

## TRAFFORD COUNCIL

**Report to: Accounts & Audit Committee**

**Date: 11 February 2014**

**Report for: Information**

**Report of: Director of Finance**

### Report Title

**Insurance Performance Update Report 2013/14**

### Summary

This report provides an update on insurance performance during 2013/14.

The estimated gross cost of the insurance function (excluding schools) for 2013/14 is £1.201m, comprising £0.396m of premium costs and £0.805m provision for claims. This compares to a gross expenditure in 2012/13 of £1.595m.

The current insurance contract expires in 2014 and the Council is in the process of tendering its insurance portfolio. A hardening of the insurance market in the last 3 years is likely to see an increase in premium; this has been reflected in the 2014/15 budget.

As at 31 December 2013 the Council has received 233 liability claims which compares with 427 for the whole of 2012/13. The reason for the fall in claims numbers is, in the main, due to the milder winter.

Total cost of claims settled for the first 9 months of 2013/14 was £0.437m with the average claim cost running at £4,966. This compares with £1.323m for total cost of settled claims and the average cost of settled claim at £10,934 for 2012/13.

Repudiation rates on highway claims for the first 9 months of 2013/14 have increased: repudiation levels are at 79% compared to 74% in 2012/13.

### Recommendations

That the report be noted.

Contact person for access to background papers and further information:

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Background Papers: None

## 1. Introduction

- 1.1 Following on from the report sent to committee in June 2013 the purpose of this report is to provide an update on:

Performance in respect of highway claims and other major claims;

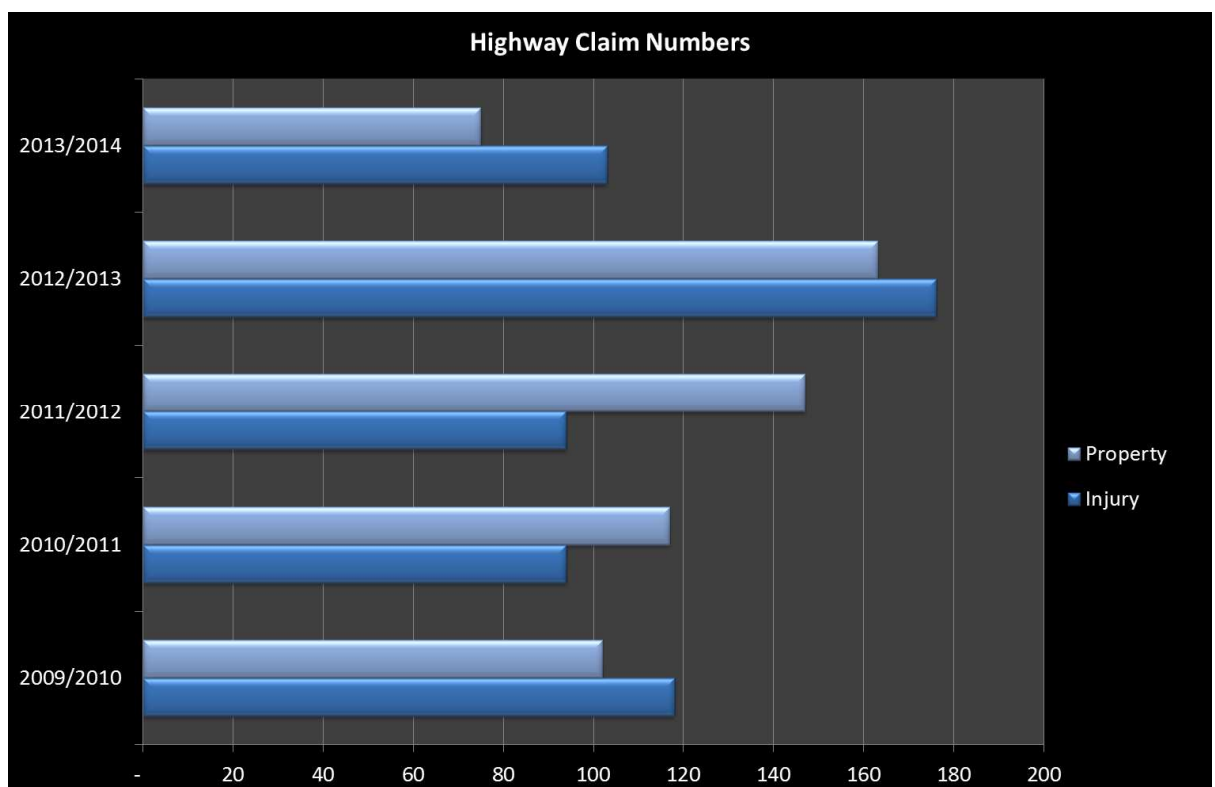
The new Ministry of Justice Reforms and the implications on the Council;

