

The Risk Factors

A view about claims and information management

Richard Hayes C Eng FIHE DMS
APSE Associate Trainer and
Interim Manager



Risk- The Jury is still out

Risk and Liability Review

Our current response

An underlying problem

Technology to assist?





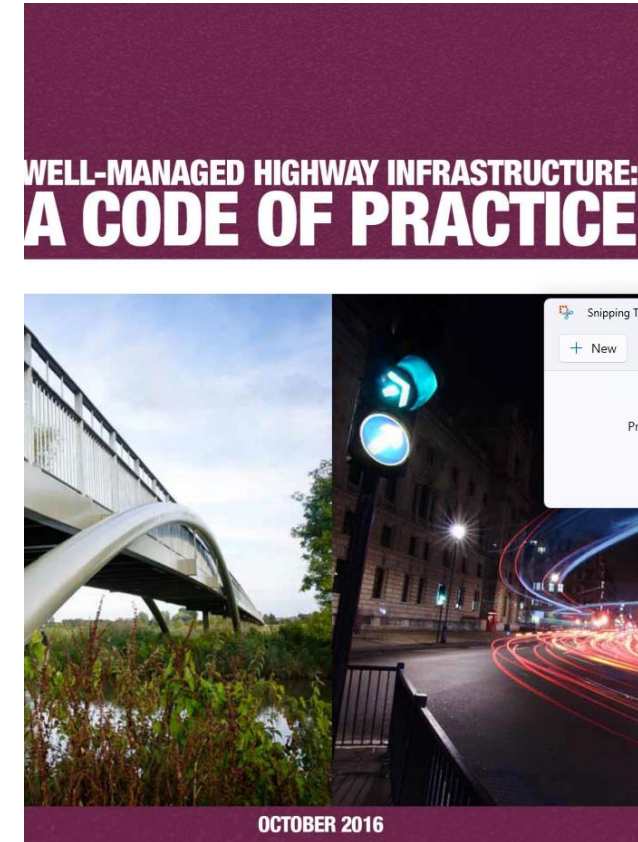


The UK Roads Leadership Group (UKRLG) launched a survey on potential updates to the national code of practice - *Well-managed Highway Infrastructure*.

The deadline for responses was 17 February 2023.

Are you utilising improved/new technology to assist in your systems of highway inspection or condition survey following implementation of the code and what benefits has this achieved, if any?

Do your existing systems and software support implementation of recommendations and have you reviewed your highway maintenance management systems as a result?



The Highway Inspectors Board launched a review in 2023 on potential updates to the national code of practice - *Well-managed Highway Liability Risk*

