

Report of the: Director of Policy and  
Resources

Agenda  
Item No: 6  
Meeting: 22 September 2015

## **NORTH LINCOLNSHIRE COUNCIL**

### **AUDIT COMMITTEE**

## **RISK MANAGEMENT PROGRESS REPORT**

### **1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To inform Members of key issues arising from risk management work.
- 1.2 Regular reporting on risk management issues is an important source of assurance for Members to fulfil their role and provides supporting evidence for the annual approval of the Governance Statement.

### **2. BACKGROUND INFORMATION**

- 2.1 Strategic risks are defined as 'those risks, which will significantly impair the achievement of the council's principal aims and objectives, core service delivery and overall probity'. The annual review of strategic risks is currently underway and the revised Strategic Risk Register will be reported to this Committee at the next meeting.
- 2.2 An analysis of operational risk registers across the council has been undertaken. The top 10 risks by the number of registers are listed in Appendix A. Appendix B analyses the risks by residual risk score. The analysis shows:
  - The top operational risks are also recognised as strategic risks to the council
  - A strong correlation in ranking of the types of risks analysed by frequency or by severity
- 2.3 An important aspect of the risk management action plan is to continue to raise awareness across the council. This is achieved through comprehensive training programmes and communication networks. In addition to information available on the web page and Intralinc the 21st edition of the Risk Roundup newsletter was also issued in September (Appendix C) and included important articles on significant risk topics

such as the Counter Terrorism and Security Act, information governance and retention of data.

2.4 The 2015 CIPFA/ALARM risk management benchmarking questionnaire has been completed. The benchmarking club will provide comparative measures and highlight areas for improvement in current arrangements. The results are due in October/November and benchmarking club outcomes will be reported to the Committee in January.

2.5 As part of a schedule of reviews of key risks and major projects, contained within the risk management action plan, a presentation on cyber risks was delivered to the Risk Management Group. This identified the key risks facing the council and systems that are in place to mitigate the risks.

### **3. OPTIONS FOR CONSIDERATION**

3.1 The Committee should consider whether this update provides sufficient assurance on the adequacy of risk management arrangements. The Committee is invited to ask questions about the contents of the report and seek clarification as necessary.

### **4. ANALYSIS OF OPTIONS**

4.1 The progress report is designed to provide this Committee with the assurance required to fulfil its role effectively.

### **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

5.1 Regular reviews of risk management arrangements should safeguard the council's assets and ensure that value for money is achieved in the use of resources.

### **6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)**

6.1 An Integrated Impact Assessment is not required.

### **7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED**

7.1 The Risk Management Group is made up of representatives from all services and therefore risk management outcomes are the result of a comprehensive consultation process.

7.2 There are no conflicts of interests to declare.

## **8. RECOMMENDATION**

- 8.1 That the Audit Committee considers the assurance provided by the Risk Management progress report on the adequacy of risk management arrangements.

### **DIRECTOR OF POLICY AND RESOURCES**

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**Background Papers used in the preparation of this report:** None

## Appendix A

### Top Ten NLC Operational Risks – by frequency

| Operational Risk   | 2015 Ranking | 2013 Ranking | Places | P & R | People | Public Health | Total |
|--|--------------|--------------|--------|-------|--------|---------------|-------|
| IT failure – corporate, bespoke, telephony               | 1            | 1            | 5      | 20    | 1      | 1             | 27    |
| Inadequate information governance                        | 2            | 6            | 3      | 16    | 1      | 1             | 21    |
| Non compliance with legislation/meeting statutory duties | 3            | 7            | 4      | 10    | 4      | 0             | 18    |
| Failure of major supplier/contractor                     | 4            | 9            | 6      | 5     | 1      | 1             | 13    |
| Major event e.g. fire, terrorism, pandemic flu           | 5            | 3            | 8      | 3     | 1      | 0             | 12    |
| Inadequate/loss of/changes to funding                    | 6            | 8            | 7      | 1     | 1      | 1             | 10    |
| Lack of trained staff                                    | 7            | 5            | 2      | 6     | 1      | 0             | 9     |
| Safety of staff/risks to staff working alone             | 8            | 4            | 6      | 1     | 1      | 1             | 9     |
| Failure to recruit qualified staff/loss of key staff     | 9            | 2            | 2      | 4     | 1      | 0             | 7     |
| Failure to safeguard                                     | 10           | new          | 2      | 0     | 4      | 0             | 6     |