The current budget position.

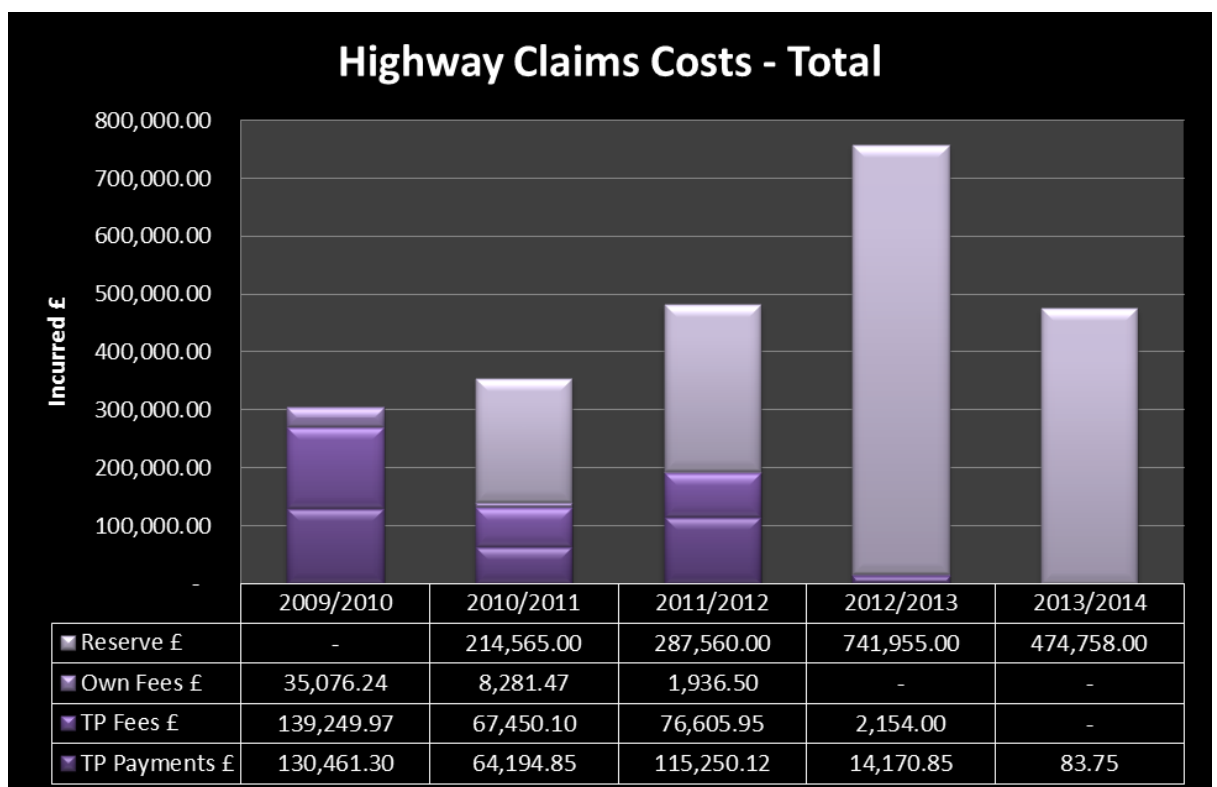
## 2. Insurance Performance

- 2.1 A Claims Activity Report is presented in Annex A. This provides a detailed analysis comparing 2012/2013 with the first three quarters of 2013/2014. This includes claim numbers and cost of settled claims in period by class of claim. The average cost of settled claims has decreased; this is due to two large claims being settled in 2012/2013.

