has developed a robust claims procedure. Once a claim has been submitted to Kirklees MC the claimant is invited to a joint site meeting with an inspector. This reduces the number of fraudulent claims and helps to clarify details of the incident.

If a claim goes to trial witnesses for the Council meet legal representatives prior to the trial and all inspectors are, in addition to ongoing training activities, educated in court practices. Following every court case staff are debriefed in an effort to improve the Authorities performance in subsequent trials.

Norfolk County Council insists on an on site inspection for all personal injury claims.

### **6.3 Northern Ireland – General Approach**

In 1987, in response to a 57% increase in public liability claims over a four-year period, the Department of the Environment Road Service introduced a comprehensive inspection and repair regime in the urban areas of the Northern Ireland road network. Annual payments for compensation at the time totalled £6m.

By 1989 the inspection and repair system had been fully computerised with inspectors downloading information to PC's. The action taken by maintenance teams was also recorded helping to provide a comprehensive record that could be easily accessed in the event of a claim in a particular area.

By 1992-93 claims number had been reduced by over 50% and the compensation payments were reduced by 40% in a five-year period.<sup>18</sup>

A more detailed version of this case study is shown in Appendix 4.

#### **6.4 London Borough of Bromley – Performance and Promotion**

The London Borough of Bromley currently enjoys a repudiation rate in excess of 90% and defends claims aggressively. It is able to do this because the authority has a thorough inspection and maintenance regime.

To deter 'no win no fee' solicitors the Council regularly sends out press cuttings of the Council's success and its overall performance to the solicitors. This frightens off fraudulent claims.

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<sup>18</sup> Kindred Associates Report on Highways Liability Claims – The Issues, 1995, case study P34

## **7. How does Derbyshire County Council Compare with Best Practice?**

### **7.1 Highways Maintenance - Prevention**

Performance Indicators show that improvements have been made to the condition of roads within Derbyshire. In general, however, the indicators still show that Derbyshire's roads are in a poorer condition than the majority of counties in the country.<sup>19</sup>

Increasing resources are being invested in improving conditions of roads but long term under investment and the length of the highway network mean that the improvement programme will need to be long term to bring Derbyshire up to the top performing councils.

The increased resources have come from the settlements received as a result of the authority's Local Transport Plan submissions to the Government and have resulted in a larger programme of resurfacing schemes. However patching, which is funded by the revenue budget, has continued to be under pressure.

#### **7.1.1 Highways Maintenance Strategy**

The Code of Practice for Maintenance Management recommends that: "Policies, priorities and programmes for highway maintenance should be formally approved and adopted by authorities, and incorporated into a Highway Network Management Plan and the Local Transport Plan"<sup>20</sup>.

To address this Derbyshire County Council is in the process of developing a Highway Network Management Plan (HNMP). The plan will work alongside the Local Transport Plan and will replace the outdated Policy and Standards document for Highways Design, Construction and Maintenance.

The first part of the HNMP will be a résumé of what the Authority does and brief summaries of policies over a wider remit. The second part will be the technical annexes, which will cover, in full, our policies, procedures, standards, detailed drawings and possibly funding arrangements.

This will bring Derbyshire County Council in line with the Code of Practice.

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<sup>19</sup> Derbyshire County Council Best Value Performance Plan, 2003/04, p379-380

<sup>20</sup> Delivering Best Value in Highway Maintenance, Code of Practice for Maintenance Management, IHT, 2001, Summary p6

## **7.2 Inspection and Repairs**

Included within a Highways Maintenance Strategy should be inspection and repair policies that lead to the provision of accurate, timely and relevant information on the condition of the highway network, and sets standards for repairing defects.

There are no statutory standards of highway inspection or maintenance but all the actions of a highway authority have to pass the 'test of reasonableness'. Complying with Codes of Practice and 'industry norms' helps to show that the authority has acted reasonably.

### **7.2.1 Derbyshire County Council's Inspection Regime**

#### **7.2.1.1 Policy**

In March 2003 the Environmental Services Department updated the County Council's Highways Safety Inspections Policy. The new policy brings the inspection regime into line with the Code of Practice and further details are included in explicit instructions to Highway Inspectors<sup>21</sup>.

In accordance with the Code of Practice the policy outlines:

- the required frequency of inspections
- the appropriate method of inspection
- items to be inspected
- explicit classification of the category of defects
- the information to be recorded by a Safety Inspector

To support the new policy, and to comply with the Code of Practice, Derbyshire County Council has introduced two person inspection teams and the highways network is being re-categorised.

A presentation by Ian Ross-Bain, from loss adjusters, Gallagher Bassett and Bill Sulman from Insurance Brokers, Heath Lambert to the Improvement and Scrutiny Panel outlined the need for the policy to be effective in three areas.

- In the boardroom – (policy must be considered and consistent)
- On the street – (it must be implemented and integrated)
- In court – (action must be documented and understood)

Derbyshire County Council's new policy is effective in the boardroom. It is both considered and consistent with the new Code of Practice.

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<sup>21</sup> Derbyshire County Council, Environmental Services Department, Highway Safety Inspections, Instructions to Inspectors, November 2003

### **7.2.1.2 Implementing Policy**

The new instructions to Inspectors were introduced in November 2003. Elements of the policy are new and need time to be fully integrated into the system.

- **Derbyshire County Council Inspection Facts and Processes**

- Derbyshire County Council employs 35 Highway Inspectors and 12 Inspection Assistants
- The direct costs are approximately £1.25m per annum
- Inspectors spend approximately 1/3 of their time on safety inspections
- Inspections are undertaken according to scheduled routes
- Information from safety inspections are currently recorded on notepads and then transferred by Inspectors onto Inspection Sheets. A computerised process is being piloted
- Some defects are reported to Derbyshire County Council by the public
- Defects are recorded by Inspectors on a 'continuation sheet' (part of the works order system) and passed to Maintenance Managers
- Highway Inspectors are not required to have received training, or possess formal qualifications to undertake their duties. However, most Inspectors have received some in-house training

Figure 2 shows a simplified flow chart of the inspection and repair process.

- **Strengths of the Inspection Regime**

The role of a Highways Inspector is crucial to the success of the inspection regime. It is a stressful role and officers are aware of the impact that their role can have on safety and County Council finances.