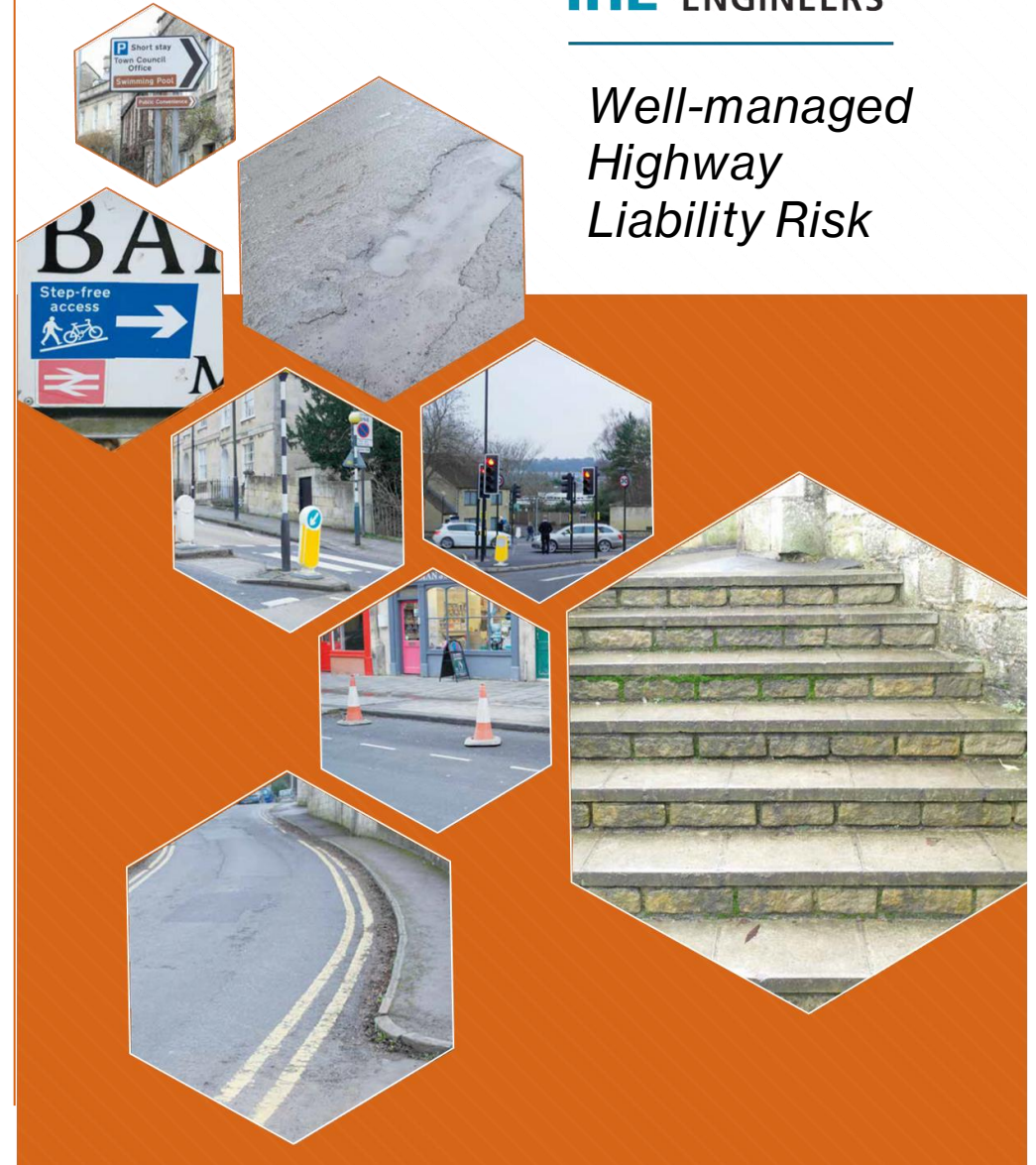
Key issues to be considered

Terms of reference:

- To review *Well managed Highway Liability Risk*
- To review guidance to further support Asset Management approach to risk and liability (in conjunction with review of Well Managed Highway Infrastructure)



Well-managed Highway Liability Risk





ALARM Survey 2022

Average highway maintenance budgets up 4% from 2021

The average shortfall in the 2021/22 carriageway budget has increased by nearly 50% to £6.4 million per authority

The one-time catch up cost (to bring the network up to a manageable condition) has increased by 23% on 2021 to £12.64 billion and would take 9 years to complete



A councillor has defended his move to fix potholes on local routes after the council told him to stop.

Luke Mason, who represents the Coulby Newham ward in Middlesbrough, said his DIY job had left the roads in "a far better state" than they were.

The Conservative representative said the council was coming under "ever-increasing pressure", with demand for maintenance "outstripping supply".

Middlesbrough Council said repairs had to be done to "appropriate standards".



‘RSTA calls for agreed national standard for repairing potholes’ – *Highways Magazine* August 2016

Highway authority	Pothole intervention level
Perth & Kinross	60mm depth
Gloucestershire	40mm depth x 300mm width
Worcestershire	40mm depth x 200mm width
Bath	30mm depth
Hounslow, London	75mm depth (urgent response)
Warwickshire	100mm (28 day response) 50mm depth (repair within 6 months)
Trafford	40mm depth
Herefordshire	All potholes, regardless of depth

How to get the council to cough up for pothole damage

Drivers will be all too familiar with the unnerving sound and bone-shaking judder of their car hitting a pothole. Britain's road surfaces are deteriorating and insurers are warning that December's cold snap could cause the number of potholes to soar even further.