## Appendix B

### Analysis of Operational Risk Registers – by residual score

R – Red Risk

A – Amber Risk

G – Green Risk

| Operational Risk  | Places     | P & R       | People     | Public Health | Total        |
|---|------------|-------------|------------|---------------|--------------|
| 1. IT failure – corporate, bespoke, telephony               | 3 A<br>2 G | 7 A<br>13 G | 1 G        | 1 A           | 11 A<br>16 G |
| 2. Inadequate information governance                        | 1 A<br>2 G | 13 A<br>3 G | 1 G        | 1 G           | 14 A<br>7 G  |
| 3. Non compliance with legislation/meeting statutory duties | 2 A<br>3 G | 5 A<br>5 G  | 2 A<br>2 G |               | 9 A<br>13 G  |
| 4. Failure of major supplier/contractor                     | 2 A<br>4 G | 2 A<br>3 G  | 1 G        | 1 A           | 5 A<br>8 G   |
| 5. Major event e.g. fire, terrorism, pandemic flu           | 2 A<br>6 G | 2 A<br>1 G  | 1 A        |               | 5 A<br>7 G   |

|   |            |            |            |     |            |
|---|------------|------------|------------|-----|------------|
| 6. Inadequate/loss of/changes to funding                | 6 A<br>1 G | 1 A        | 1 G        | 1 A | 8 A<br>2 G |
| 7. Lack of trained staff                                | 2 G        | 6 G        | 1 G        |     | 9 G        |
| 8. Safety of staff/risks to staff working alone         | 3 A<br>3 G | 1 G        | 1 G        | 1 G | 3 A<br>6 G |
| 9. Failure to recruit qualified staff/loss of key staff | 1 A<br>1 G | 3 A<br>1 G | 1 G        |     | 4 A<br>3 G |
| 10. Failure to safeguard                                | 1 A<br>1 G |            | 2 A<br>2 G |     | 3 A<br>3 G |

## A digest of risk management issues



# The Counter Terrorism and Security Act and local authorities



The Counter-Terrorism and Security Act received Royal Assent on 12 February 2015 and came into force on 1 July 2015. Among other provisions, the Act places the Prevent programme on a statutory footing. This means that in future all local authorities will have a duty to have due regard to preventing people being drawn into terrorism.

Prevent is one of four strands of the government's counter-terrorism strategy, and aims to stop people becoming terrorists or supporting terrorism. The other three strands are:

**pursue:** to stop terrorist attacks

**protect:** to strengthen our protection against terrorist attack

**prepare:** where an attack cannot be stopped, to mitigate its impact.

### Summary of the Act:

**Part 1** contains new powers for summary passport seizure at ports and borders and an Executive power to invalidate passports and prevent the return of British citizens outside of the jurisdiction

**Part 2** contains reforms to the TPims (Terrorism Prevention and Investigation Measures) regime and reintroduces an executive power to internally exile individuals within the UK for up to two years

**Part 3** extends the Home Secretary's power to require communications companies to retain communications data

**Part 4** creates a new authority to carry scheme which will forbid airline carriers from taking British citizens and entire categories of nationality in and out of the country

**Part 5** covers new duties to address the risk of individuals being drawn into terrorism

**Part 6** amends the Regulation of Investigatory Powers Act 2000 (RIPA) to allow for the warrantless interception of all post sent within the UK or to and from the UK.

