

## **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 Since April 2016 the co-ordination of risk management has been part of the Audit and Assurance shared service with North East Lincolnshire. Since the previous update to the Committee in April 2017 a number of initiatives have taken place, including:
  - the development of a revised risk strategy which sets out the council's approach to risk management, risk appetite and roles and responsibilities. The strategy document is currently under consultation with senior officers and a final version will be presented to audit committee;
  - the development of shared risk management software across both councils. A new risk management system has been procured and is currently being implemented. It is due to go live October/November 2017. The benefits of the system are; it is easy to use/navigate, it has an effective reporting facility and it allows risks to be shared and compared more easily if required. This will include the adoption of a common scoring system across both councils;
  - the production of a risk management toolkit to support the implementation of the new risk register and the updated risk policy;
  - a review of the council's strategic risks. The senior leadership team has identified the strategic risks, and undertaken an initial assessment of controls in place and mitigating actions;
  - a review of the e-learning packages related to risk management; and

- the introduction of Risk Super Users who will be responsible for disseminating training, sharing information about risk management and ensuring risk registers are kept up to date across services.

2.2 As part of the 2016/17 internal audit programme Lincolnshire County Council was requested to conduct an independent review of the council's risk management arrangements. The final report was issued in June 2017 and provided satisfactory assurance on the adequacy of the arrangement. The recommendations are being implemented as part of the initiatives referred to in paragraph 2.1.

2.3 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 latest edition of the Risk Roundup newsletter has also been published (appendix A). The newsletter includes important articles on significant risk topics such as health and safety, information governance and fraud.

### **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 As Audit and Assurance has responsibilities for both Audit and Risk Management in order to provide the council with assurance on the adequacy of the council's risk management arrangements the audit of risk management arrangements referred to in section 2 was carried out by officers from a neighbouring council.

## **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: GOVERNANCE AND PARTNERSHIPS**

Civic Centre  
Ashby Road  
SCUNTHORPE  
North Lincolnshire  
DN16 1AB

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

# RISK

## roundup



A digest of risk management issues

## Health & Safety Risks

### 1 Council fined £1m after disabled man crushed by tractor

**They failed to segregate vehicle movements from the public, the HSE said.**



**Nottinghamshire County Council has been fined £1m after a disabled member of the public was crushed by a tractor. Council employees were using the tractor, fitted with mounted grab attachment to clear branches from a park, when they hit the man. The 71 year old victim was on a guided walk in the park when the accident took place and he was left with injuries to his arms, legs and head.**

An investigation by the Health & Safety Executive (HSE) found the council failed to implement a safe system of work for this activity.

They failed to segregate vehicle movements from the public, the HSE said. They also failed to train the workers to the required level.

The County Council pleaded guilty of breaching Sections 2 (1) and 3 (1) of the Health & Safety at Work Act 1974, and has been fined £1m and ordered to pay costs of £10,269.

“The failure to properly plan this work and put in place straight forward control measures not only put the gentleman at risk but also endangered other members of the public walking with him” said an HSE inspector.



## 2 Council fined after apprentice loses a finger in lawnmower accident

**This was a preventable incident which would have been avoided if suitable control measures, levels of training, supervision and monitoring were applied.**

Nottingham City Council has been fined after an apprentice suffered serious hand injuries when trying to unblock a lawnmower. The HSE found the council had replaced some of the manufacturer’s safety features with its own designs which were unsafe.

Nottingham Crown Court heard how the 22 year old worker was on site at a primary school in 2014 and was trying to unlock the machinery when his hand came into contact with the rotating blade. His right index was severed and he also suffered serious cuts and ligament damage to other fingers on his right hand.

The court ruled that the Council had failed to suitably control the risks posed by the physical equipment in use and also did not fully consider the training needs of the employees so they could operate the machinery in a safe and appropriate manner.

Failures were also identified in the levels of supervision provided for lawn mowing by apprentices.

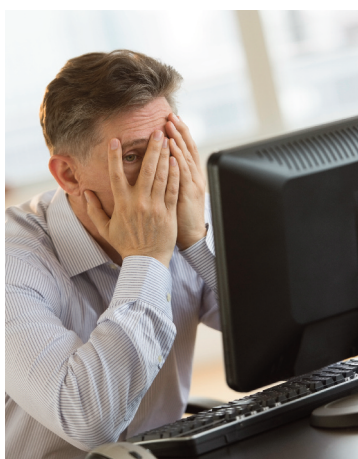
The Council pleaded guilty to breaking the Health & Safety at Work Act 1974 and was fined £33,000 and ordered to pay costs of £12,000.