The number of pothole claims made by motorists has gone up by a third since 2016, according to data from Admiral, the car insurer.

Meanwhile, the cost of pothole damage has surged by 16pc since 2021 and the average cost for repair is in the low thousands of pounds.

The insurer has warned drivers that the effects of last month's icy conditions could cause similar levels of road surface destruction as the "Beast from the East" storm in 2018, when pothole claims more than doubled.

With the RAC finding that six in 10 drivers believed the condition of local roads was worse than a year ago, this spells further woe for frustrated motorists.

A pothole typically forms when water seeps into small pre-existing cracks in the road surface and then freezes and expands in cold temperatures. When the weather thaws, the ice melts, leaving gaps in the surface that are further broken down by passing traffic.

The responsibility for fixing potholes, and for general road maintenance, is often in the hands of local councils, which – if shown to have been negligent in keeping roads

PAYOUT
£8.9m
Compensation paid to drivers by councils in 2021-22; most claims related to damage caused by potholes

properly maintained – could be liable to pay for your car repairs. Local councils in England and Wales paid a total of £8.9m in road user compensation claims in the financial year to March 2022, with 78pc of claims specifically pertaining to potholes. However, it can be difficult to make them cough up.

Brian Gregory of the Alliance of British Drivers says getting pothole compensation is "not an easy process". He adds: "Local authorities and councils [are] strapped for cash anyway, they're looking for any way that they can raise revenue rather than spend it."

But there are ways that you can maximise your chances of success.

Gary Rycroft of Joseph A Jones & Co Solicitors recommends collecting as much evidence as possible of both the pothole and the damage to your car in order to provide the strongest case possible to the council. "Pho-

tos of the pothole to show its size and depth, and a plan to show its location, are a really good idea – throw everything at it," he says.

"You will also need coherent evidence of the damage to your vehicle or your own injuries, as well as details of the costs of repairs or any medical treatment you have had. Keep receipts or other evidence like bank statements."

Local roads, B roads and some smaller A roads are maintained by local councils in England, Wales and Scotland, so they will be the body responsible if your car comes a cropper on a local pothole on these types of roadway.

Motorways and larger A roads are maintained by National Highways.

Mr Rycroft says it is a good idea to demand proof from the authority that they were doing their job. "Write to them to report the issue and at the same time ask if they knew there was a problem in that location," he says.

Admiral recommends that motorists specifically ask for copies of highway maintenance schedules and reports of incidents within 14 days of the accident, which will help to demonstrate that either the highway hasn't been properly maintained or a reported issue has not been addressed.

You are entitled to fair compensation if the council or National Highways has failed in its duty to keep the road in a fair state of repair, so, if the offer from the authority does not cover your costs, don't be afraid to negotiate.

Mr Rycroft says: "If your evidence is strong, stick to your guns and don't be afraid to negotiate a settlement."

"It's worth knowing that authorities frequently defend these claims. If they can show they have a good road maintenance programme and weren't aware of the pothole, it may be a valid defence. That's one reason why we all need to report them," he adds.

Admiral says the chances of settlement are higher if the pothole has already been reported and the council has not already acted.

If your claim is rejected by the council, taking it to court is a last resort. However, the process can be costly and time consuming, and may be worthwhile only if the damage to your vehicle is significant.

You should seek legal advice before escalating your claim.

Genevieve Holl-Allen



GETTY IMAGES

▲ Local roads are repaired by councils; National Highways is responsible for motorways

