Report of the Director of Policy and Resources

Agenda Item No. 9
Meeting: 28 June 2016

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 An important aspect of the risk management action plan is to continue to raise awareness across the council. This is achieved through training programmes and communication networks. In addition to information available on the web page and Intralinc the 23rd and 24th editions of the Risk Roundup newsletter have also been issued (appendices A and B). The newsletters include important articles on significant risk topics such as cyber risks, breaches in health and safety and sexual exploitation.

2.2 An internal audit review of risk management arrangements has been concluded. Audit work undertaken provided evidence of satisfactory assurance on the adequacy of internal control arrangements. The issues identified are being addressed and have been reported to the Risk Management Group. The main findings of the review are summarised below:

- New managers are not completing the required eLearning packages within six months of their appointment.
- Some operational risk registers are incomplete.
- Risk Management is an important part of Member Training, which is currently under review. However, the Chair of the Audit Committee is able to participate in risk management issues through membership of the Risk Management Group.

- Leavers are not always notified to the Strategic Lead – Risk and Governance promptly in order for access to the risk system to be removed.

2.3 As part of a schedule of reviews of key risks and major projects, contained within the risk management action plan, a presentation on emergency planning arrangements was delivered to the Risk Management Group. The presentation included an overview of what arrangements and controls are in place within NLC. Assurance was also provided that the Emergency Planning Strategic Risk is being well managed.

2.4 In April 2016 CIPFA/SOLACE published the "Delivering Good Governance in Local Government: Framework" which replaced the document published in 2007. In light of the new Framework the council's Code of Corporate Governance will be updated. This will be presented to the Audit Committee in September 2016.

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

RISK roundup

Issue 23
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NORTH LINCOLNSHIRE COUNCIL
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Council hit by hackers

The site was suspended in order for the matter to be investigated properly and for extra security measures to be implemented as required.

Lincolnshire County Council

On Tuesday 26 January 2016 malware entered the County Council's computer network and began encrypting computers and demanding a ransom. Around 300 staff computers were affected after a member of staff opened an email that triggered the malware attack.

Initially it was thought that the demand was for £1m ransom but the council reported that the ransomware attack asked for $500 in the digital currency Bitcoin and threatened the amount would increase over time if this was not paid. Ransomware encrypts data on infected machines and only unscrambles it if victims pay a fee.

Regardless of the demand, rather than pay up, the Council closed down their systems and conducted a sweep of the IT across the organisation in order to make sure the malware could not spread. The council reported that it had scanned and checked 458 servers and 70 terabytes of data 'to make sure it was clean'. Staff had to resort to pen, paper, telephone and face to face contact, while members of the public were urged via the local press to refrain from contacting the Council over anything non-urgent. IT systems were finally restored on Monday 1 February.

The vast majority of systems were found to be unaffected by the malware, but library services and online booking required infected files to be deleted and restored from backup.

Stratford-upon-Avon

Stratford-upon-Avon Town Council's website was temporarily brought down by hackers on Friday 8 January 2016. Visitors attempting to access the website were greeted with a homepage headed by the word 'El Surveillance', and featured a quote from the Qur'an and an unusual image. At the foot of the page there was a link to a twitter account named @Elsurveillance followed by a reference to dating escorts.

According to a website intelligence analyst from Malwarebytes this was part of a hacking campaign aimed at escort sites by defacement and the theft of data although it is not certain why the Town Council was targeted.

The site was suspended in order for the matter to be investigated properly and for extra security measures to be implemented as required. It was reported that there was no sensitive data on the website and no other data had been lost, so no long term damaged had been done.

Reminder

As reported in the Cyber risks article in issue 22 of RISK roundup cyber attacks are becoming more common, causing disruption to services in varying degrees. Malware is a malicious software which can infect IT systems very rapidly. It can cause corruption to data and allow an attacker to gain access to network systems to extract valuable data.