Speaking after the hearing the HSE inspector said “The Council’s failings in this case have led to the worker suffering life changing injuries. The Council had for many years been removing a part of the lawnmower fitted by the manufacturer which prevented operators from gaining access to the blade. This meant that those operating the lawnmower were exposed to risk. This was a preventable incident which would have been avoided if suitable control measures, levels of training, supervision and monitoring were applied”.

# Information Governance Risks

## 3 Council fined £100,000 after hackers stole sensitive information

**The messages contained financial and sensitive information about council staff.**



**A council has been fined £100,000 after being accused of failing to repair a ‘vulnerability’ in the authority’s software which allowed hackers to access sensitive information.**

The Information Commissioner’s Office (ICO) issued Gloucester City Council with the fine after a cyber attacker accessed council employees’ sensitive personal information. The attacker took advantage of a weakness in the council’s website, which led to over 30,000 emails being downloaded from council mailboxes. The messages contained financial and sensitive information about council staff.

According to the ICO, the attacker, someone claiming to be part of the hacking group Anonymous, exploited the much publicised ‘Heartbleed’ software flaw. “This was a

serious oversight on the part of Gloucester City Council. The attack happened when the organisation was outsourcing their IT system” said the Group Enforcement Officer at the ICO. “A lack of oversight of this outsourcing, along with inadequate security measures on sensitive emails, left them vulnerable to an attack”. The ICO investigation found that the Council did not have sufficient processes in place to ensure its systems had been updated while changes to suppliers were made.

The Council said they were ‘disappointed’ with the decision which they would appeal.



## 4 Council 'truly sorry' for adoption data breach

**The spreadsheet comprised of information about current and former adoptees, parents and the social workers involved with these families.**

**A council has apologised after a data protection breach revealed the personal details of thousands of people involved in the adoption process.**

A member of Newcastle's City Council's adoption team accidentally emailed a spreadsheet containing private information about 2,743 individuals to 77 people last month. The spreadsheet comprised of information

about current and former adoptees, parents and the social workers involved with these families.

The local authority has launched an investigation into the breach and contacted all of the email's recipients to request they delete the information to prevent circulation. They are also working to contact all those affected and are offering counselling services to assist anyone involved.

"I am truly sorry for the distress caused to all those affected" said the Director of People. "We are conducting a thorough review of our processes to identify what changes we can make to ensure that this never happens again. The breach appeared to have been caused by human error and a failure to follow established procedures".

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## 5 Essex Council fined £150,000 for publishing personal data about a family

**The Council published the statement in full, without redacting the personal data.**



**A council has been fined £150,000 for publishing sensitive personal information in an online planning application document. The ICO has issued the fine to Basildon Borough Council for breaching the Data Protection Act.**

The investigation came after a statement in support of a planning application was published on its planning portal containing personal information on a static traveller family who had been living on the site for many years. The information included the family's mental health issues, the names and ages of the family members and the location of their home.

The Council published the statement in full, without redacting the personal data. An inexperienced officer did not notice the personal information in the statement, and there was no procedure in place for a second person to check it before the personal data was inadvertently published online.

The ICO Enforcement Manager said "This was a serious incident in which highly sensitive personal data, including medical information, was made publicly available. Planning applications in themselves can be controversial and emotive, so to include such sensitive information and leave it out there for all to see for several weeks is simply unacceptable".

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# Operational Risks

## 6 Council pays out £2,000 after blind woman unable to vote

**This compromised her statutory duty, right to vote in secret, and right to vote independently.**

**A woman has won a legal challenge against her district council over voting access for the blind and partially sighted.**

Rachel Andrews has myopic macular degeneration and is registered blind. She attended her local polling station in May 2015 to vote in the general election but had to do it through a third party due to inadequate facilities.

The Representation of the people Act 1983 states that polling stations must be equipped with a device that enables blind and partially sighted people to vote without assistance. However, the current device used to meet these requirements, the Tactile Voting Device (TVD), was not available to Ms Andrews and

her husband who is also blind, and the presiding officer had never heard of one.

