

Highway claims - explained

Background

Statutory duty

Cheshire East Borough council is the Highway Authority for all roads and footways that are maintainable at public expense within the Borough of Cheshire East, excluding those roads that are the responsibility of Highways England (essentially motorways). We discharge our maintenance duties through Cheshire East Highways (CEH) as our service provider.

This means that under Section 41 of the Highways Act 1980, the council has a statutory duty to maintain the fabric of the public highway. However, provided that the council takes reasonable steps to do this, it is in a position to defend claims under Section 58 of the Act.

The council's [policy](#) of regular inspections and the subsequent actions to repair are designed to meet that duty and demonstrate in court that the council takes a responsible attitude to its duties.

Courts consider the reasonableness of a council's approach to maintenance (i.e. response times to repairing defects) and determine if the council has complied with its own policies.

Third party claims

When the council receives a claim from a third party relating to damage or injury occurring on the highway, it will usually relate to an alleged breach of its statutory duty to maintain and inspect.

The council is indemnified against high value third party claims (above a specified level) through a commercial insurance provider.

Where the council believes it has complied with its Statutory Duty, it will liaise with its insurance provider and gather the necessary evidence requested by the insurer's solicitor.

Any awards against the council below the insurance policy excess are funded through the council's Insurance budget. The costs associated with gathering evidence are funded through Highways' budgets.

The council's repudiation rate for third party claims is typically in the mid-90% region, which is very high and among the best authorities in the country. However, this only demonstrates that the council is addressing its Statutory Duty. It does not mean our roads are in good condition.

The cost of claims

Where we do pay out on claims, most are "below deductible" (i.e. our 'excess'). This amount is typically relatively low. CEH indemnifies the council for the cost of claims where they have not provided services as required. This is assessed on a case-by-case basis.

The real cost in claims is defending them and remaining compliant. This is the cost of carrying out inspections and addressing defects we become aware of. There are also the costs of processing the claims and maintaining insurances that are there to protect us against high value claims.