Consultation has highlighted a number of positive aspects of the existing inspection regime. Strengths include:

1. Good working relationships between Inspectors and the Environmental Services Insurance Office
2. Changes have regularly been made to the inspection regime to keep it in line with most other Highway Authorities
3. Inspectors often undertake minor repairs themselves where appropriate
4. Derbyshire County Council has a fairly high repudiation rate for highway claims

- **Problems Identified with Derbyshire County Council's Highway Safety Inspection Regime**

The consultation process for the review has identified a number of areas for improvement within the existing highway safety inspection regime. The new policy explicitly sets out the inspection regime but some inspector training is still outstanding. The previous working practices were not being applied consistently 'on the street'. This has implications in court.

Problems identified include:

1. Inspections being missed and not being undertaken at the prescribed frequency
2. Unreliable information and inconsistent presentation of information
3. Inspectors not detecting defects
4. Inspection routes not computerised
5. Limited use of technology to record prescribed inspection information

These problems undermine the inspection policy and have led to Derbyshire County Council paying compensation unnecessarily. This was emphasised by Ian Ross-Bain, from loss adjusters, Gallagher Bassett and Bill Sulman from Insurance Brokers, Heath Lambert who analysed a small sample of claims that the County Council has paid compensation on. In this sample, which was not claimed to be representative, missed defects, and missed inspections, were responsible for 53% of payments. This figure must be considered within the context that 70-80% of claims are successfully repudiated by the County Council.

The identified problems are primarily caused by inconsistent training for Inspectors and inadequate use of technology to record inspection details.

## 7.2.2 Derbyshire County Council's Highway Repairs Regime

### 7.2.2.1 Policy

The updated 'Instructions to Highway Inspectors' incorporates repair guidelines that bring timescales for repairing defects in line with the Code of Practice.

Specifically the instructions state that Category 1 defects should be made safe within a period of 24 hours. Timescales for repairing Category 2 defects and other remedial works are outlined and they are dependent on established criteria.<sup>22</sup>

Derbyshire County Council's new policy is effective in the boardroom. It is both considered and consistent with the new Code of Practice.

### 7.2.2.2 Implementing Policy

- **Derbyshire County Council Highway Repair Facts and Processes**

- In 2002/03 the budget for routine highway maintenance was about £6m. This is used for patching and repairing potholes. This compares to the highway claims cost of about £1.25 million a year
- Highway Care Teams were introduced in 2001. The care teams undertake small maintenance jobs and respond to urgent safety work
- AllRoads undertake the larger jobs and planned maintenance
- Highway Inspectors identify defects and record them on a 'continuation sheet' (part of the works order system). Maintenance Managers apportion the work to Highway Care Teams / AllRoads. The Care Team signs the sheet to say that the work has been undertaken

Figure 2 shows a simplified flow chart of the inspection and repair process.

- **Strengths of the Repair Regime**

Consultation has highlighted a number of positive aspects of the existing repair regime. Strengths include:

1. The introduction of Highway Care Teams has speeded up the repair of dangerous defects
2. The regime is more responsive to the needs of the user
3. The current system offers greater flexibility and will aid the Council to meet the new timescales for repairing defects

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<sup>22</sup> Derbyshire County Council, Environmental Services Department, Highway Safety Inspections, Instructions to Inspectors, November 2003



- **Problems Identified with Derbyshire County Council's Highway Repair Regime**

The consultation process for the review has identified a number of areas for improvement within the existing highway repair regime. Problems identified include:

1. Targets are still not being met for the repair of dangerous defects within 24 hrs. The target for 2002 within County Council BVPP was 95%. A performance level of 87.7% was achieved. This was an increase from 86% achieved in 2001/2
2. Inadequacy of routine maintenance budget to repair all defects reported by Inspectors and the public to a desired standard
3. It can be difficult under the present system to track down continuation sheets that demonstrate that works have been undertaken. Completed continuation sheets form an important element of the audit trail when defending a claim

These problems can lead to dangerous defects identified by Inspectors not being repaired within the Code of Practice agreed timescales, and important documentation not being available to support the County Council's defence. These problems undermine the repair policy and have led to Derbyshire County Council paying compensation unnecessarily.

This was emphasised by Ian Ross-Bain, and Bill Sulman who analysed a small sample of claims that the Council has paid compensation on. In this sample, repairs not being undertaken were responsible for 40% of the payments. Due to the time taken to settle personal injury claims, this figure does not take into full account the effect of introducing the Care Teams.