Ms Andrews’s mother-in-law had to read out the candidate names to her and then had to mark her votes on her ballot papers on her behalf. This compromised her statutory duty, right to vote in secret, and right to vote independently.

After complaining about the incident to Broadland District Council, and chasing on several occasions, Ms Andrews did not receive a satisfactory response. The case went to court and was settled for £2,000, an apology and recognition of discrimination from the council, and assurances improvements would be made.

## 7 Councils warned about threat of toxic Giant Hogweed

**As well as causing a nasty rash and blisters, the weed can also create long-term health problems that reoccur in subsequent summers.**



**Local authorities have been urged to control and manage the spread of Giant Hogweed, which can cause severe blistering to the skin of people who come into contact with it.**

The Property Care Association (PCA) has warned the invasive weed can pose a threat to public health as the plant’s sap is highly toxic to

the skin in sunlight. As well as causing a nasty rash and blisters, the weed can also create long-term health problems that reoccur in subsequent summers. Added concern is that Giant Hogweed sap which comes into contact with items such as clothing and equipment can also be transferred via touch, so it can possibly affect somebody else.

# Fraud Risks

## 8 Debt recovery fraud alert

**The fraudsters aim is to intentionally target a very large organisation who are unlikely to challenge the recovery order.**



**The National Fraud Intelligence Bureau (NFIB) have identified a new fraudulent trend that may impact legitimate companies and organisations in the near future.**

The NFIB are aware that fraudsters are researching, via open source, solicitor organisations and obtaining their Document Exchange (DX) number to further the intended fraud. Generally the detail is available within the website content of the targeted company.

The fraudsters will then use this information to deceive a solicitor into going to court and submitting a large volume of false debt collection forms. The fraudsters may even purport to be the solicitor. It is understood the Judge will ask if there is any representation from the companies concerned; normally there is no representation.

The fraudsters aim is to intentionally target a very large organisation who are unlikely to challenge the recovery order (at least before they hand over the money) - this would generally be to avoid any reputational damage that may impact an organisation's standing.

Debt collectors will attend the head offices of the companies with the signed paperwork. Chief Financial Officers (CFO's) will usually be contacted but the advice is more often than not, to pay the money and appeal later. None of these companies want debt collectors in the reception area threatening to start removing company property. We understand that companies can appeal an order, however by that time the fraudsters are not traceable.

### **Prevention & protection advice**

- Undertake appropriate due diligence in respect of any official documentation received.
- If you dispute or recognise discrepancies contact internal audit for further advice.
- Ensure finance teams are meticulous if a debt recovery order is received.



## 9 Carer jailed for stealing £290,000 from 102-year-old woman

**She was found guilty of six charges at Hull Crown Court, including fraud by abuse of position.**



**26 June 2017**

**A "merciless" carer who stole nearly £290,000 from a 102-year-old woman has been jailed for nine years.**

Julie Sayles, of Bridlington, East Yorkshire, bought two houses with money she took from a bank account she shared with Edith Negus. She was found guilty of six charges at Hull Crown Court, including fraud by abuse of position.

Mrs Negus's great niece Ann Ruthuen said the family had been "unable to grieve for Aunt Edith". In a statement read to the court, she said the case had caused stress and anxiety and "it has devastated many of us".

"Julie Sayles organised the funeral and there was no mention of Edith. Edith always wanted a headstone and Julie never provided one for her. After the funeral she was sat laughing on a bench. We have sat all week through the court case and listened to the evidence. It has been very distressing."

Edith Negus "lived through the reigns of three kings and a queen" and twice survived being bombed in London, the judge said. Recorder Anthony Kelbrick told Sayles: "For merciless fraudsters like you there can be only one sentence: prison. You took advantage of her frailty time and time again".

He said Sayles had "coveted" the wealth Mrs Negus had gathered and saved through hard work.

A jury of nine men and three women took less than two hours to find her guilty of fraud, buying two properties with the proceeds of crime, as well as making a fraudulent will and presenting it to a solicitor, after a six-day trial.

Margaret Long, a friend of Mrs Negus' for 25 years, said: "The last words Edith said to me were she was very doubtful about Julie".

During the trial, the court heard the former charity worker, who described herself "as a woman of faith", persuaded Mrs Negus to change her will to benefit her.