**Use the existing counter-terrorism local profiles to begin to assess the risk of individuals being drawn into terrorism.**

**Parts of the act relevant to local authorities:**

Part 5 Chapter 1 (sections 26 - 35) of the Act creates a "general duty on specified authorities" that a specified authority must, when exercising its functions, have due regard to the need to prevent people from being drawn into terrorism.

The Prevent duty guidance, published alongside the Act goes into more detail. It sets an expectation that local authorities will:

- Establish or make use of an existing local multi-agency group to agree risk and

co-ordinate prevent activity (these multi-agency groups, through local authorities, will be expected to put in place arrangements to effectively monitor the impact of Prevent work).

- Use the existing counter-terrorism local profiles to begin to assess the risk of individuals being drawn into terrorism.
- Engage with Prevent coordinators, schools, universities, colleges, local prisons, probation services, health, immigration enforcement and others as part of the risk assessment process.

- Mainstream the prevent duty so it becomes part of the day-to-day work of the authority, in particular children's safeguarding.
- Any local authority that assesses, through the multi-agency group, that there is a risk will be expected to develop a Prevent action plan.
- Ensure frontline staff have a good understanding of Prevent, are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with this issue.

**Ensure Emergency Planning and Business Continuity plans are robust**

**Other specific responsibilities include**

- Ensure public venues are not used for extremism purposes (responsible booking policy)
- Ensure IT access in public venues does not allow access to extremist or terrorist material

- Ensure that organisations who receive public funding are not engaged in extremist activities
- Ensure that the principles of the Act are written into new contracts with suppliers
- Specific requirements for schools and further education colleges

- Mitigation in new builds and planning processes
- Ensure Emergency Planning and Business Continuity plans are robust

The Head of Safer Neighbourhoods is co-ordinating the council's response to ensure compliance with the Act.

## Emails stolen from council website in cyber attack

Over 13,000 email addresses have been stolen from Edinburgh City Council's website following a cyber attack.

Some 13,134 people have been contacted by the council after their email addresses were leaked during the database attack. A total of 400 email addresses

belonging to council staff were also obtained in the assault. A council spokesperson denied that any other personal information had been stolen during the incident. The Information Commission's Office has been informed and preventative measures have been taken by the web service providers.



# Information governance and technology

New technology offers significant benefits for local authorities, their employees, partners and suppliers. It can help reduce costs, create flexible working options and fulfil today's communications, accessibility and transaction requirements.

outsourcing, partnering and sharing services. One result of this is that information is being shared with more organisations and they are having to rely upon these to implement appropriate IT risk management and data protection.

- Threats to service delivery and other local authority activities
- Significant loss of reputation, with disaffection of employees, partners and the local community.

**Almost all (99%) of the local authorities' chief executives and directors interviewed were confident that they have the capability to protect sensitive data.**

## Common misconceptions

It is a common misconception that cyber attacks, committed maliciously or with criminal intent, are the most serious danger. For this reason, data protection may mainly focus on IT solutions such as firewalls, robust passwords and data encryption. Clearly it is important to have all of these in place but in fact most breaches for local authorities occur because individuals possessing data fail to understand the possible ramifications of how and where they use and transfer it – and to whom.

As such, data is no longer restricted to office computers. Employees use many devices which enable mobile working, for example, smart phones, tablets and laptops. Having third party sensitive information on such devices – or the ability to easily access it from them – widens the likelihood of a data breach.

## Managing data

The pressure of recent budget cuts and the need to provide "more for less" has also increased this likelihood. Local authorities have adopted a number of ways of managing data, including

## What the research tells us

Research conducted for Zurich Municipal by Ipsos Mori last year shows that local authorities are very confident about their ability to manage data protection. Almost all (99%) of the local authorities' chief executives and directors interviewed were confident that they have the capability to protect sensitive data. However, the latest analysis from the Information Commissioner's Office (ICO), published in March 2015, shows that local authority data breaches are ranked second in incidents by sector in the previous year. (The health sector being first, and the education sector third.) This performance suggests a significant gap between perceptions and reality.