- 2.2 As at 28 January 2014 the Council had received 233 liability claims compared to 427 for the whole of 2012/13 which saw a large increase in claim volume. That increase may be attributed in part to the new legislation affecting the claims process, with solicitors maximising the number of claims under the old costs regime (see section 3). Additionally the combination of extensive gritting, ice and heavy rainfall causing deterioration in the road surface resulted in an increased number of vehicle claims. Claim numbers in 2013/14 have broadly reverted to previous levels as shown in the chart below.



- 2.3 Whilst current claim numbers in 2013/14 are significantly lower than 2012/13, particularly property damage claims, injury claim numbers are already above pre-2012 levels and this situation is being monitored. The majority of these are repudiated but it is the intention to roll-out an injury claim form for self-represented claimants (See Para 2.9) with a view to control this claim volume.
- 2.4 Of the 233 claims received in 2013/14 70% are highway claims, with the remainder split between parks (11%), education and property services (10%) and the final 9% spread over remaining services. In terms of insurance activity highway claims account for the majority of liability claims against the Council and will be the focus of this report. A full update on other liabilities will be included in the year-end report.
- 2.5 The Council's positive approach in defending claims and effective internal claim handling processes has resulted in claims costs being reduced significantly from the previous five years and repudiation rates have increased. The latest information shows that rates are increasing with 79% of settled claims to date in 2013/14 being repudiated. This compares to 74% in 2012/13.
- 2.6 Whilst this shows the position for recently settled claims it is useful to consider the extent claims are repudiated for insurance policy years. The period from 2004 to 2009 the Council paid on average approximately £750,000 a year on highway claims and during this period 56% of claims were successfully defended. In more recent policy years between 2009 and 2012 the Council will pay no more than an average of £380,000 a year with 80% of claims being successfully defended.



- 2.7 In more recent policy years a significant number of claims remain open and reserves are held against these claims until settlement. The current totals when compared to the figures last reported to the Committee as at 31/03/2013 show an overall reduction in the 'total incurred' (the estimated total cost of claims in a policy year). For example, the estimated cost of claims in 2012/13 has reduced by £198k which is due to claims being successfully defended.

Policy Year	Total Incurred £	Total at 31/03/2013 £	Movement +/- £
2009/2010	304,787.51	314,723.00	(9,935.49)
2010/2011	354,491.42	373,692.00	(19,200.58)
2011/2012	481,352.57	507,942.00	(26,589.43)
2012/2013	758,279.85	955,884.00	(197,604.15)

- 2.8 During 2013 a Highway Property Damage Claim Form has been introduced to send to members of the public who have damaged their vehicles due to potholes in the highway network. The form is designed to capture all the relevant information required to investigate a claim at the outset and this saves time on administration by streamlining the claim process. It also informs the claimant of the claim process and the Council's responsibilities under the Highway Act 1980. This manages the expectations of claimants and many forms are not returned as the claimant is unable to demonstrate the Council has acted negligently.
- 2.9 Early indications are that this has been a successful initiative with 36 forms sent out with 19 being returned. This reflects a "drop-out" rate of 47%. A further development will be to roll this out for self-represented injury claims.
- 2.10 **High value claims** tend to attract claimant solicitors no matter the merits of the case because of the potential costs reward involved. The Council has 10 on-going claims which are valued at over £50,000 each. The estimated value for these cases which reflect a mix of both highway and other public liability stands at £1,178,986 and is reflected within the current insurance provision. The claims range across a number of policy years and are investigated by specialist claims handlers/solicitors and monitored by the insurance team.

### 3 Ministry of Justice Reforms to Civil Claims Procedures

- 3.1 This year has seen the most significant changes to the Civil Procedure Rules in handling liability claims since the Woolf reforms of 1999. These changes were implemented in two stages. The first in April 2013 where fixed costs for claimant's legal representatives were introduced (see Annex B) and the second in August 2013 with the setting up of the online Claims Portal.
- 3.2 The Claims Portal is a process which requires the use of standardised information passed between claimant lawyers and insurers / compensators through a secure electronic Portal, within specific time frames, which enables key decisions to be communicated more quickly and reduces duplication.