The jury was told she had made withdrawals of £7,688, £90,000, £40,000 and several withdrawals totalling £150,000 between February and July 2014 after she set up the joint account in January of that year. Mrs Negus died in the October.

Sayles used the money to buy properties - one in Trowbridge, Wiltshire, and another in Scarborough, North Yorkshire.

### **Prevention & protection advice**

- If you have suspicions that someone is taking advantage of a vulnerable person, report this at the earliest opportunity to your line manager.

## 10 Wendy Dillingham jailed for stealing £260,000 from Evesham employer

**She hid her dishonesty by creating false documents until an internal audit uncovered her actions in 2013.**



**26 July 2017**

**A company secretary who siphoned off more than £260,000 from her employer to fund a luxury lifestyle has been jailed for five years for fraud. Wendy Dillingham, 59, paid herself inflated wages, moved lump sums into her account and used bank cards belonging to PPS Media Limited.**

She hid her dishonesty by creating false documents until an internal audit uncovered her actions in 2013.

Dillingham, from Evesham, admitted theft, fraud and false accounting. She was sentenced at Worcester Crown Court.

Dillingham worked at the Evesham-based firm between 1987 and March 2014 where she was responsible for the company payroll, West Mercia Police said. She used her position to create false bank statements, withdrew money from cash machines and used the bank cards to buy herself luxury cosmetics, paintings, clothing and luggage.

Police said she paid herself a higher wage despite claiming to have taken a £10,000 per year reduction, to help the business through the economic downturn in 2008.

The firm became suspicious when Dillingham was unwilling to provide original bank statements during the audit.

Managing Director, Vernon Pethard, said he remained "deeply shocked and dismayed" by her crimes. She was in a position of trust and this was a highly thought-out and long term deception. I had even made her an executor of my will which shows the extent to which she was trusted by me".

Det Insp Emma Wright, from the force's economic crime unit, said officers had carried out a "long and complex investigation. Wendy Dillingham betrayed the trust of a company who had employed her for 24 years by abusing her position in order to steal money from them".

### **Prevention & protection advice**

- Segregation of duties on financial systems.
- Ensure budgets are properly monitored.
- Report any suspicions of financial irregularity to internal audit.

# 11 Boss jailed for taking £1.3m from Swansea homeless charity

**During a plea hearing in April, prosecutor Carl Harrison said the fraud was "a major factor in the charity ceasing to exist".**



**21 July 2017**  
**A boss who took £1.3m from a homeless charity to fund a lavish lifestyle has been jailed for five years.**

Robert Mark Davies who worked for Swansea-based Cyrenians Cymru admitted fraud by abuse of position. The charge related to a six year period between 4 June, 2008, and 11 November, 2014, when he forged invoices.

Cardiff Crown Court heard he spent £100,000 on boats, £26,000 on airfares and £80,000 staying at The Savoy, London. The deception involved a total of £1,343,074 and since an investigation was launched into the lost money, it has been forced to declare itself insolvent.

It went into administration in February 2015 after 42 years helping the homeless and people living in poverty in west Wales, with 20 jobs affected.

During a plea hearing in April, prosecutor Carl Harrison said the fraud was "a major factor in the charity ceasing to exist".

Det Sgt Stuart Prendiville of South Wales Police said he had "a lavish lifestyle" which included "extravagant holidays and the purchase of several boats".

He added: "This ultimately was a factor which led to the charity becoming insolvent and the tragic loss of a number of support services provided to the homeless and vulnerable people of Swansea".

**Prevention & protection advice**

- Segregation of duties on financial systems.
- Challenge any requests to submit or authorise unusual payments. Alternatively make your concerns known to internal audit.

## 12 Fraud bus boss David Hulme to repay £42k to council

**He had claimed £495,857 for the company between July 2011 and December 2012.**

**15 February 2017**  
**A former bus firm managing director who made false claims about concessionary fare passenger numbers has been ordered to repay £42,894 to Gwynedd council.**

David Hulme, of Caernarfon, was jailed for six years last March for fraud and false accounting. He had claimed

£495,857 for the company between July 2011 and December 2012.

Caernarfon Crown Court heard during proceeds of crime hearing he had benefited from the fraud by £87,683.

Judge Huw Rees ordered an eight-month jail sentence if the money was not repaid to Gwynedd council within three months.