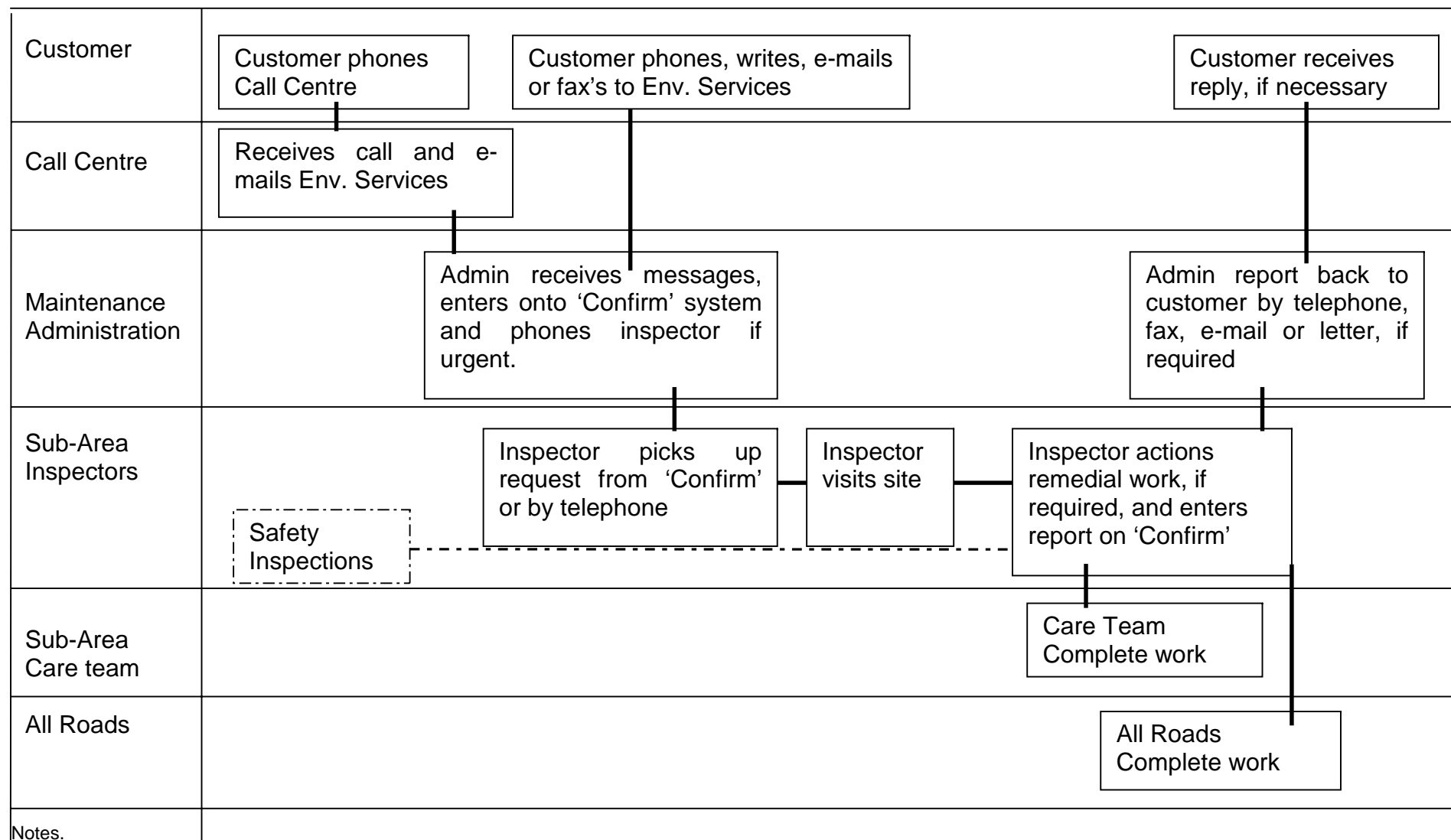
Budget limitations and an inadequate system used to access and store documentation primarily cause the identified problems.

### **7.2.3 Reviewing the Inspection and Repairs Process**

Arrangements should be made to review the inspection, assessment and recording regime at regular intervals. Reviews should take into consideration:

- Comments and feedback
- Identified trends and perceived risks
- Changes in network characteristic and use

At present the Council does not systematically review its inspection and repair regime. Information management is addressed in detail in section 7.3.

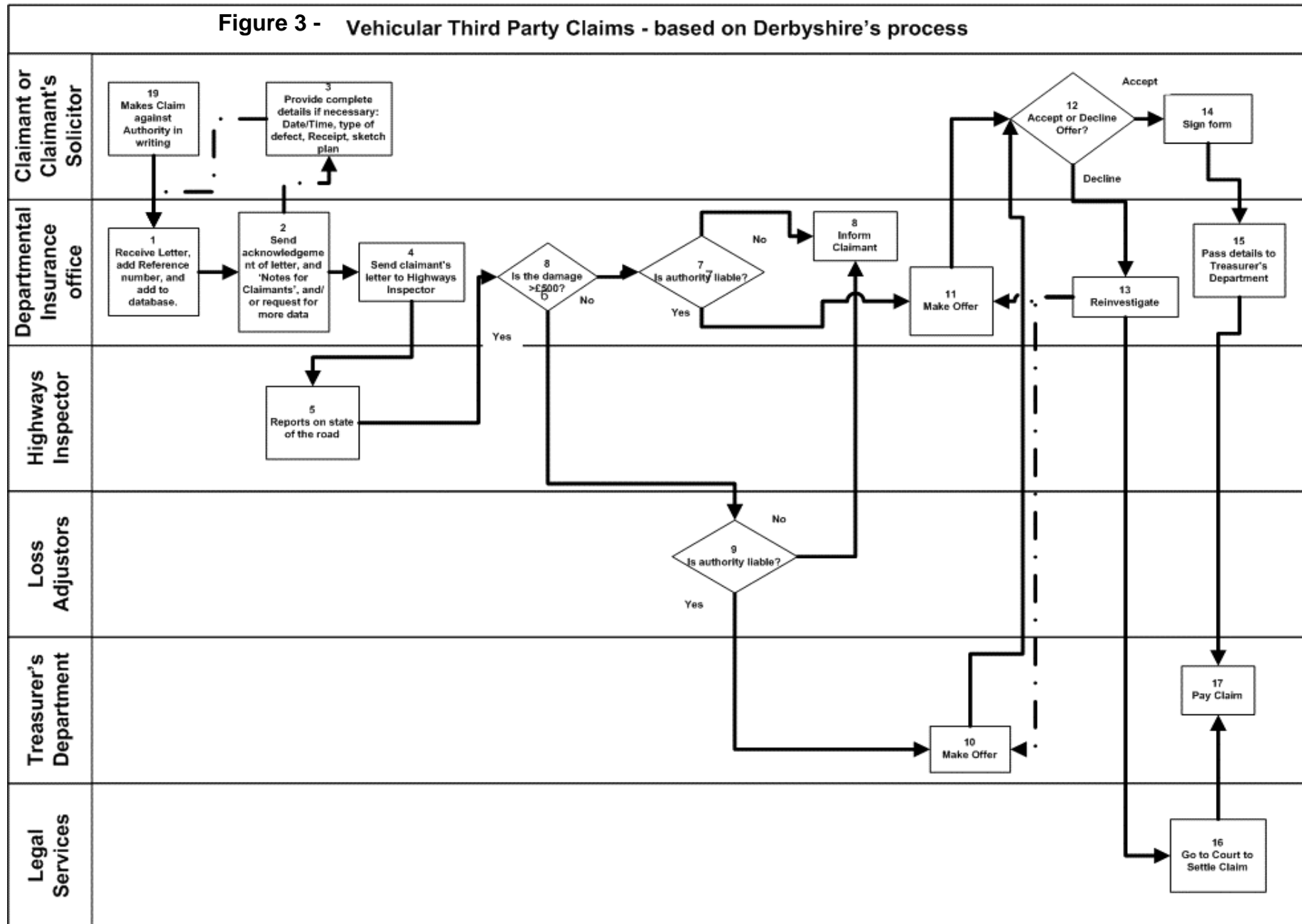
**Figure 2 Simplified Flow Chart – Service Request to Action**