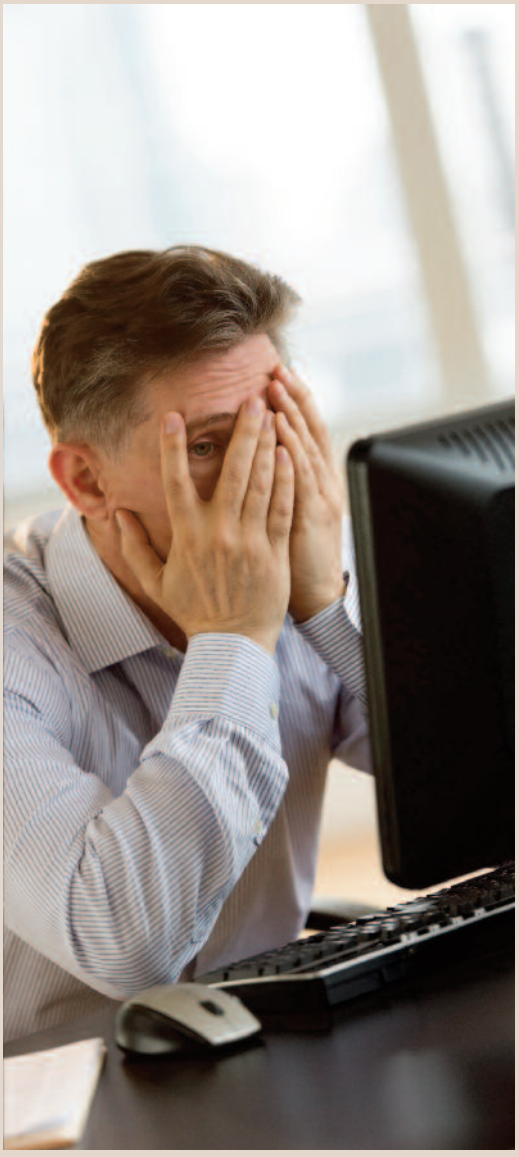
Council hit by hackers cont.

Whilst the council adopts a strength in depth approach to IT and information security and takes precautionary measures to block malicious activity entering our network, they can still find their way through in the form of phishing attacks and carefully crafted emails which may appear to look legitimate.

Everyone should therefore be vigilant when using IT systems. If anyone receives any emails that look suspicious or request information such as login names, passwords or bank details etc, these must not be provided. Clicking on hyperlinks should be avoided if they have come from a source not recognised or can trust. Emails should be deleted straight away including emptying deleted items folder.

The council reported that it did not incur any fines or penalties from the Information Commissioner's Office as a result of the breaches.

String of data protection breaches by Leicester City Council



Details of a string of breaches of data protection laws by staff at Leicester City Council have been published. Information revealed by the authority outlines a series of errors by employees handling sensitive documents. In total there were 34 reported breaches of the Data Protection Act in 2014, outlined in a response to a Freedom of Information inquiry.

Incidents reported included:

- A series of letters posted to the wrong addresses
- A form containing personal details falling out of a locked drawer during an office move
- The possible theft of a notebook while a staff member was shopping
- The loss of community pay-back documents at a neighbourhood centre in the city
- A letter containing 23 pupils' details being sent to the wrong school
- A mobile phone containing contact numbers and texts from council colleagues and service users was lost
- A bag holding personal documents was stolen from a staff member's car

The council reported that it did not incur any fines or penalties from the Information Commissioner's Office as a result of the breaches.

Rise in council suspensions over social media breaches

Although the number of suspensions rose, the figures showed that overall there was a 4% fall in staff being issued with warnings.

An investigation by the BBC has found there was a 19% rise in council workers being suspended last year for breaking social media rules.

Data obtained via a Freedom of Information request revealed that of the 51 staff involved, few were later dismissed or resigned following suspension.

Although the number of suspensions rose, the figures showed that overall there was a 4% fall in staff being issued with warnings. Some 11 workers were subject to disciplinary action for viewing porn online.

The highest number of suspensions was at St Helens Council, which took action against seven staff including several offences involving Facebook. East Riding of Yorkshire Council suspended two teachers for befriending pupils on Facebook while Leeds Council took action against two employees over racial comments they had made online. Councils that confirmed they had dismissed staff following suspensions included Luton, Norfolk and Newport City.