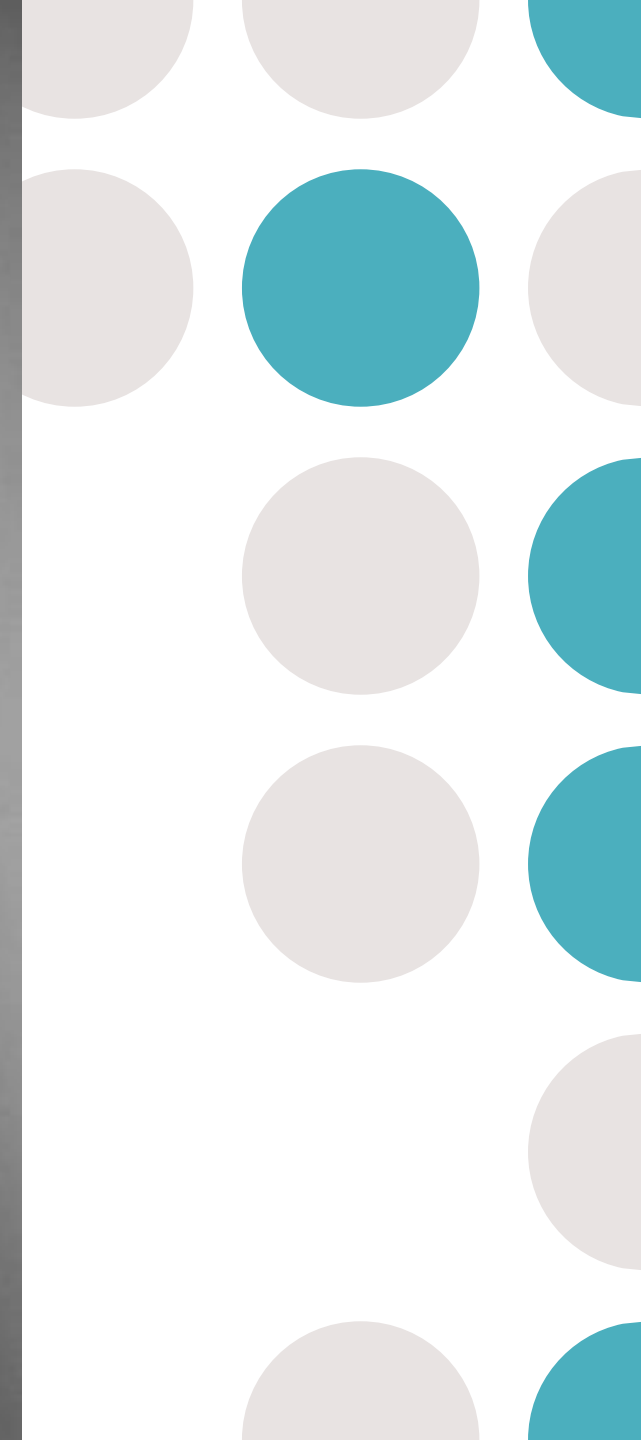
ble to pay for your car repairs. Local councils in England and Wales paid a total of £8.9m in road user compensation claims in the financial year to March 2022, with 78pc of claims specifically pertaining to potholes. However, it can be difficult to make them cough up.





Fraudulent claims

- Making fraudulent compensation claims is morally acceptable to many people
- 55% of claims thought to be opportunistic
- $\frac{2}{3}$ of claims contain an element of fraud
- Fraudulent claims could be:
 - Fictitious incident
 - Incident not as alleged
 - Exaggerated injury



Risk Guidance Review context

COVID 19

backlog of Court hearings

settlements out of court

Technological improvements

training review

Underlying trends



I wasn't sure which ones to use. So I put them all out...



Narrow trenching

Narrow Trench= An opening over 60 mm and up to 300 mm wide and over 1 m long.”



Supervision- changes to Inspector training

To be able to ensure that fees and non-compliance charges are consistently applied and enforced

To be able to ensure that contractors are compliant with NRSWA and Permit regulations

To be able to ensure that appropriate inspections are carried out correctly and recorded accurately

To be able to demonstrate appropriate knowledge of other relevant Codes of Practice and legislation including TMA 2014, Local HAUC guidance and Local permit Schemes

To be able to demonstrate a standard and consistent approach to compliance

To be able to recognise such risks that may occur when working on the highway and to identify and employ the measures required to ensure personal safety of those employed and other highway users



Technology – a help or hindrance



FUTURE TRENDS

More data – Mobile sensors, IOT, vehicle data, traffic flows, accident statistics – Joining the dots.

Data sharing/Open data, drivers much more informed



richardhayes@ymail.com