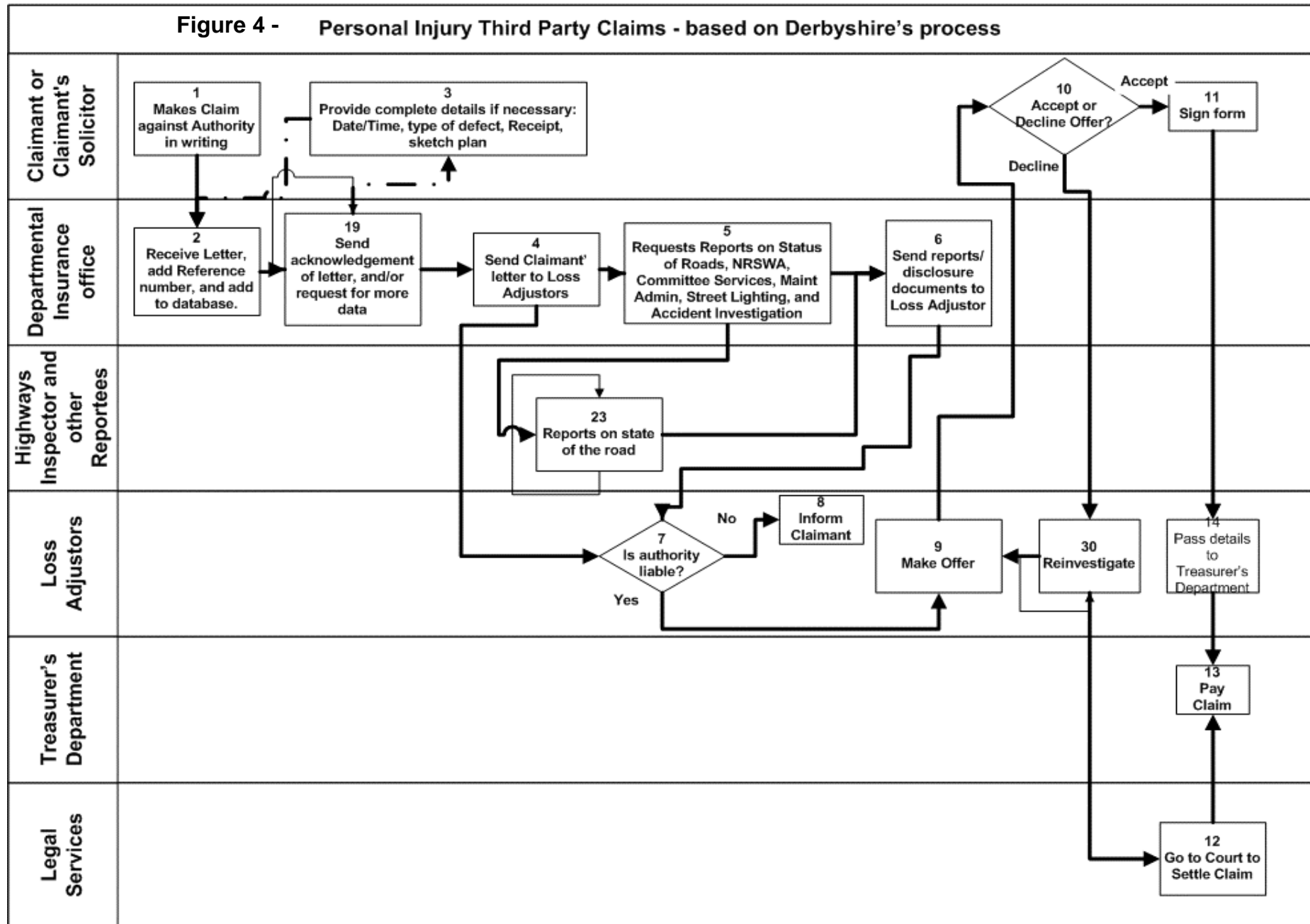
- 1) 'Confirm' is the computerised highway maintenance package that allows service requests to be logged, circulated electronically and tracked.
- 2) The care-team undertake small jobs and respond to urgent safety work, AllRoads undertake the larger jobs and planned maintenance.

### 7.3 Derbyshire County Council's Claims Process

Derbyshire County Council's claims process is explained in Figures 3 and 4. In addition the table below summarises the main roles of the service providers involved in the process.

Service Provider	Facts & Function
Highways Insurance Office	<ul style="list-style-type: none"> <li>• 4 FTE officers</li> <li>• They receive claims and determine if they believe the County Council is liable for non-injury claims under £500</li> <li>• Manage the highways claims process</li> <li>• Record aspects of the claim on a database</li> </ul>
Highway Inspectors	<ul style="list-style-type: none"> <li>• When claims are received Inspectors complete a 3<sup>rd</sup> Party Accident Form giving information on the condition of the road</li> </ul>
Loss Adjusters	<ul style="list-style-type: none"> <li>• County Council loss adjusters are Gallagher Bassett</li> <li>• They determine whether they believe Derbyshire County Council is liable for personal injury claims, and all claims over £500</li> <li>• Receive £95 per case from the County Council</li> <li>• In 2002/3 Gallagher Bassett received over £120,000 from Derbyshire County Council</li> </ul>
County Treasurer's Division	<ul style="list-style-type: none"> <li>• The Council's experts on risk management and insurance</li> <li>• Provide corporate steer on all matters associated with insurance and risk management</li> <li>• Pay all claims where Derbyshire County Council is determined liable</li> </ul>
County Secretary's Division	<ul style="list-style-type: none"> <li>• Undertake investigations and take witness statements on personal injury claims that are referred to them</li> <li>• Prepare the file for the loss adjusters and advise on liability and quantum</li> <li>• Handle litigated claims with officers going to court as required.</li> </ul>





### **7.3.1 Strengths of the Claims Process**

A fast and effective claims process can lead to deserving cases obtaining fair redress swiftly, and will reduce costs to an authority.