School fined after pupil paralysed when swing collapsed

The tragic accident could have been avoided had the school implemented the findings of its own risk assessment.

A Hertfordshire school has been fined for safety failings after a pupil suffered permanent paralysis when a swing collapsed.

St Albans Magistrates Court heard how a 13 year old pupil at the school was playing on a wooden swing in an adventure playground.

A Health and Safety Executive (HSE) investigation found the swing had collapsed because the supporting timbers had rotted. The heavy wooden cross beam of the swing fell onto the pupil's head and neck causing spinal injuries that resulted in permanent paralysis.

Queenswood School in Hatfield was fined £50,000 and ordered to pay £90,693 in costs after pleading guilty to an offence under Section 3(1) of the Health & Safety at Work etc. Act 1974.

An HSE Inspector reported that the case shows how important it is that schools and other providers of play equipment maintain them in a safe condition. The tragic accident could have been avoided had the school implemented the findings of its own risk assessment.

Council road sweeper vehicle kills biker

An HSE Inspector stated that risk assessments are essential when carrying out any significant task.

Sevenoaks District Council pleaded guilty to safety failings after member of the public was killed when he collided with a road sweeper lorry.

A council road sweeper lorry was cleaning the outside of a dual-lane slip road when a member of the public drove into the back of the sweeper on his motorbike. Maidstone Crown Court heard the road sweeper had been travelling approximately 4 mph and there was a bend in the road which likely prevented the motorcyclist from seeing the sweeper. The motorcyclist was pronounced dead at the scene.

Despite the road sweeper having flashing beacons and a 360 sign on the back (a big arrow that indicates vehicles to pass by) there should have been significantly more controls in place for sweeping a stretch of road like this.

A HSE investigation found that there was no road specific risk assessment in place, just a generic one covering all road sweeping done by Sevenoaks District Council. This did not identify all suitable control measures needed for sweeping this dual-lane slip road.

The council was fined £50,000 and ordered to pay £32,000 in costs after pleading guilty to breaching sections 2(1) and 3(1) of the Health and Safety at Work etc. Act 1974.

An HSE Inspector stated that risk assessments are essential when carrying out any significant task. These risk assessments need to identify the appropriate controls and such controls need to be implemented and checked to ensure they remain suitable and sufficient. This incident shows how important it is for councils, and other companies, to properly assess the risk of work tasks.

Any employee intending to take action arising out of these articles should, if in any doubt, contact the council's legal section for advice before doing so.

The council gratefully acknowledges the contribution made by its insurers, Zurich Municipal, in providing articles for this publication.

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.

HIGHWAYS

ZURICH claim

HIGHWAYS – ICE AND SNOW ON HIGHWAY – PEDESTRIAN'S INJURY FROM SLIPPING

Clark v Doncaster Metropolitan Borough Council, **11.06.15, Doncaster County Court**

In December 2010 the claimant, C, fractured his ankle when stepping from a pub's car park to the adjoining pavement. C said the car park was covered in slush and that the pavement was "like a skating rink". C was wearing normal shoes, despite being aware of the weather conditions.

C claimed damages from the defendant highway authority, D, for his injury, alleging negligence and breach of statutory duty under s.41(1)(A) of the Highways Act 1980. His allegations included that D had failed to ensure the highway was reasonably safe.

D denied liability, contending that it had complied with its duties. D alternatively alleged that the accident was caused entirely, or at least in part, by C's contributory negligence.

The court heard that C believed most of the area in question had been gritted, but he said that there was ice where he fell.

The court considered all the evidence and held that D had gritted the area where C had fallen, which was one of D's priority areas. The court said it would be unlikely that D would grit all its priority areas except for this particular section of the highway.

The court held that D's duty was not to operate a policy of perfection – it was required only to take measures that were reasonably practicable to ensure the highway was safe. It had gritted the priority areas and had issued a public notice advising that particular care be taken if the public were to go out in the extreme weather conditions.

The court then considered that, if its conclusion was wrong about D having complied with its duty, whether C was to any extent responsible through his own contributory negligence.