## Risk consequences

Failure to protect data can result in:

- Imposition of penalties by ICO including potentially hefty fines
- Information getting into the "wrong hands" potentially resulting in extortion, theft or malicious attacks against the affected individuals
- Liability for damages

## How safe is your data? Questions for all organisations

- Do you understand and manage the complete risk cycle, starting from when data is created through to its eventual archiving or disposal?
  - Why is the data being created?
  - How is it being disseminated?
  - Who are you sharing the data with – and how is it being used?
  - Where and how is it being stored?
  - Do your storage providers have robust protection policies in place and how do you monitor these?
  - Do you have up-to-date retention and archiving policies?
  - Have you made adequate provision for disposal and, if you are using an external disposal company, are they carrying out your instructions appropriately?
- How good are the security systems of those with whom you share data, such as suppliers and partners?
- Have you evaluated the possible costs associated with technology risks – in reputational as well as financial terms?

**Secure Storage - corporate archive facilities are provided for safe keeping of all archive documents and inventories are kept where appropriate.**

### **Policies and procedures in place within NLC**

- Information Governance Policy Framework which is supported by a number of policies including Records Management Policy, Internal Information Sharing Policy, Humber Information Sharing Charter, Information Security Policy and Data Breach Policy.
- Directorates have nominated staff roles for Information Asset Owners, Data Protection and FOI\EIR co-

ordinators, and Records Management co-ordinators.

- The Senior Information Risk Owner (SIRO) is accountable for information governance issues, fosters a culture for protecting and using data and provides a focal point for managing information risks and incidents.
- Secure Storage - corporate archive facilities are provided for safe keeping of all archive documents and inventories are kept where appropriate.
- The Information Governance

Training Plan is reviewed annually to ensure that staff understand their data protection responsibilities and are frequently reminded of them.

- Data Protection & Environmental Information Regulations - well-designed procedures have been developed that aim to ensure that all employees, elected members, contractors, partners or other servants of the council abide by their duties and responsibilities under the Acts.

## **Council sentenced after theatre injury**

**Stafford Borough Council admitted breaching Management of Health & Safety at Work Regulations 1999, and were fined £20,000 with full costs of £1,922 and a victim surcharge of £120.**

Stafford Borough Council was fined after an incident at a theatre in which a worker suffered a fractured bone in his back. Stafford Magistrates' Court heard that two theatre employees were using a tallescope (a telescopic aluminium manually operated work platform, used for one person spot access) to undertake high level work to stage curtains and a projector.

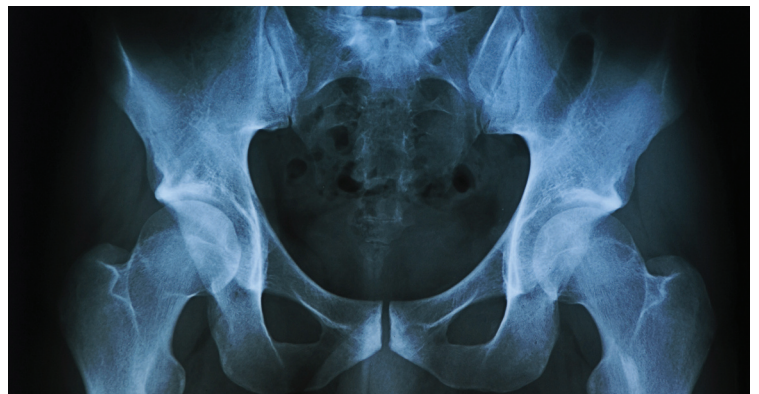
One of the workers was in the caged working platform at the top of the tallescope, approximately 4.5 metres high, as his colleague manoeuvred it around the stage to relocate it when the apparatus overturned.

