

Appendix 7a

Torbay Council Claims Handling – July 2016

The Claims Handling function is undertaken by a Solicitor and a Legal Officer to a standard which has consistently been commended by internal and external auditors. On the last audit by existing insurers (December 2013), a rating of 99.4% was awarded overall.

An audit by our previous insurer led to an affirmation that “Torbay Council claims handlers demonstrate excellent technical knowledge and robust claim management resulting in many claims being repudiated without challenge”.

The Claims Handling team ensures that all public and employers liability cases are fully investigated in terms of liability, causation and quantum. This enables a comprehensive letter of repudiation to be sent often stopping the claim in its tracks. In-depth investigations of each claim including photographs, plans and statements taken at an early stage have assisted in achieving the successful repudiation of many claims pre-action and the successful defence of several litigated claims.

Last summer we have had success at trial where the claimant had sustained a serious injury following a tripping incident on the highway where no footway existed. It was alleged that the Authority were negligent and in breach of their statutory duty in failing to warn of the defect, operate a suitable repair and maintenance system and provide sufficient lighting. The claimant was unable to prove that the area was dangerous and evidence given by two of the Authority's officers was sufficient to convince the Court that in any event the section 58 defence would have been accepted.

Also in recent months two claims have been discontinued one week prior to trial - one with full recovery of costs. In the first the claimant had fallen down highway steps whilst holidaying in the area and was unable to identify any defect relying instead on the absence of a handrail and poor lighting. This was robustly defended by the Authority.

The second claim brought under the Occupiers Liability Act concerned another fall upon steps leading to a park. Again, no particular defect could be identified and following our vigorous defence the claim was not pursued to trial.

The claims section also handles vehicle damage claims submitted by way of a standard Claims Form. In the 2015 – 2016 financial year the authorities repudiation rate in respect of these claims was 85%.

The total reserves in respect of those claims mentioned above only amounted to over £200,000 resulting in a significant saving.

Over the previous 10 years the Authority has a success rate at trial of 71%, winning 15 out of 21 cases.

In terms of risk management the Claims Handling Solicitor works particularly closely with officers of the Highways Department in the systematic review and development of policy

and procedure for example in the recent revision of the Code of Practice for Highway Maintenance.

This effective working relationship has led to a significant reduction in the volume and cost of highway claims settled by payment and a decrease in the volume of claims generally. The Claims Handling Team provides ongoing input and support into the improvement of departmental practices and has also worked closely with the Authority's Arboricultural team in developing a workable Tree Risk Management Strategy.

Extract from last claims audit by Insurer – 2013.

Background

This report was prepared following an audit on the 5th December 2013 at the offices of Torbay Council insurance office in Torquay.

Audit carried out by incumbent Insurer.

Audit Objectives and Scope

The purpose of the audit was to review the Torbay District Council claims operation, in terms of its operational procedures and technical claims handling capabilities.

File Review Issues

Authority/Service Levels

- All claims are dealt with within acceptable timescales. Service levels good, responses generally being given in 24-48 hours.

Reserving

- The reserves are recorded on a realistic basis based on the information supplied and taking into account the medical evidence received. Use of case law is evident when assessing damages.

Liability

- Clear evidence of policy cover being applied, and claims being repudiated where appropriate. There are logical steps outlined in relation to the liability decision being made.

Quantum

- All files are reviewed once available medical information is available and as above use of case law and JSB clear on file

General damages

- Generally damages are consistent and in line with current values /guidelines

Special Damages

- Again evidence of calculations being made and challenged where appropriate.

File Management

- The files contain a Handling Checklist, detailing the actions required, ensuring all procedures are followed and there is clear evidence that this is being followed in all cases.

Case Management

- Good evidence of review However diary management could be improved In some areas

Fraud

- This is not an issue there are measures in place to identify fraud.

Leakage

- None evident on the files reviewed.

Agreed Recommendations and Action Plan SUMMARY

Full cooperation was provided by the Council staff and claims handlers with open and honest discussions in place regarding process and procedures.

Generally and as mentioned in the previous audit the files are very well maintained and robust procedures are in place as far as case management is concerned. There is evidence that diaries are kept updated but one case could be closed earlier after receiving no reply from claimants or their solicitors. In addition on some claims files, notes could be made on a separate sheet or typed rather than written on the correspondence.

Very effective efforts are evident to secure all the appropriate information and documentation.

It is clear there are good lines of communication between departments and decision making is prompt. Effective measures are clear with regard to securing all the appropriate details for claims including advice /witness comments and co-operation from highways in particular is obvious on the files

There is excellent evidence of a robust and determined process in relation to dealing with and reducing claimants solicitors costs including the use of independent costs experts where required.

Overall the files are well handled and correct decisions on liability and quantum are demonstrated.

The report is divided into the following areas:

Executive Summary

Operational Issues

File Review Issues

Agreed Recommendations and Action Plan

Audit Opinion

In accordance with the audit rating definitions the audit rating is Overall **Effective but some minor improvement required.**

A Total of 160 points were available and the authority scored 159 giving a score of 99.4%

We highlight the following areas for attention which are listed in order of importance:

Diary Management is a minor issue found in one file that needs addressing in terms of closure of files