The court noted that C said that after the accident he had drunk several brandies which someone in the pub had given him in an effort to alleviate the pain. C's hospital records indicated that C had consumed significantly more alcohol than he had admitted.

The court also noted that C was aware of the weather conditions but he had worn normal shoes that did not provide extra protection for the likely slippery conditions, and he had not changed his way of walking by taking extra care.

The court dismissed C's claim but said that, had it found D primarily liable, it would have found contributory negligence of 50%.

COMMENT

This provides a useful reminder of the extent of a highway authority's duties to ensure highways are reasonably safe in wintry weather. The duty is to take reasonably practicable steps to ensure safety, and policies are not required to be perfect, particularly during extreme weather conditions. Documentary records of those policies and their implementation should of course be able to be produced if necessary. This ruling also highlights the importance of checking the full circumstances of the claim in terms of potential arguments of contributory negligence.

HIGHWAYS

ZURICH claim

CONFLICTING EVIDENCE OF CAUSE OF ACCIDENT – S.58 DEFENCE

Ahearn v St Helens Metropolitan Borough Council, **29.12.14, St Helens County Court**

The claimant, C, regularly went jogging along the road on which he lived. One day, while jogging on the same road, C said he tripped and sustained injuries due to a defect in the road.

C claimed damages for his injuries from the defendant highway authority, D, alleging negligence and breach of statutory duty. His allegations included breach of s.41 of the Highways Act 1980 (the Act) by D failing to inspect, maintain and repair the highway.

D denied liability. It also contended, under s.58 of the Act, that it operated a suitable inspection and maintenance regime for the area.

At trial, C was unable to give any information as to the condition of the road before his accident and there was no other live evidence about this to assist the judge.

The judge noted that, in C's particulars of claim, he alleged he tripped and fell on a section of broken tarmac but, in his witness statement, he alleged he fell in a hole in the road.

Further, the judge said that, although C took photographs of the alleged defect, he did not report it to D "despite the obvious danger".

D's witness said that he inspected the area the day before C's alleged accident and could not possibly have missed such an obvious defect had it been present during his inspection.

C said the defect was full of debris, indicating it had been present for some time – more than one day.

The judge accepted that C fell but not due to any defect in the road for which D was responsible.

The judge held that the defect was not present at the time of C's accident and that C may have waited for a hole to develop in the road before taking the photographs. When the defect was reported to D, it was repaired immediately.

The claim was dismissed.

COMMENT

This illustrates the need to cross-check a claimant's initial allegations with those later pleaded or made in a witness statement. It also highlights the importance of highway authorities recording whether an alleged defect was reported and what, if any, subsequent action was taken, and when. Here the judge regarded as relevant the fact that the claimant did not promptly report the alleged dangerous defect to the defendant, and that the defendant swiftly repaired a defect the claimant later reported to them.

EDUCATION

ZURICH claim

SCHOOL'S KNOWLEDGE OF PUPIL'S HEALTH ISSUES FOR PE CLASS

Faithful (a child, by her litigation friend and mother L Faithful) v Kent County Council,
12.10.15, Tunbridge Wells County Court

The claimant, C, is a pupil with autism who attends a school for which the defendant, D, is responsible. During a physical education (PE) lesson, involving pupils jumping between two tyres, C fell and sustained injuries for which her mother claimed damages on her behalf from D.

C, who was aged 12 at the time, alleged, among other things that, given D's knowledge of her disability, D was negligent in causing C to participate in a lesson likely to risk injuring her, it failed to assess her suitability for the activity or discuss it with her mother, and generally failed to take adequate care of her.

The judge held that it would have been unfair to exclude C from the PE lesson because she had striven to overcome her disability and her parents would not have wished her to have been excluded. Further, C's parents had not informed the school about certain of C's health issues relevant to her participating in PE. If third parties, such as occupational therapists, considered that C required particular adjustments, they would have contacted the school direct, but had not done so.

The claim was dismissed.