- 3.3 Handling claims within the Claims Portal framework will mean adhering to stricter timescales than are currently in place.
- 3.4 Under the current Civil Procedure Rules we have 21 days to acknowledge a claim and 90 days to investigate and come to a decision on liability. Under the reforms this will reduce to 1 day to acknowledge the claim and 30 working days to investigate an Employer's Liability claim and 40 working days for a Public Liability claim. If liability is admitted within these time frames the claim remains within the portal and there are two further stages available to assist in achieving settlement between the parties.
- 3.5 If liability is denied and/or certain requirements of the process are not complied with the claim exits the portal and reverts to the existing civil procedure rules.
- 3.6 The reforms introduce amendments to costs which represents both positive and negative impacts for the Council;

#### **Positive**

- Claimant's solicitors will no longer be able to claim a success fee directly from the defendant (i.e. the Council), which can be up to 100%. The claimant will now have to pay the agreed success fee out of their damages.
- Claimant's solicitors will no longer be able to recover "After the Event" insurance premiums from the defendant.
- Claimant solicitors' fees have been standardised and significantly reduced.

#### **Negative**

- Payments to successful claimants for their injuries (damages) from the defendant will be increased by 10%.
- Qualified one-way cost shifting (QOCS): this means an unsuccessful Claimant will not be at risk of paying the opponents costs.
- It is expected that the new system will introduce increased litigation around the processes and timescales involved rather than the claims.

#### **3.7 Implications for Trafford are as follows:-**

As these reforms have only just come into place there is currently much speculation and conjecture on how the litigation landscape will be affected. Fixed costs will bring about a sense of proportionality to third party legal fees which is good news for the Council. The table below provides a comparison of actual third party legal costs paid by the Council compared to those that would be paid under the new arrangements.

Policy Year	Third Party Legal Fees paid by Trafford £	Third Party Legal Fees under Fixed Costs £	Third Party Legal Fee under Fixed Costs and settled in the Claims Portal £
2008/2009	457,558	165,801	133,063
2009/2010	287,929	156,256	132,574

There are clear financial incentives for compensators in settling claims within the Portal framework. Although there are also financial incentives for third party lawyers to attempt to move a claim out of the portal (i.e. slightly higher fixed costs) the introduction of the extended fixed costs framework still ensures control of costs and allows defendants to undertake a precise assessment of risk and costs exposure in those cases in which a justifiable defence exists. In the longer term the applicability of the fixed costs regime should lead to a reduction in the high ratio of third party costs to claimant's damages.

- 3.3 The Insurance Team has continually refined their claim handling procedures with the insurers to streamline this process and have already made the following changes:
- a) Updated the highways team within ETO on changes and set up an email address in conjunction with the insurers to speed up the reporting process.
  - b) Streamlined procedures for Employer's Liability claims - all such claims will now be investigated by the Council and the insurers within two weeks of receipt of claim.
  - c) Designed an Action Sheet to assist investigations for all new claims.
  - d) Registered on the Claims Portal.
  - e) The Council's insurance details are included on the Council's website to aid external Solicitors logging claims on the portal.
- 3.4 To date the Council has received around a twenty claims through the portal. The quality of information provided on these is poor. Whether this is a ploy to remove the claim out of the portal process by providing the bare minimum of information is speculation at the moment. None of the portal claims have reached settlement as of yet.
- 3.5 The insurance team will continue to monitor developments within the industry as these reforms progress.

## 4 Budget and Tender

- 4.1 The projected cost of non-schools insurance in 2013/14 is £1.201m, comprising premiums of £0.396m and provision for the cost of liability claims of £0.805m. Premium levels are broadly in line with those in 2012/13 and reflect the insurance rates negotiated with our existing insurer.
- 4.2 The provision amount set aside to cover liability claims is based on an independent actuary report. Following the latest report there has been a minor change to the levels of provision for highway claims (reduction) offset by an increase in the provision for other liability claims. This is due to a number of high value claims see 2.10. (Note – the provision set aside in 2012/13 included £0.4m in respect a scheme of arrangement set up by Municipal Mutual Insurance, a previous insurer of the Council, as a consequence of the Company being unable to finance outstanding claims. The Scheme Administrator set an initial levy of 15% to be applied to the value of claims paid out on the Council's behalf in previous years).