Consultation has identified a number of clear strengths within the aforementioned Derbyshire County Council claims process. Key strengths include:

#### **1. Woolf Protocols are consistently achieved -**

The process employed by Derbyshire County Council has resulted in very few claims not being processed within the timescales established by the Woolf Reforms (paragraph 5.3). This is because officers from the Highways Insurance Office effectively control the process. Failure to meet the deadlines for responding or providing evidence could lead to the Court finding against the Authority in default.

#### **2. Experienced and knowledgeable officers -**

Within the Highways Insurance Office, and throughout the system, there are a number of experienced officers who understand the process and the legal requirements specific to highway claims. This experience is invaluable when making important decisions regarding perceived liability.

#### **3. Good relationships between departments and external partners -**

The process relies upon effective relationships and communications between all parties involved. Consultation highlighted that relationships appear to be healthy and communication, if not as regular as desired, is appropriate.

These strengths have contributed to Derbyshire County Council's high repudiation rate on highway claims. The level of claims that are successfully defended ranges from between 70% to 80%.

### **7.3.2 Problems Identified with Derbyshire County Council's Claims Process**

The repudiation rate reflects the fairly robust claims procedure employed by the Authority. The system however, does have a number of areas for improvement that result in elements identified as best practice in section 5 not being incorporated.

Areas for improvement within the system include the following:

## **1. Accuracy of Information**

The present system relies upon information from Claimants and Inspectors for liability to be assessed.

Highway safety inspection records are not sufficient to form a Section 58 defence. Inspectors are asked to complete a 3<sup>rd</sup> Party Accident Report Form when a claim comes in. This requires Inspectors to visit the site and report on the condition of the road. Problems associated with this include:

- Inspectors reporting on wrong location due to lack of clarity in a claimants statement
- Inconsistency of Inspectors reports
- Road conditions may have substantially changed from when the incident occurred to when the Inspector completes a post-claim site visit. (Generally, personal injury claims can be submitted up to three years after the incident and damage only claims up to six years after the incident).

## **2. No joint site meeting with claimant**

Derbyshire County Council do not insist on a joint site meeting with the claimant. As mentioned above the system relies on information from Inspectors and the Claimant.

A joint site meeting between an officer and the claimant would have the following advantages:

- It helps to identify the exact location of an incident
- Dimensions of any defect can be agreed
- It can deter fraudulent claims
- It can help assist the identification of serial claimants
- It can help inform the decision – defend or not
- It can improve relations with the claimant

Joint site meetings can lead to the claims process being speeded up and the level of fraudulent claims reducing. This has happened in Kirklees MC and Norfolk County Council.

### **3. Threshold too low for liability claims**

At present the County Council's Loss Adjusters, Gallagher Bassett, review all personal injury claims and non-injury claims over £500.

Numerous minor vehicular claims against the Authority are in excess of £500. The experienced Highways Insurance Office employees can adequately handle these claims, thereby reducing the number of claims being sent to the Loss Adjusters. This would save the Council money.

### **4. Training for witnesses**

Interviews with Inspectors identified a lack of understanding of court practices and a genuine fear about going to court. This exerted pressure on Inspectors.

A number of Highway Inspectors have undertaken some training in court practices, the perception amongst Inspectors was that training needed to be enhanced to improve understanding of legal issues and ultimately their performance in court.

### **5. Information Management**

The current database used to manage and monitor highway claims is not capable of meeting the needs of the Highways Insurance Office. The database employed is not sophisticated enough to detect trends in claiming patterns or to effectively track and analyse costs.

A more advanced highway claims monitoring system could detect trends and the information could be used to influence the inspection, repair and claims process. This should be a regular occurrence whereby the system continues to adapt to reflect the changes in 3<sup>rd</sup> party insurance claims. This is proving successful in Sunderland as demonstrated in paragraph 6.1.

### **6. Limited promotion of the County Council's success in defending claims**

An effective means of reducing fraudulent claims is to ensure that 'no win no fee' solicitors are made aware of successes that the County Council has had defending claims in, and out of, court. This does not happen regularly.

### **8. Summary of Findings**

The condition of roads and footways is high on the public agenda. For a well-serviced and safe highway network it is imperative that Highway Authorities have an effective inspection and repair process.



In addition to a competent inspection and repair regime it is vital that a robust claims process is in place that deals with claims accurately and efficiently and seeks to reduce fraudulent claims.

The consequences of a more effective system should be a safer highway network and the reduction in the number of successful third party insurance claims. This will ultimately save Derbyshire County Council money.

The County Council's present system has some scope for improvement. The system has been updated to reflect social and legal changes and many of these changes require time for them to be applied consistently across Derbyshire.

A number of these changes have been designed to bring the County Council into line with the Code of Practice which advises an approach based on risk management. In addition greater resources continue to be invested into improving the condition of roads within Derbyshire over the long term.

Scope for improvement however, have been identified through the consultation process and with regards to insurance claims the adage 'you are only as strong as your weakest link' is particularly pertinent.

## **8.1 Inspection and Repair Regime**

To enhance the inspection and repair regime improvements need to be made to the training of Highway Inspectors, the use of technology to record and manage information, and prioritising resources.

## **8.2 Claims Process**

To improve the claims process modifications need to be made to the way the Council gathers information from Claimants and Inspectors, manages the information, and prepares witnesses for court.

Identified improvements should ensure that the Council's procedures follow the Code of Practice. The Courts, in considering whether the Highway Authority has acted reasonably, will take compliance with the Code of Practice into account.

## **9. Conclusion and Recommendations**

To improve Derbyshire County Council's performance regarding Highways 3<sup>rd</sup> party insurance claims a number of improvements are required. These are set out below.

### **Inspection and Repair Process**

Inspections need to be on time, accurate and consistent. Short-term maintenance should be kept to a minimum but when required it must be on time and documented.

The introduction of new highway safety instructions by the Environmental Services Department is welcome but the new policy needs to be supported by the following recommendations:

### **9.1 Improve Training for Highway Inspectors**

Highway Inspectors perform a vital role in undertaking safety inspections. At present training for Inspectors is inconsistent. Due to employee changes, not all inspectors have benefited from previous training.