COMMENT

Where a child attending school has particular special needs, appropriate third parties will usually ensure the school is aware of these. Where the child's parents are aware of specific health conditions which may impact on the child's suitability for certain activities, they should draw these matters to the school's attention.

OCCUPIERS' LIABILITY

ZURICH claim

SLIP ON FOOD SPILLAGE IN BUS STATION

Bousfield v Middlesbrough Borough Council, **20.10.15, Middlesbrough County Court**

The claimant, C, slipped and fell while walking through a bus station in Middlesbrough. C, who was aged 64 at the time, sustained injuries for which she claimed damages from the defendant, D, who was responsible for the bus station.

C alleged negligence and/or breach of duty under the Occupiers' Liability Act 1957. C said she slipped on a spillage of a food substance. She alleged that D failed to ensure that C was reasonably safe while visiting the bus station, by failing to clean the floor, failing to warn visitors of the hazard posed by the spillage, and failing to guard or cordon off the spillage.

D denied liability.

The court held that C fell on food spilled or dropped by another visitor and the spillage presented a foreseeable risk of danger to visitors. The court held that D knew that food was occasionally dropped or spilled on the floor. D employed one cleaner who, with D's two security guards, cleaned the spillage in question.

The court noted that, in 2012, D reduced the number of its cleaning staff on duty from two to one, for budgetary reasons. When two cleaners had been on duty, they were fully occupied in carrying out cleaning tasks.

The court held that D had failed to take all reasonable steps to comply with its duty to ensure C was reasonably safe while visiting the bus station. The claim succeeded.

COMMENT

The success of this claim indicates that a court may consider that certain steps a public authority takes, due to budgetary constraints, places the authority at risk of failing to comply with its duty of care or a particular statutory duty. Where a public authority is compelled to review its expenditure, it should endeavour to ensure that any significant changes or staff reductions do not expose the authority to such risks.

RISK roundup

Issue 24
June 2016

NORTH LINCOLNSHIRE COUNCIL
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A digest of risk management issues

Council drivers 'sexually exploited' children after background check failures

Children were 'sexually exploited' by taxi drivers on council-funded school runs after a local authority failed to run background checks, report finds.

An interim review into the licensing of hackney carriages and private hire vehicles by South Ribble Borough council described the council's failure to vet 44 of its drivers as particularly severe.

In a case that echos of the Rotherham sex abuse scandal, a five year old girl was reportedly attacked. The report noted that while the Crown Prosecution Service considered her too young to give evidence, 'police believed the driver had committed the offence'. In another case, a 16 year old girl reported fearing a driver would rape her.

Two licensing officers who allegedly issued licences without checks have been suspended in light of the report's findings. Since the report has been issued a full review of all taxi licences has been conducted, including checks on all drivers.

Council sentenced after vulnerable man choked to death

A council has been prosecuted after the death of a vulnerable day visitor to one of its care centres. A 53 year old man choked while eating his lunch at the council run Hartley's Day Opportunity Centre in Shrewsbury.

The Health and Safety Executive (HSE) told the court that the centre caters for adults with learning disabilities. The visitor was taken to the centre for the day with a packed lunch provided by carers at the residential home where he lived. The deceased began to eat his lunch when he started to choke and collapsed. Staff at the centre went to his assistance, who by then appeared to have gone into respiratory arrest.

CPR was commenced and paramedics were called. On arrival of paramedics attempt was made to intubate, this was difficult due to food in the trachea. The deceased was rushed to Royal Shrewsbury Hospital and further CPR was carried out however he did not recover.

The deceased had a long history of choking incidents at both his residential home and day services and HSE argued that appropriate safeguards were not implemented at Hartley's Day Centre despite these warnings.

Shropshire Council admitted breaching Section 3(1) of the Health and Safety at Work etc. Act 1974. The council was fined £25,000 and ordered to pay £39,317 in costs.

Two men imprisoned for council bribery attempt

Under the Bribery Act 2010 two men have been given prison sentences for offering a bribe to a council worker.

Saeed Shakir was sentenced to 20 months imprisonment after pleading guilty in November 2015 to offering a bribe to a contracts manager from Surry County Council. The second man, Muzaffar Hussain was imprisoned for three years after being found guilty of the same offence on 12 February 2016.

