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Risk control
Managing the Highways



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Managing the Highways

Introduction

Public highways can include carriageways, footways and cycleways. Not all Councils have responsibility for managing public highways, but those that do usually retain the status of a Highway Authority (Roads Authority in Scotland).

Highway networks are one of the most valuable assets that Council's own as they play a vital part in delivering Council objectives by enabling safe and reliable journeys. In doing so, they support social wellbeing and economic prosperity.

The networks are essential for emergency services to execute their work effectively. Policing, healthcare, fire, and other emergency response services all require effective highway networks. A functioning society relies upon well-maintained and well-managed highway assets. It gets people to work, to study, to visit friends and family, and it supports the movement of trade across the country.

However, managing the nation's public highways can be challenging. These challenges can be presented by a combination of increasing volumes of traffic, financial constraints on public sector spending, and environmental factors such as the impact of climate change.

The Highways Act 1980

The Highways Act 1980¹ (Section 41) places a duty on the relevant Highway Authority to maintain the public highways. This includes a duty to ensure that, so far as is reasonably practicable, safe passage along a highway is not endangered by snow or ice.

If a Highway Authority does not maintain a public highway in accordance with its duty and an individual is injured or suffers loss on the highway, for example by a carriageway pothole or pavement defect, then that individual may be able to sue the relevant Highway Authority for breaching its statutory duty and causing that person damage or loss.

The Highways Act 1980 (Section 58) does provide Highway Authorities with a special defence in any action against it for damages for non-repair of the highway. The Highway Authority can defend itself by proving that it 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" (this includes pedestrian traffic).

This makes it clear that the Highway Authority does not have a duty to make sure carriageways and footways are maintained to the high standards of a bowling green, however, it must take reasonable care to ensure that the carriageways, footways and cycleways are not dangerous. If it can demonstrate that it has taken reasonable care, then it should not be possible to recover damages against the

Highway Authority, even if the road was in fact dangerous at the time the incident occurred.

In summary, this means implementing systems of highway inspection and maintenance that are proportionate to the risks presented by that part of the network. For example, the greater the level of traffic, the greater the level of potential risk is presented, and so a higher level of inspection and maintenance may be required.

The duty placed upon Highways Authorities to maintain the highway clear of dangerous snow and ice is detailed within Section 41 (1A) of the Highways Act 1980. It was introduced by Section 111 of the Railways and Transport Safety 2003, which came into effect from 31st October 2003.

Under Section 41 (1A) of the Highways Act 1980 Highway Authorities are under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.

It should be emphasized that this is not an absolute duty and what is deemed to be reasonably practicable is a question of fact. The issues that would normally be considered in this context would include:

- The character of the highway in question
- The type, nature and volume of traffic that may use it
- Whether it would be unreasonable for the Highway Authority to take no action.

The Roads (Scotland) Act 1984

This Act² contains similar legislation to the Highways Act 1980 for specific application in Scotland.

A Scottish Roads Authority is under a duty to manage and maintain all such roads in their area. Such roads being those adopted and included in the list of public roads.

Although there is no direct equivalent defence as Section 58 of the Highways Act, a similar defence can be successfully argued. Roads (highways) claims are broadly pled and defended on the same grounds in both jurisdictions.

Regarding the issue of snow and ice, Section 34 of the Roads (Scotland) Act 1984 states that a Roads Authority shall take such steps as they consider reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads.

Other Relevant Law

Other areas of relevant law and potential liability associated with managing the public highways include:

- Common Law Duty of Care - a duty of care may exceptionally be established where a local authority has failed to exercise a statutory power.
- Occupier's Liability - on sites where a contractor has exclusive possession, lane rental, or where a contractor closes off a footway, there is potential for occupiers' liability.
- The Corporate Manslaughter and Corporate Homicide Act³ 2007 - companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.
- Article 8 Human Rights Act 1998 – the right to respect for private and family life.

Well-managed Highway Infrastructure

In 2016 the UK Roads Liaison Group⁴ (UKRLG) published the 'Well-managed Highway Infrastructure' Code of Practice (the Code). This updated Code was designed to promote an integrated, risk-based approach to managing highway infrastructure assets.

The two-year transition period for adoption of the updated Code ended in October 2018, with the expectation being that all Highway Authorities would be compliant with the updated Code by this time.

The Code applies throughout the United Kingdom and is designed to promote the adoption of an integrated asset management approach to highway infrastructure based on the establishment of local levels of service through risk-based assessment.

The Code encourages Highway Authorities and Roads Authorities to develop their own levels of service in accordance with local needs, priorities, and affordability, and provides guidance to this effect.

In the interest of route consistency for highway users, all Authorities are encouraged to collaborate in determining levels of service, especially across boundaries with neighbours responsible for strategic and local highway networks. Boundaries are not usually apparent to users and Authorities should be aware of the possibility of distinct changes in levels of service through a local risk-based approach, both across Authority boundaries and between roads with different characteristics.

The Code is not a mandatory standard, however, adherence to its guidance has been endorsed by the Court of Appeal as evidence of good practice. Adoption of the

recommendations contained within the Code is a matter for each Highway Authority or Roads Authority to consider.

Claims for Compensation

When considering increasing volumes of traffic, the financial constraints on public sector spending, and the impact of climate change, allied with the millions of journeys which are undertaken on the public highways each year, it is perhaps understandable that highways risk exposure can be very significant for those Authorities with responsibilities for the public highways.

For the larger Authorities, claims for compensation can often number in the thousands per year, with the values of some claims potentially stretching into the millions (£).

In the first instance the claimant needs to prove that:

- The highway was dangerous to traffic or pedestrians
- The dangerous condition was created by the failure to maintain or repair the highway, and
- The injury or damage resulted from such a failure.

If proven, the burden then passes to the Authority to demonstrate to that it 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.

If the Authority can show that at the time of the most recent pre-accident inspection, the defect did not exceed their intervention levels, or did not exist at all, then it may be able to successfully defend itself from that claim using a section 58 defence). To defend itself in these circumstances, the Authority is required to provide evidence in the form of inspection and maintenance records to substantiate its position.

Managing the Risks

Although the deadline for adoption of the new Code has long since passed, central to the ethos of the code is continuous improvement.

RMP can assist Authorities with the following services:

- A **Highways Risk Management Review** provides an independent review of arrangements for highways management when measured against the new Code and the Authority's ability to successfully repudiate claims.

The review focusses on the following areas:

- Framework,
- Policy and Strategy;

- Risk Management;
 - Risk-Based Approach;
 - Network Inventory and Hierarchy;
 - Safety Inspections;
 - Defect Recording and Repair;
 - Winter Maintenance and Severe Weather;
 - Competencies and Training; and
 - Outsourcing
- A **Highways Mini Risk Review** is an abbreviated version of the Highways Risk Management Review which concentrates on the key themes.
- **Training** which can develop the understanding and competence of highways teams in applying risk management principles to highway asset management practices. A **Mock Highways Trial** is often used as a training tool to encourage engagement and reflection on the effectiveness of current arrangements and systems.
- A **Document Review** and **Claims Analysis Review** can evaluate documentation and provide feedback and suggestions for improvements where applicable.

An essential element in defending claims is demonstrating that the statutory obligations placed on an Authority have been met. Checking arrangements are effective and efficient is an important aspect of being prepared to demonstrate that highways management is robust.

References

1. [The Highways Act 1980](#)
2. [The Roads \(Scotland\) Act 1984](#)
3. [The Corporate Manslaughter and Corporate Homicide Act 2007](#)
4. [Well-managed Highway Infrastructure Code of Practice](#)

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

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