The Health & Safety Executive (HSE), prosecuting, told the court the incident should never

have happened but they had found movement of the tallescope with someone in the cage took place on many occasions before this particular incident. The court heard that a suitable risk assessment had not been carried out for the use of the tallescope. If it had, the manufacturer's instructions on a warning label on the apparatus stating it should be rolled with men or materials on

platforms, should have been highlighted.

Stafford Borough Council admitted breaching Management of Health & Safety at Work Regulations 1999, and were fined £20,000 with full costs of £1,922 and a victim surcharge of £120. The employee suffered a fracture to the sacrum (the bone at the base of the spine connected to the pelvis).



## Council's 35 year child protection data retention policy held to be lawful

**Mr Justice Simon was clearly impressed by the evidence from Council staff as to the circumstances in which access to the data might be required long after the child reached his or her majority.**

The Administrative Court has ruled that a local authority's policy of retaining child protection records for 35 years or more is lawful.

In a judicial review action, in *R (C) v Northumberland County Council & Anor.* [2015] EWHC 2134, the Administrative Court (Simon J) has ruled that the data retention policy of Northumberland CC is lawful.

The claimant (C) felt that he and his family had been the subject of a significant injustice in their dealings with Northumberland County Council, and that it held material about them as a result. C wanted all the data relating to the case to be destroyed.

Northumberland County Council agreed to this, but the issue of principle still fell to be determined. The Information Commissioner was an interested party in the case.

The issue was whether it is lawful for Northumberland CC to have a policy of retaining child protection records for a period of 35 years after a case has been closed. In fact, the policy allows for a longer period of retention where the child is or becomes looked after (in which case the retention policy is 75 years from the

date of birth) or adopted (in which case the retention period is 100 years from the date of the adoption order). C and the Information Commissioner contended that a proper retention period might be six years from the child's 18th birthday, although it was accepted by all that it was for Northumberland County Council to justify its policy not for others to supply one.

Mr Justice Simon was clearly impressed by the evidence from Council staff as to the circumstances in which access to the data might be required long after the child reached his or her majority. Among the examples were access that might be relevant to siblings where parents had children many years apart and access by the data subjects themselves where requests may be of crucial importance to a sense of identity and emotional or mental well-being. The fact that the ICO had changed its stance on the policy, having at one time considered it lawful, may also have weighed with him.

Simon J regarded the suggestion that reviews might be carried out at seven-year intervals as unduly burdensome. He accepted a statement from

one member of staff of the Council:

The current retention policy provides for retention for a period long enough to ensure that it is improbable that information from a closed record will be of central importance in any future work to protect children. In some cases, it might in principle be possible to dispose of records after a shorter period – particularly in situations where an investigation found where an investigation has found no evidence that abuse or neglect [has] taken place – but it would be necessary to assess the risk in every case.

In the judge's view, there was a need to keep the records for a substantial period, and certainly substantially longer than the period argued for by C and the Information Commissioner. While 'the period of 35 years is not the only possible period of retention, but in my judgment it falls within the bracket of legitimate periods of retention'. He therefore concluded that the policy 'is in accordance with the law, has been carefully considered, adapted to the purposes for which it is required, and is applied proportionately and flexibly'.

### COURT CIRCULAR

The insurers Zurich Municipal publish important insurance articles for councils to consider important risk management messages. A sample of these claims reports are detailed on the next few pages.

## SCHOOLS



## CHILD'S INJURY WHEN DISASSEMBLING TRAMPOLINE

*Clarke v Derby City Council*, 18.02.15, Nottingham County Court

In October 2009, the claimant, C, was a pupil at a school for which the defendant, D, was responsible.

At the end of a physical education lesson the teacher, T, instructed the pupils to put away the equipment they had been using, which included a trampoline. T was allegedly called away and C said she and other pupils embarked on collapsing and folding the trampoline. During this process, one side of the trampoline sprang back, trapping and fracturing C's arm. C was aged 15 at the time.

C claimed damages from D for her injury. Her allegations included failure to supervise the task properly, failure to implement a safe system for it, and causing or permitting too many pupils to engage in the task.