To improve the accuracy and consistency of inspections, the judgement of Inspectors, and the understanding that Inspectors have of their role it is important that more training is given to all Highway Inspectors.

Recommendation:

- Continue to develop a training programme for Highway Inspectors. The training should encompass specialist training in court practices. This will enhance Inspectors awareness of the legal process and their performance in court.

### **9.2 Utilise Information Technology to Record Inspections and Repairs**

Most Inspectors currently record inspections on notepads and transfer them to inspection sheets, these are then filed. Repairs are recorded on continuation sheets, these are also filed.

This system results in the inconsistent presentation of inspection information, difficulty in accessing records and the loss of important files. The system needs to be modernised.

A number of Highway Inspectors are currently piloting the use of hand held computers to record inspections. This information is then downloaded to a database that officers have access to.

Utilising bespoke Highway Inspection software will limit the inconsistency of reporting, as information required is prescribed within the package. It will also

improve the ability of the Highway Insurance Office / Loss Adjusters to identify an audit trail to defend claims.

Pending a successful outcome of the pilot it is recommended that:

- Inspections and inspection routes are recorded on hand held computers and transferred to a database.
- The database incorporates the work undertaken by the highway repair teams so that there is greater integration of the inspection and repair system.

### **9.3 Prioritise Repairs According to Risk**

To repair all the defects reported by Inspectors would require additional funding for routine highway maintenance. The improved inspection standards outlined in the new highway safety instructions may also lead to more defects being detected.

Improvements need to be made to the prioritising of repairs to ensure that the most dangerous defects are repaired within the policy guidelines.

Recommendation:

- Highway Care Managers must ensure that resources are focused on repairing defects that pose the highest risk to the public. Highway Inspectors will identify these defects.

## **The Claims Process**

To improve the Councils ability to defend highway claims and to reduce the amount of compensation paid to claimants the following recommendations are proposed:

### **9.4 Undertake Joint Site Meetings with Claimants**

Joint site meetings between the claimant and a Council employee can lead to the claims process being speeded up and the reduction in the level of fraudulent

claims. This can lead to smaller and fewer payments to claimants, and has proved cost effective in other Highway Authorities.

**Recommendations:**

- For a trial period of 1 year, employ a claims investigator to meet claimants on site and investigate personal injury claims. This post will be employed within the Highways Insurance Office and the outcomes will be monitored to examine the impact of the role.
- For a trial period of 1 year, engage a motor vehicle engineer to meet claimants on site and assess the validity of selected motor vehicle claims. The Highways Insurance Office will manage this service and the outcomes will be monitored to examine the impact of the role. The cost of this service will be charged to the insurance fund as part of the cost of settling the claim. This recommendation will not require the creation of an additional post.

## **9.5 Raise the Threshold for Claims Assessed by Derbyshire County Council**

The present limit for non-injury claims that are determined by the Highways Insurance Office is £500. Claims above this figure are sent to the Council's loss adjusters who decide whether the claim should be defended.

**Recommendation:**

- Derbyshire County Council insurers be approached to seek an increase in the threshold for non-injury claims assessed by the Highways Insurance Office from £500 to £1000. This level should be reviewed annually.

## **9.6 Improve the Management of Claims Information**

The current database used by the Highways Insurance Office to monitor highway claims is not sophisticated enough to enable trends in claim patterns to be identified or to analyse why compensation has been paid.

If the analysis of information is improved then inspection schedule can, for example, be amended so that high-risk locations are inspected and repaired prior to peak claim days.

**Recommendation:**

- Develop a new database that will enable greater analysis of information to be undertaken. Information obtained from the new database can then be used to support changes to the inspection, repair and claims process.

## **General Improvements**

### **9.7 Review the Inspection, Repair and Claims Process on a Regular Basis**

#### **Recommendation:**

All aspects of the process should be reviewed regularly to ensure that existing practices are delivering the desired results. Of particular importance is the need to:

- Consult service providers following a trial to see how improvements can be made. (See paragraph 7.3 for a list of key service providers)
- Keep all highway maintenance employees informed of the claims figures and repudiation rates. This reinforces the link between inspection and claims.

### **9.8 Promote the Success of Derbyshire County Council's Claims Process**

To deter claimants from submitting fraudulent claims against the Authority it is advisable that the Council promotes its record in defending claims:

#### **Recommendation:**

- Undertake promotion publicising Derbyshire County Council's success in defending claims.

## **10. The Next Stage**

The report will be presented to Cabinet for consideration. It is recommended that:

-

- (1) the Chair of the Improvement and Scrutiny Panel presents the report to the Cabinet.
- (2) following consideration of this report it is suggested that, should the Cabinet agree to implement the recommendations, the Improvement and Scrutiny Panel receives a report at a date to be determined, to outline progress made.

## 11. Action Plan

The table below sets out the recommendations outlined in this report.

Recommendation	Implement Yes/No	Action?	Lead Officer	Timescale
Improve Training for Highway Inspectors				
<ul style="list-style-type: none"><li>Continue to develop a training programme for Highway Inspectors. The training should encompass specialist training in court practices.</li></ul>			Les Unwin	On-going
Utilise Information Technology to Record Inspections and Repairs				
Pending a successful outcome of the pilot it is recommended that: <ul style="list-style-type: none"><li>Inspections and inspection routes are recorded on hand held computers and transferred to a database.</li></ul>		Significant cost and IT implications	Graham Harris	October 2005
<ul style="list-style-type: none"><li>The database incorporates the work undertaken by the highway repair teams so that there is greater integration of the inspection and repair system.</li></ul>			Graham Harris	April 2006
Prioritise Repairs According to Risk				
<ul style="list-style-type: none"><li>Highway Care Managers must ensure that resources are focused on repairing defects that pose the highest risk to the public, Highway Inspectors will identify these defects.</li></ul>			Area Maintenance Managers	On-going
Undertake Joint Site Meetings with Claimants				
<ul style="list-style-type: none"><li>For a trial period of 1 year, employ a claims investigator to meet claimants on site and investigate personal injury claims.</li><li>For a trial period of 1 year, engage a motor vehicle engineer to meet claimants on site and assess the validity of selected motor vehicle claims.</li></ul>			Barry Walker	December 2004
			Barry Walker	April 2004