Hussain was a director of a taxi company which had a million pound contract with the council to provide home to school transport. Due to complaints about the quality of the service, he was about to lose the contract.

In December 2013 Shakir arranged a meeting with the council officer in question and offered him £500 along with a promise of ongoing payments of a four figure sum, to be negotiated with Hussain.

The officer recorded the offer on his phone and immediately reported it to his line manager and group manager, who contacted the police.

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Council rapped for data protection failings

A Scottish council has been rapped by the regulator for repeatedly failing to train staff around data protection.

West Dunbartonshire Council were told to implement training on several occasions, as well as being advised to put in place a policy around homeworking. But their failure to do so ultimately contributed to a data breach that led to a child's medical reports being stolen.

The Information Commissioner's Office (ICO) carried out an audit of the council in January 2013. The audit gave a reasonable assurance of the council's compliance with the law, but made recommendations for the areas that needed improvement, including training for all staff and adopting a home working procedure. A follow up audit in November 2013 showed progress, but showed some of the recommendations still had not been implemented.

In July 2014, the council reported a data breach to the ICO, after an employee had a bag containing information stolen. The employee had taken details of an adoption case out of the office to work from home, but the laptop and paperwork left in the car overnight was stolen.

An ICO investigation found the employee had not been given training on the Data Protection Act, and the council still had no guidance to staff on handling personal information when working from home. The council avoided a fine as the breach did not cause substantial damage or distress.

The council has now been issued with an enforcement notice obliging it to implement training and guidance, or face court action.

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A Road Less Travelled

In his summary, the judge concluded that "a defect in a road in the highways occasionally used by cyclists may not be dangerous when it would be so if the road was in central London and was habitually used by cycle races involving large numbers of competitors."

Melvin Griffths v Gwynedd Council (2015) EWCA CIV1440

The Court of Appeal has handed down judgement in a case that clarifies the test for dangerousness in respect of defects on infrequently used highways. In a helpful decision for local authorities the court has applied established principles to highway claims, in particular that the test of dangerousness is informed to some extent by what the public at large would expect the highways authority to do to ensure repair of the roads, particularly at the time when resources are scarce.

The facts

The claim concerned a cyclist on a remote highway in the mountains in North Wales. As he rounded a bend and was travelling downhill, he encountered some debris in the road which he attempted to avoid by steering to the left hand edge of the road. In doing so he encountered a defect which comprised of a large chunk of tarmac which had broken away from the edge of the road. This caused him to be thrown over the handlebars. The claimant sued the local council for breach of section 41 of the Highways Act 1980. It was argued that this type of defect was commonplace in rural location such as this.

The decision

In the first instance the court held that despite the defect falling into the authority's own category 1 classification, the defect was not dangerous so as to amount to a breach of s. 41. The claimant challenged the decision and the Court of Appeal dismissed the appeal and determined that:

1 The nature of the road and its use are relevant factors in considering whether the defect on it is dangerous.

2 The reasonable expectations of the public as to the standard of maintenance of the highway service is a relevant consideration – the court held that the burden which a finding of dangerousness would impose on the authority was a relevant and obligatory consideration in light of the decision in Mills v Barnsley MBC.

3 The highways authority's own intervention levels do not determine the dangerousness of a defect.

What this means for local authorities

This decision will come as good news to local authorities with ever more constrained budgets for highways maintenance. It is a helpful reminder in particular that the test of dangerousness is informed to some extent by what the public at large would expect the highways authority to do to ensure repair of such roads, particularly at a time when resources are scarce.

The judgement was a helpful application of established principles to highways claims arising from accidents in remote rural locations. It is very rare that a highways case makes it to the Court of Appeal. Local authorities will be able to draw upon this case in their defence in future similar matters.

In his summary, the judge concluded that "a defect in a road in the highways occasionally used by cyclists may not be dangerous when it would be so if the road was in central London and was habitually used by cycle races involving large numbers of competitors."

Court Circular

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.