D denied liability, contending that T was present at the time. Further, the trampoline was put away under T's direct supervision and in accordance with the national guidelines – the Safe Practice in Physical Education and Sport – issued in 2008 by the Association for Physical Education.

D said T was only made aware of C's injury after the first part of the procedure to put away the trampoline, which T believed was carried out without any incident connected with it.

D said there had not been any previous similar incidents. The trampoline was inspected annually and, in the July 2009 inspection, was found to have been in good working order.

D further argued that C's accident was wholly or at least partly caused by her own negligence in, among other things, failing to follow T's instructions and to take proper care for her own safety.

At trial, C said she believed T had been called to attend to noisy pupils in the corridor, who were waiting for the next lesson. However, it transpired that there was no lesson after C's. The judge said T could not, therefore, have been called outside by a pupil waiting for the next lesson and there was no explanation for T allegedly having left the room.

The judge also found significant changes between C's initial allegations and those made later in her particulars of claim. The judge said that an allegation of failure to supervise was such an obvious complaint that it would have been made at the outset, if T had actually not been present to supervise the putting away of the trampoline, but that allegation was not initially made.

The judge was not satisfied that the accident occurred as alleged and the claim was dismissed.

### COMMENT

This ruling highlights the importance of scrutinising allegations and evidence for inconsistencies and discrepancies. It also emphasises the importance of obtaining and retaining witness statements promptly after an incident – here T's statement, made soon after the alleged accident, made no reference to her having left the classroom, and the judge found no reason to disbelieve her. C, however, changed her allegations from the initial letter of claim to her pleaded claim, giving the court reason to doubt her version.

## SCHOOLS

## SCHOOL TRIPS – INJURY TO CHILD

*Coulthard (a minor) v Halton Borough Council*, 02.03.15, Warrington County Court

The claimant, C, when aged nine, went on her school's annual trip to a farm. The pupils were instructed to sit on a fence to be photographed. When C was sitting on the fence, it collapsed and C was injured.

C claimed damages for her injuries from the defendant, D, who was responsible for the school. C's allegations included that the fence was unsafe to sit on and the Head Teacher's visual inspection of it beforehand was inadequate.

Damages of £3,750 were agreed, subject to the court's approval and to liability, which D denied. D contended, among other things, that it could not reasonably have known the fence would collapse when pupils sat on it and it had been reasonably inspected beforehand. D also argued that the school's annual visit to the farm was a "desirable activity" under s.1 of the Compensation Act 2006 and, as such, should not be discouraged or prevented.

The judge held that the Head Teacher's visual inspection was reasonable and there was nothing indicating the fence was potentially dangerous. D was not under a duty to have ensured a more thorough inspection. The fence collapsed due to its rotting beneath the surface of the soil but this would not have been visible on even closer inspection of the exposed fence.

The court also accepted the annual visit was a "desirable activity" that should not be prevented in future. The claim was dismissed.

### COMMENT

Although only a county court ruling, this will be welcomed by schools which organise similar school trips. It also provides a helpful example of the court recognising these annual trips as a "desirable activity" that should not be prevented by imposing unrealistic obligations on the school.

## HIGHWAYS



## TRIP – DEFECTIVE KERBSTONE

*Gilbey v Hull City Council, 14.10.14, Kingston upon Hull County Court*

The claimant, C, alleged that, one night in March 2013, as he was leaving a public house, he tripped and injured himself due to a missing kerbstone at the edge of the pavement.

C claimed damages from the defendant highway authority, D, alleging its negligence and/or breach of duty to inspect, maintain and repair the highway, under s.41 of the Highways Act 1980, caused his accident.

D conceded a breach of duty but argued that its breach did not cause C's accident.

C's medical records indicated he was heavily intoxicated at the time of the alleged accident. He had gone home after leaving the pub and only noticed his injuries on waking up the following morning. He attended hospital, saying he could not recall the accident but another person told him he had fallen outside the pub. However, there was no evidence that C had actually fallen at the missing kerbstone.