Recommendation	Implement Yes/No	Action?	Lead Officer	Timescale
Raise the Threshold for Claims Assessed by Derbyshire County Council				
<ul style="list-style-type: none"><li>The insurers should be approached to seek an increase in the threshold for non-injury claims assessed by the Highways Insurance Office from £500 to £1000. This level should be reviewed annually.</li></ul>	Yes		Martin Brassington	Completed February 2004
Improve the Management of Claims Information				
<ul style="list-style-type: none"><li>Develop a new database that will enable greater analysis of information to be undertaken.</li></ul>			Martin Brassington	June 2004
Review the Inspection, Repair and Claims Process on a Regular Basis				
<p>All aspects of the process should be reviewed regularly to ensure that existing practices are delivering the desired results.</p> <ul style="list-style-type: none"><li>Consult service providers following a trial to see how improvements can be made.</li></ul>			Les Unwin	From April 2005
<ul style="list-style-type: none"><li>Keep all Highways Maintenance employees informed of the claims figures and repudiation rates. This reinforces the link between inspection and claims.</li></ul>			Barry Walker	October 2004
Promote the Success of Derbyshire County Council's Claims Process				
<ul style="list-style-type: none"><li>Undertake promotion publicising Derbyshire County Council's success in defending claims.</li></ul>			Barry Walker	From April 2005



## **12. Appendices**

- Appendix 1 - Project Brief
- Appendix 2 - Consultation
- Appendix 3 - Process for Establishing Liability
- Appendix 4 - The Northern Ireland Inspection and Repair System

## **Appendix 1 - Project Brief**

### **ENVIRONMENT AND HIGHWAYS IMPROVEMENT AND SCRUTINY PANEL**

#### **REVIEW OF THIRD PARTY INSURANCE COVER**

#### **PROJECT BRIEF**

##### **1. Purpose of the Review**

To undertake a review examining the issues concerning insurance cover on Derbyshire County Council highways

##### **2. Objectives of the Review**

- To identify the cost to the Council of settling highway third party insurance claims
- To establish the reasons for the rise in the number of claims the Environmental Services Department receives annually
- To identify and examine the effectiveness of the methods and the processes employed by the Council to reduce the number of claims
- To identify and learn from Councils who appear to be more successful in claim management
- To ascertain and examine additional measures that may reduce third party insurance claims against the Authority

##### **3. Big Issues**

- Is the rise in the number of insurance claims a reflection of the increasingly litigious society we live in or is it indicative of the poor condition of the County's highways?
- Is the County Council being proactive in identifying defects and repairing them?
- Can more be done to encourage road users and pedestrians to report highway defects?

##### **4. Review Methodology**

- Identify the processes involved in monitoring and repairing highways, and the insurance claims process
- Research best practice
- Collect and analyse performance information
- Undertake consultation with:
  - Officers from the Environmental Services Department
  - Highway Maintenance Staff (and Operatives)
  - Derbyshire County Council's loss adjusters

- Elected Members
- 'Best Practice' Authorities
- External experts

**5. Outline Consultation Plan**

- Prepare a plan including a balance of written and oral views of those groups and individuals outlined above.
- Develop further understanding by Elected Members through a series of interviews with expert witnesses at Improvement and Scrutiny meetings.

**6. Comparison and Benchmarking – quantitative and qualitative information**

- How does the County Council compare with other councils with regards to:
  - The number and cost of claims?
  - The condition of highways?
  - Processes employed to limit and defend claims?

**7. What the review will not include**

- A full review of the County Council's Highways function

**8. Outline Project Plan**

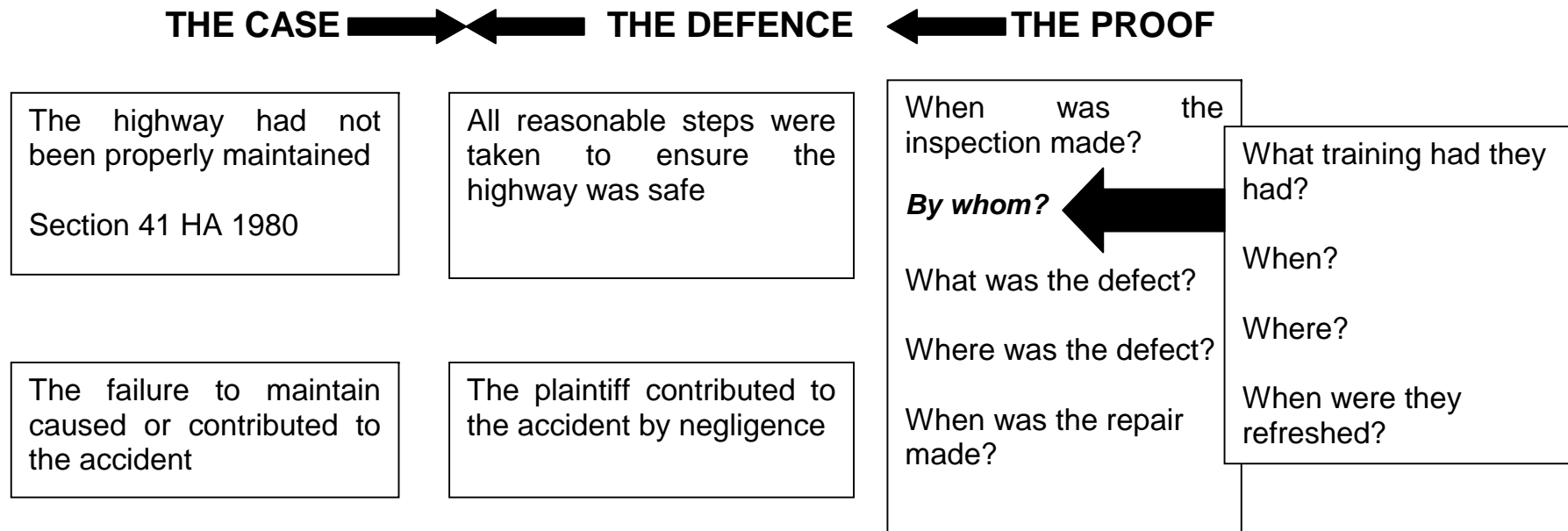
- June 2003 I & S Committee approves the Project Brief and appoints a Working Group
- June to October 2003 I & S Working Group prepares consultation plan, gathers comparative information and undertakes consultation
- September 2003 I & S Committee receives a progress report
- December 2003 I & S Committee receives the final report