HIGHWAYS

ZURICH claim

RAPID DEVELOPMENT OF POTHOLE – S.58 DEFENCE ACCEPTED

Jenkinson v Darlington Borough Council, **02.12.15, Darlington County Court**

The claimant, C, said that, as he was cycling on a road, the front wheel of his bicycle struck a pothole, causing him to fall and sustain injuries. C claimed damages from the defendant, D, alleging his accident and resulting injuries were caused by D's negligence and breach of duty, under the Highways Act 1980, to maintain the highway. His allegations included failure to repair the defect and warn C of it.

D denied liability and contended that it operated an adequate repair and maintenance system. It produced evidence of a monthly inspection system. An inspection of the area, 10 days before the accident, found no actionable defect. After the accident, D's inspector found a defect measuring 60mm. D's witnesses gave evidence that potholes can develop rapidly – sometimes overnight – in certain weather conditions. C's accident had occurred during a period of exceptionally cold weather, with temperatures below zero Celsius for the 21 days preceding the accident.

The court accepted that the pothole could have developed rapidly within a short period of time, and that D operated an inspection regime that met its statutory duties. The claim was dismissed.

COMMENT

Given certain weather conditions, defects can rapidly develop in a highway, even overnight. This emphasises the importance of highway authorities maintaining records of adequate repair and maintenance operations, including systems in operation to manage unusual weather conditions, and being able to produce those records to defend allegations of breaches of duty.

HIGHWAYS

ZURICH claim

NO DUTY TO INSPECT UNDER PARKED VEHICLES

Helsby v Walsall Metropolitan Borough Council, **10.09.15, Dudley County Court**

The claimant, C, was walking on a highway when he allegedly tripped on the broken edge of a manhole cover in a grassed area between the pavement and the road. C sustained injuries for which he claimed damages from the defendant highway authority, D, alleging breach of duty, under s.41 of the Highways Act 1980, to maintain the highway.

C's allegations included that, despite an annual inspection of the area carried out earlier on the day of his accident, the defect had not been recorded.

D denied liability. On the day of the accident, D's inspector noted other defects in the area and that cars were parked partly on the road and partly on the verges of the pavement. D contended there was no duty to inspect underneath parked vehicles.

Shortly before the trial commenced, C withdrew his entire claim for special damages and C's only witness refused to attend trial. The judge said it was "a matter of some concern" that C's witness statement was so short.

Further, the judge found C uncertain about the mechanics of the alleged accident and as to which defect allegedly caused it. The judge ruled C's evidence was unreliable.

The judge accepted that, had a car not been parked over the alleged defect, D's inspector would have noted it. The judge held, however, that it would be wholly impractical, completely disproportionate and above and beyond the scope of D's duty, to require its inspectors to inspect under parked vehicles.

The claim was dismissed.

COMMENT

This ruling reiterates that highway authorities' duty to maintain highways does not extend to requiring inspectors to inspect under parked vehicles. Here, the court was assisted by the inspector's record noting the presence of parked cars during the inspection. Highways inspectors may consider routinely noting the presence of parked cars in their inspection records, to defend similar allegations.

This claim also highlights potential indicators of a weak or groundless claim – the special damages claim withdrawn shortly before trial, the claimant's unusually short witness statement, and his only other witness refusing to attend trial.

OCCUPIERS' LIABILITY

ZURICH claim

METAL FLAPS CONTROLLING CAR PARK ACCESS – DUTY TO TRESPASSERS

Malcolm v Corby Borough Council, **27.01.16, Northampton County Court**

One evening in November 2012 the claimant, C, was walking from a public house towards a taxi rank. As he walked across a car park towards the taxi rank, he tripped and fell on one of a series of raised metal flaps at the vehicular exit of the car park.

C, aged 56 at the time, sustained injuries including a deep laceration to his knee, for which he claimed damages from the defendant, D. Due to the injury, C was off work for approximately six weeks and unable to drive for approximately four months. He suffered a type of knee pain, patellofemoral syndrome, for up to 18 months.