	2012/13 Actual £000	2013/14 Estimate £000	2013/14 Projected £000
<b>Premiums:-</b>	<b>392</b>	<b>396</b>	<b>396</b>
Casualty	179	182	182
Property	79	80	80
Fleet	125	125	125
Money, Fraud	9	9	9
<b>Provision:-</b>	<b>1,203</b>	<b>925</b>	<b>805</b>
Liability Highway	633	590	538
Liability Other	151	335	267
MMI Provision (*)	419		
<b>Gross Expenditure:-</b>	<b>1,595</b>	<b>1,321</b>	<b>1,201</b>
Less Income (Non schools DSG and DSO)	(239)	(239)	(239)
Planned transfer to/(from) reserve	(659)	(250)	(145)
Rebates	(50)	(32)	(32)
<b>Net Expenditure</b>	<b>647</b>	<b>800</b>	<b>785</b>

(\*) Payment to be made in respect of the MMI scheme of arrangement in 2013/14 in line with available provision.

- 4.3 The insurance contract with Travelers ends on 31 March 2014 and tenders are currently being evaluated. All the evidence has suggested that the local authority insurance market is hardening and also there have been examples where insurance companies have been showing less appetite for the local authority market by breaking existing long term agreements. To a certain degree this has been witnessed during the current procurement process where, although a healthy number of organisations have bid for the Council's

business, this has been done for discrete policies with only a small number of organisations making a package bid for the full range of insurance policies. The evaluation process is currently being finalised and final prices are anticipated to be in excess of the budget provision by approximately £15,000.



## ANNEX A

## CLAIMS ACTIVITY REPORT

<b>Claim Numbers</b>	<b>2012/2013</b>				<b>2013/2014 QTR 1,2 &amp; 3</b>			
	<b>HW</b>	<b>PL</b>	<b>EL</b>	<b>Total</b>	<b>HW</b>	<b>PL</b>	<b>EL</b>	<b>Total</b>
Live Claim b/f	253	87	34	374	326	75	29	430
New Claims Received	342	67	18	427	164	58	11	233
Settled Claims	269	79	23	371	305	68	9	382
Claims c/f	326	75	29	430	185	65	31	281
Net Change in Claim Numbers	73	(12)	(5)	56	(141)	(10)	2	(149)
<b>Cost of Settled Claims</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>
Claimant Costs £	370	90	297	757	94	89	17	200
Claimant Solicitor Costs £	171	174	98	443	97	65	30	192
Own Solicitor Costs £	48	9	66	123	19	26	0	45
Total £	589	273	461	1,323	210	180	47	437
No of Claims Settled at NIL	200	43	7	250	241	49	4	294
Repudiation Rate of Settled Claims	74%	54%	30%	67%	79%	72%	44%	77%
Average Cost of Settled Claims	8,536	7,583	28,813	10,934	3,281	9,474	9,400	4,966

## Ministry of Justice Reforms to Civil Claims Procedures Fixed Costs Table

	Portal		Out of Portal but Case Settles before issue			Case Issued		
	£1k-£10K	£10-£25k	£1k-£5k	£5k-£10k	£10k-£25k	Pre Allocation	Post Listing	Pre Trial
<b>Employers Liability</b>								
<b>Fixed Costs</b>	£900	£1,600	£950 + 17.5% of damages	£1,855 + 12.5% of damages over £5k	£2,500 + 10% of damages over £10k	£2,630 + 20% of damages	£3,350 + 25% of damages	£4,280 + 30% of damages
<b>Public Liability</b>								
<b>Fixed Costs</b>	£900	£1,600	£950 + 17.5% of damages	£1,855 + 10% of damages over £5k	£2,370 + 10% of damages over £10k	£2,450 + 17.5% of damages	£3,065 + 22.5% of damages	£3,790 + 27.5% of damages