Fellow firm owner Darren Price had pleaded guilty to false accounting and was sentenced to two years and three months at the same time as Hulme.

Padarn Buses went into liquidation after the offences were discovered, with the loss of 84 jobs and debts of £2.38m.



### End Note

As these final two cases show, fraud is not a victimless crime. Not only have organisations lost significant amounts of money, innocent employees have lost their jobs and communities reliant on the services these companies provide have lost that support.

Therefore, it is essential that we all remain vigilant to the possibility of fraud being perpetrated either against the Council or our partner organisations and that any suspicions are raised at the earliest opportunity.

# Insurance Risks

## 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.

### OCCUPIERS' LIABILITY



#### CHILDREN'S SCHOOL PLAYGROUNDS – SUPERVISION

*Cooper (a child, by her litigation friend, T Marks) v Northumberland County Council*, **01.12.16, Newcastle County Court**

The claimant, C, was a five year old student at a school for which the defendant, D, was responsible. C was climbing on fixed turning or "rolling" bars, when she fell, sustaining an injury.

C claimed damages from D, alleging her injury was caused by D's negligence and/or breach of duty under the Occupiers' Liability Act 1957. C's allegations included failure to operate a system to supervise the children using the bars, failure to provide adequate instruction in how to use them, and failure to warn of the danger of attempting to walk on the bars.

D denied liability. Its defence included that C had received proper instruction in how to use the bars, C had admitted trying to stand on them despite instructions not to and the children were adequately supervised. Further, the bars were not defective; they were regularly inspected and had been in situ for many years without any similar incidents.

There were no adult witnesses, and precisely how C fell was unknown. The court held that, given the weekly instructions in how to use the playground equipment, C would have known how to use the rolling bars but C had knowingly used them incorrectly.

The court held that the level of supervision was adequate – three staff supervising fewer than 90 children in the same age group. The standard of the playground equipment was also adequate. The claim was dismissed.

#### COMMENT

This ruling highlights the question of school playground equipment and the supervision of children using it. It focuses on the importance of being able to produce evidence that the equipment had been inspected appropriately, it was properly maintained, appropriate risk assessments had taken place, it was appropriate to the age group of the children using it and children had been sufficiently instructed in how to use it. Further, this claim emphasises the importance of being able to demonstrate adequate levels of supervision. As the court stated, it is not "practical to assume that every child can be monitored at every second regardless of the supervision system in place".

### OCCUPIERS' LIABILITY



#### SCHOOL DOOR CLOSING ON CHILD'S HAND – FORESEEABILITY

*O'Leary (a child, by her litigation friend B O'Leary) v Oxfordshire County Council*, **13.01.17, Oxford County Court**

The claimant, C, and her brother attended a primary school for which the defendant, D, was responsible. C had paused at the doorway to her classroom when her brother shut the door, trapping C's middle finger in the hinge. C, aged five, sustained injuries to her finger for which her mother, on her behalf, claimed damages from D. She alleged negligence and breach of duty under the Occupiers' Liability Act 1957. Her allegations included that D should have carried out risk assessments of the school's doors and that doors posing a risk of injury should be fitted with protective devices.

D denied liability, contending that the door was a "normal door", posing no particular risk of injury.

The judge considered relevant case law, including *Smart v Gwent County Council* (1991, Court of Appeal) and *Ashford v Somerset County Council* (22.11.2010, Yeovil County Court). The judge said that a door is an everyday object. Parents do not risk assess their doors at home or put finger guards on them. Parents must ensure their children negotiate doors safely.

The judge said that C had moved between classrooms many times without injury. At age five, C would have known not to put her fingers in door hinges. A risk assessment of the school doors would not have identified any particular risk of injury. The judge noted that, protectors have since been fitted to the school doors, but this did not constitute evidence of any breach of duty by D. The claim was dismissed.

#### COMMENT

This ruling reiterates that not every foreseeable risk of injury to children must be guarded against. A child's home is unlikely to be risk assessed for hazards such as trapping fingers in doors, drawers, cupboard doors, windows, and standard car doors. Parents should teach children about such risks, but a person of any age may catch their fingers in a door hinge.

While every effort has been made to ensure the accuracy of these reports, this publication is intended as a general overview and is not intended, and should not be used, as a substitute for taking legal advice in any specific situation. Neither Zurich Municipal, nor any member of the Zurich group of companies, will accept any responsibility for any actions taken or not taken on the basis of this publication.