## Appendix 2 - Consultation

To support the development of this review consultation has been undertaken with the following:

Organisation	
Environmental Services Department - Network Management Division	<ul style="list-style-type: none"> <li>• John Waite</li> <li>• Les Unwin</li> <li>• Steve Waterhouse (Highway Inspector)</li> <li>• Pat Byrne (Highway Inspector)</li> </ul>
Environmental Services Department - Network Management Division (Highways Insurance Office)	<ul style="list-style-type: none"> <li>• Barry Walker</li> <li>• Hilary Boyack</li> <li>• Sue Walker</li> </ul>
Corporate Resources Department - Treasurer's Division (Insurance and Risk Management)	<ul style="list-style-type: none"> <li>• Martin Brassington</li> <li>• Tom Smith</li> <li>• Sarah Thrustle</li> </ul>
Corporate Resources Department - County Secretary's Division	<ul style="list-style-type: none"> <li>• Robin Hemmingway</li> </ul>
Gallagher Bassett	<ul style="list-style-type: none"> <li>• Ian Ross-Bain</li> </ul>
Heath Lambert	<ul style="list-style-type: none"> <li>• Bill Sulman</li> </ul>
Local Authorities	<p>Information from the following Local Authorities has supported this review:</p> <ul style="list-style-type: none"> <li>• Norfolk County Council</li> <li>• Suffolk County Council</li> <li>• Kirklees MBC</li> <li>• Leeds City Council</li> <li>• Leicestershire County Council</li> <li>• City of Sunderland Council</li> <li>• Tameside MBC</li> <li>• Warwickshire County Council</li> <li>• Lancashire County Council</li> </ul>

## Appendix 3 – Process for Establishing Liability<sup>23</sup>



<sup>23</sup> Kindred Associates Report on Highways Liability Claims – The Issues, 1995, p14

## **Appendix 4 - The Northern Ireland Inspection And Repair System<sup>24</sup>**

### **Background**

In 1987 in response to a 58% increase in public liability claims over a four year period the Department of the Environment Road Service introduced the above inspection and repair regime in the urban areas of the Northern Ireland road network of over 15,000 miles. Payments for compensation at the time totalled £6 million. The legal duty of course is the same in Northern Ireland as in the rest of the United Kingdom although the requirement is included in different legislation.

By 1989 the inspection and repair system had been fully computerised with industrial grade inspectors using DCDs and downloading to PCs to produce job cards on which was recorded the action taken by whom and the date. The completed work data was downloaded to provide a comprehensive record which could be easily accessed in the event of a claim in a particular area.

### **Cost of Inspections**

The Northern Ireland Department of Environment Roads Service have begun an inspection and maintenance system which meets current legal consensus as to reasonableness. The cost is around £8 per mile per inspection, including all elements on footways and carriageways, as well as hedge cutting notices etc.

### **Results**

By 1992-93 claim numbers had been reduced to 2,894 a reduction of over 50%. The lower number of claims also included a considerable number of low cost vehicle damage claims. The cost effective inspection system allowed many of these claims to be referred to utilities, contractors and others opening roads under the road opening permit system administered by Road Service.

Compensation payments were reduced by over 40% in the five year period. Compensation payments are obviously paid in an arrears situation so it is difficult to establish comparisons between the number of claims lost in a particular year and the payments made in the same period.

The Department also operates a Central Claims Unit headed by a Solicitor. The Unit processes all claims received and reviews the legal implications to provide a better co-ordinated and, where possible, strong defence. This has considerably improved the success rate of cases defended and has made a major contribution to the success achieved. The Unit also maintains a vigorous stance in detecting and prosecuting fraudulent claims. A number of successful and well publicised prosecutions has been a major deterrent to this practice.

The maintenance standards given below have also been accepted by the Courts as being reasonable with this view being confirmed by the higher court when the standards have been challenged. In 1991 standards were developed for all road maintenance operations. The standards included those applicable to rural roads and footways which were not as onerous as for urban locations thus representing the reduced risks of claims on rural roads. The standards

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<sup>24</sup> Kindred Associates Report on Highways Liability Claims – The Issues, 1995

are regularly reviewed including the inspection frequencies, but the urban road standards given above have remained unchanged.

In the dearlly days a monitor of the adherence to the urban standards was carried out three days out of each calendar month. The monitor now covers the whole period and is easily abstracted from the computer data. This monitoring is considered essential because Courts take a dim view of non-adherence to in-house standards almost no matter that the reason.

A new aspect of public liability claims is the increasing tendency of insurance companies to enjoin the road authority in road traffic accident claims even in quite bizarre cases. However the basic 'rules' for handling all claims remain the same namely to have standards available for all aspects of road maintenance and adhere to them and argue the case on the basis of reasonableness in all the circumstances.

## **ROAD INSPECTIONS**

Motorways

## **Inspection Intervals**

Daily Mon – Sat

General Purpose Roads

Heavily used town centre roads

4 weeks

Primary roads

4 weeks

Others

8 weeks

## **FOOTWAY INSPECTIONS**

Heavily use town centre footways

4 weeks

Primary route footways

4 weeks

Heavily used footways in other locations

4 weeks

Others

8 weeks

## **PUBLIC LIABILITY INSPECTIONS**

Public liability inspections on urban roads and footways record only the defects listed below:-

Differences in level including manholes, frames, boxes etc.

+ 20 mm or greater

Gaps and steps between flags etc.

+ 20 mm or greater

Dangerously rocking flags

20 mm difference in level or greater

Missing ironwork, cracked and dangerous covers etc.

As found – Make safe & repair as priority 1

## **The above defects will normally be dealt with on the following basis:**

**Priority 1** Defects well in excess of the above standards eg 50 mm or greater shall normally be actioned within three working days of discovery either by carrying out of a repair or erection of warning equipment.

**Priority 2** All other public liability defects recorded shall be actioned within the period before the next inspection.