The judge held that C was intoxicated when he left the pub and it was clear that he could not recall how he sustained an accident. The judge held that C only believed he had fallen outside the pub because this is what he had been told by another person who had attended the pub during the same evening. But there was no clear evidence of where C had actually fallen.

The judge held that, while it was possible that C had fallen at the missing kerbstone, there was insufficient evidence to prove, on balance, that he had done so. C had not proven that D's breach of duty caused his accident and the claim was dismissed.

## COMMENT

This emphasises that, while a defendant may in some circumstances be compelled to admit a breach of duty, a claimant still must prove on balance that the admitted breach caused the loss and damage claimed.

## HIGHWAYS



## SCOOTER ACCIDENT – LOOSE DEBRIS ON ROAD

*Addison v North Lincolnshire Council, 20.01.15, Kingston upon Hull County Court*

The claimant, C, said that, as he was riding home on his scooter, at between five and seven miles per hour, his scooter slid on debris on the road, causing him to fall and sustain injuries. C had been on his way home and had nearly arrived when his accident occurred.

C claimed damages for his injuries from D, the highway authority responsible for the road. He alleged the debris constituted a hazard and that D had breached its duty to sweep it up. C had ridden along the same route, without difficulty, two days before the accident.

D argued that the debris was not a hazard for which it was responsible but, due to C's accident, arranged for the "gravel" to be swept up. D said the road was regularly inspected and swept monthly – it was swept five days before the accident. D further argued it is not under a duty to sweep the roads, as per the Court of Appeal's ruling in *Valentine v Transport for London (Court Circular, January 2011)*.

D did not provide documentary evidence of the sweeping system but two of its witnesses confirmed it. One witness said he swept hundreds

of streets for D and would have swept the road in question had there been gravel on it during the sweep five days before C's accident.

The court held that D had not breached its duty. Despite D not providing documentary evidence to support its contention that it operated a system to sweep the road, the judge accepted D's witness evidence about the system. The judge accepted that the road was swept regularly, that it was swept five days before the accident and that C, who had ridden on it two days before the accident, had not complained to D about the gravel or debris. The claim was dismissed.

## COMMENT

Despite ruling in D's favour, the judge commented on the lack of documentary evidence from D as to its inspection system. This reiterates the importance of records being maintained about the operation of legal duties, particularly in high volume claims such as highway accidents.

## OCCUPIERS' LIABILITY



## MOBILITY SCOOTER DESTABILISING IN GRASSY TERRAIN

*Erridge v City of York Council, 05.03.15, York County Court*

The claimant, C, was driving his mobility scooter across a grassy area adjacent to the Millennium Bridge in York, heading towards a footpath. The wheels of his scooter suddenly became destabilised and C fell, sustaining injuries for which he claimed damages from the defendant, D.

C alleged breach of duty under the Occupiers' Liability Act 1957, by failing to ensure the area was reasonably safe for visitors.

C's wife reported the incident to D whose inspector could not find any defect. It transpired that C had fallen in an artificial channel D had built to assist local drainage. C alleged the channel presented a risk of injury to anyone crossing the area, including cyclists, pedestrians, or someone driving a mobility scooter, because there was nothing to warn of the presence of the channel.

D denied liability, arguing that C chose to drive on the grassy area, rather than using the path and road.

The judge held that an artificial drain was not unusual in an area prone to flooding. Further, photographic evidence showed the channels are clearly visible. The area is on a rough gradient and was not unsafe in law.

The judge held that D could not reasonably have foreseen the area would be driven on by a mobility scooter user. Driving a road-going scooter over such a rough area was, the judge said, hazardous.

While sympathising with C, the claim was dismissed.

## COMMENT

This ruling confirms that occupiers, who can demonstrate they have taken reasonable care for their visitors, are unlikely to be liable for a visitor's accident where the visitor's action, resulting in the accident, was not reasonably foreseeable to the occupier.