C alleged D had breached its duty under either the Occupiers' Liability Act 1957 or 1984. His allegations under the 1957 Act included failure to ensure he was reasonably safe when visiting the car park, failure to warn pedestrians that the car park was private and should not be used as a route to the taxi rank, removing a barrier previously situated above the metal flaps enabling pedestrians to walk across the vehicular exit, and failure to warn pedestrians of the presence of the raised flaps.

Alternatively C alleged that, if he were held not to be a lawful visitor, D had breached its duty to him under the 1984 Act. His allegations included failure to take reasonable care to ensure C was not injured by the raised flaps, which D knew posed a danger to C using the car park as a route to the taxi rank. C alleged the risk of injury was one which he reasonably expected D to protect him from, in line with D's duty under the 1984 Act.

D asserted that C was a trespasser at the time, but denied liability under the 1984 Act. The car park was provided for D's employees and visitors. D said the metal flaps were raised to prevent vehicles entering the car park through the exit. D said the flaps were clearly painted and were visible to pedestrians. D denied a barrier had been removed, saying no barrier had been in place at the exit for many years.

D said there were no defects in the car park and the area was adequately lit by nearby streetlights. Further, it was unaware that the car park was used as a route to the taxi rank, and had no reason to believe the flaps posed a risk against which it should offer some protection.

D alternatively argued that the accident was wholly or partly caused by C's contributory negligence in failing to take an appropriate route to the taxi rank, avoid the flaps, and take proper care.

The court held C was a trespasser at the time of his accident. The 1984 Act therefore applied.

The court said photographs showed the paintwork of the flaps had faded or was obstructed, resulting in their not being sufficiently visible, particularly at night.

The court held the flaps posed a danger of which D was aware, it knew pedestrians walked in the area, and the risk was one against which D should have offered some protection. The court said D should have done more, perhaps through clearer warnings, to protect pedestrians from the risk of injury from the obvious hazard the flaps posed.

The court held D primarily liable, awarding C general damages of £8,000 and special damages of just over £2,000. The court accepted, however, D's argument of contributory negligence to the extent of 20%. C's damages were accordingly reduced.

COMMENT

The success of this claim emphasises the need for occupiers to ensure their premises do not pose a danger to either lawful or unlawful visitors. Where a defendant occupier knows or should know that a factor on their premises might pose a risk of injury to visitors, including trespassers, there should be clear evidence that the occupier has taken appropriate measures to offer reasonable protection against those potential hazards.

EDUCATION

ZURICH claim

INJURY TO STUDENT DURING PE LESSON

Rawlings v Staffordshire County Council, **16.12.15, Telford County Court**

The claimant, C, was a year 10 male student at a school for which the defendant, D, was responsible. C attended a gymnastics class in which students were to vault over a wooden horse using a springboard to assist their jump. The class was divided into girls and boys. A mat lay under the girls' springboard but not under the boys'. As C leapt on to the springboard, the springboard slid away and C sustained injuries.

C claimed damages from D for his injuries, alleging negligence and/or breach of duty under the Occupiers' Liability Act 1957. His allegations included failure to provide safe physical education apparatus, failure to ensure a mat lay under the springboard to prevent it from slipping when jumped upon, and supervision failures.

D denied liability, arguing that placing a mat underneath springboards could risk them slipping. The springboard itself was not defective, the gym apparatus was regularly inspected and the exercise was properly supervised and instructed. Further, under s.1 of the Compensation Act 2006, such classes are desirable activities. D alternatively argued that C's accident was wholly or partly caused by his own negligence.

At trial, C conceded that there had been proper instruction and supervision. The judge held D had not breached its duty to C. The claim was dismissed.

COMMENT

This shows the importance of schools demonstrating that lessons were adequately supervised and that students had been properly trained in how to use apparatus. It also briefly highlights the need to avoid actually creating or increasing potential risks of injury in certain situations and to be able to show that lessons involving specific apparatus have been properly risk assessed.

Any employee intending to take action arising out of these articles should, if in any doubt, contact the council's legal section for advice before doing so.

The council gratefully acknowledges the contribution made by its insurers, Zurich Municipal, in providing articles for this publication.