## HIGHWAYS

**PEDESTRIAN'S COLLISION WITH ROAD SIGN – STATUS OF VERGES***Knights v Northumberland County Council, 22.09.16, Newcastle County Court*

One dark evening in January 2014, the claimant, C, was walking his dogs along a grass verge at the side of an unlit lane, when he collided with a road sign. He sustained a laceration to his forehead for which he claimed damages from the defendant highway authority, D, alleging negligence and breach of duty under the Highways Act 1980.

The road sign displayed a silhouette of an adult and child, warning motorists of pedestrians in the road ahead. C alleged it stood five feet/150cms from the ground and it was not marked or lit to warn C of it.

C further alleged the highway was in a dangerous condition due to the sign constituting a trap, the height of the sign should have been adjusted to prevent it from amounting to a nuisance on the highway, the sign posed a foreseeable risk of injury to pedestrians, and D had failed to follow its own guidance in its Traffic Signs manual.

D denied liability but admitted the sign was sited at the height alleged. D had not received any report of any similar incidents in at least the preceding 12 months, and the sign had been in situ for many years.

The judge noted that C is familiar with the lane and knew of the presence and location of the sign. He usually wore a head-mounted torch but had not done so on the evening in question.

The judge said that as D had sited the sign in the verge, the verge forms part of the highway. However, a verge is not akin to a footpath, and D was not under a duty to maintain it as such.

The judge noted that another sign, sited on the verge approaching the end of the village, is lower than the sign in question and would present a similar danger to pedestrians. The judge held the verge was not intended for pedestrians, nor could D have expected pedestrians to walk along it. D was not, therefore, under a duty to fit the sign at a higher level.

The judge dismissed the claim but said that, had he been required to address contributory negligence, he would have held C 60% to blame. C was negligent in failing to wear his head torch, and being familiar with the route and the presence of the sign, yet walking straight into it.

The judge would have awarded C £12,000 (on a full liability basis) for the residual scar to his forehead.

**COMMENT**

This county court ruling briefly considers the circumstances under which a verge may form part of a public highway maintainable by a highway authority under its s.41 duty. The judge said that, where the highway authority has sited "road ware" on the verge, such as bollards and road signs, the verge will form part of the highway. However, generally, unless there is clear evidence indicating a verge is used as a footpath, a verge will not be subject to the same standard of maintenance as a public footpath. Each case will have its own particular features.

## HIGHWAYS

**ALLEGED TRIP IN POTHOLE – INCONSISTENT AND UNVERIFIABLE EVIDENCE***Power v Wirral Metropolitan Borough Council, 16.10.16, Birkenhead County Court*

The claimant, C, said he tripped and fell due to a pothole in the road, sustaining injuries for which he claimed damages from the defendant highway authority, D.

C alleged negligence and breach of duty under the Highways Act 1980 (the Act). His allegations included failure to repair the defect despite inspecting it five weeks earlier. His claim included £8,000 loss of earnings for an alleged lost opportunity to take up a labouring job.

D denied liability. It argued that the inspection C referred to was carried out competently, with no relevant defect found. D relied on its statutory defence under s.58 of the Act, contending it operated a suitable inspection system. Alternatively, D argued that, if held primarily liable, C's injuries were caused by his own negligent failure to take reasonable care.

The court held that C's account of how his accident occurred was inconsistent and not credible. D had tried unsuccessfully to contact the person who had allegedly offered C a labouring job, but he did not attend trial. The court therefore rejected the job offer allegation.

D asked the court to make a finding of fundamental dishonesty against C. C's counsel argued that, while the loss of earnings claim may have cast doubt on C's credibility, D had not proven that C had been fundamentally dishonest. The court rejected D's application but held that C had not proven, on balance, that the accident had occurred as alleged or that there was any actionable defect. The claim was dismissed.

**COMMENT**

This highlights a number of issues, including the need for highway authorities to be able to demonstrate the operation of a compliant inspection and repair system, and the importance of credible witness evidence, including that of claimants themselves. It also emphasises the importance of verifying loss of earnings claims, particularly concerning casual jobs or lost opportunities to take up job offers due to the injury. The inability to contact the alleged prospective employer is likely to cast doubt on that part of a claim.