

Final Internal Audit Report

Highways Statutory Defence

January 2019

Distribution: Executive Director of Place (Final only)
 Director of Public Realm
 Head of Insurance Risk and Corporate Programme Office
 Network Management Manager
 Head of Highways (Interim)
 Service Manager
 Insurance Manager

| Assurance Level | Recommendations Made | |
|-----------------|-----------------------|------------|
| | Substantial Assurance | Priority 1 |
| Priority 2 | | 3 |
| Priority 3 | | 1 |

Confidentiality and Disclosure Clause

This report ("Report") was prepared by Mazars LLP at the request of London Borough of Croydon and terms for the preparation and scope of the Report have been agreed with them. The matters raised in this Report are only those which came to our attention during our internal audit work. Whilst every care has been taken to ensure that the information provided in this Report is as accurate as possible, Internal Audit have only been able to base findings on the information and documentation provided and consequently no complete guarantee can be given that this Report is necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

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Please refer to the Statement of Responsibility in Appendix 3 of this report for further information about responsibilities, limitations and confidentiality.

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Executive Summary

1. Introduction

- 1.1 The Council is under a duty to maintain public highways under s.41 of the Highways Act 1980. The Council is afforded a defence to actions against the Council for failure to maintain the highways under s.58 of the Highways Act 1980. The Council is able to rely on this defence provided that it had taken such care as reasonably required to ensure safe passage. This includes having an inspection and maintenance regime in place and whether the Council knew the condition of the highway would have been dangerous.
- 1.2 The objectives, methodology and scope are contained in the Audit Terms of Reference at Appendix 1.

2. Key Issues

Priority 2 Issues

Highways inspection and maintenance procedure documents are out of date (**Issue 1**).

The Highways asset management plan is out of date (**Issue 2**).

Sample testing found that some inspections were too soon after previous inspections and some were later than would be required (**Issue 3**).

The priority 3 issue is included under item 4 below.

3. Actions and Key Findings/Rationale

| <u>Control Area 1: Legislative, Organisational and Management Requirements</u> | |
|---|--|
| Priority | Action Proposed by Management |
| 2 | <p>The manual was revised in May 2016 and under the current code of practice remains germane until 31st October 2018. Currently we are reviewing the manual and it will reflect the new Code of Practice for Well Maintained Highways coming into effect on 1st November 2018.</p> <p>Metis has met with Service Manager and the Senior Engineer (Highways) has already commented on the revised edition which includes for risk based approach.</p> |
| | <p>Detailed Finding/Rationale – Issue 1</p> <p>Key procedural and policy documentation should be up to date, especially in accordance with the Well Managed Highways Infrastructure code of practice. To ensure the Council acts on a risk based approach whilst maintaining the highways infrastructure this document should be up to date. This will assist the Council in defending claims which may cause financial or reputational damage.</p> <p>Examination of the Highways Inspection Maintenance Procedure document, dated May 2016, noted that it was acknowledged that the procedures were under review and would result in a risk based approach in line with the requirements of the Well Managed Highways Infrastructure code of practice.</p> <p>There is a risk to the Council that the Service will not act in compliance with the code of practice which may have a negative consequence.</p> |
| Responsible officer | |
| Service Manager | November 2018 |
| Deadline | |
| | November 2018 |

| Control Area 1: <u>Legislative, Organisational and Management Requirements</u> | |
|---|---|
| Priority | Action Proposed by Management |
| 2 | <p>An exercise to review our Hierarchy is currently being done and is expected to be finalised before the end of October 2018. Once this is completed, all our highway documents will be updated.</p> <p>To help ensure the Council achieves its corporate aims relating to the highway, there are a number of objectives that need to be met to ensure management of the highway is kept focused. These objectives are contained within the Highway Asset Management Plan. Asset management helps ensure best practice is achieved when managing long term investment in highways infrastructure. Alongside this, there is a requirement for the Council to adopt a risk based approach in accordance with the Well Managed Highways Infrastructure code of practice. This allows the Council to not only defend highways claims, but to also achieve its highways asset management objectives.</p> <p>Examination of the Highways Asset Management Plan, dated May 2015, noted that this had not been updated to reflect updated targets and the adoption of the required risk based approach.</p> <p>There is a risk to the Council that, where Council objectives are not updated in the form of an Asset Management Plan, management will be undertaken in an inefficient manner and that claims will not be defensible.</p> |
| Responsible officer | Deadline |
| Service Manager | November 2018 |

| Control Area 2: Highways Safety Inspections | |
|--|--|
| Priority | Action Proposed by Management |
| 2 | <p>The proposed management action regarding inspection has been implemented (October 2018) with regards highway inspections. We are now using Confirm, which generates the inspection due date on all the highways inspectors handheld devices and they then filter the inspections due for their area. This also means that the Senior inspector can monitor all the inspections due and when they have been carried out. The outstanding due inspections stays on the system until the inspection is carried out.</p> <p>All quarterly, six monthly and annual inspection if missed due to weather, holidays, sickness etc. should be carried out within the first 2 weeks of the following month. Missed monthly inspections will be carried out as soon practicable. This is as stated in the Highways Street Inspection regime document.</p> <p>With regards to the example given in your email with regards to a gap of 52 days between a monthly inspection, I have spoken to the senior Highways Inspector and this was due to sickness</p> |
| | <p style="text-align: center;">Detailed Finding/Rationale – Issue 3</p> <p>Monthly inspections should be completed in a timely manner to ensure that where a claim is brought against the Council, it can be defended on the basis the Council has a proper inspection regime in process.</p> <p>Examination of the inspection documents for one of the sample of roads tested, where monthly inspections are expected, found that the inspections completed from April 2018 onwards were completed on:</p> <ul style="list-style-type: none"> - 4th May 2018; - 31st May 2018; - 8th June 2018; - 30th July 2018; and - 30th August 2018. <p>Completing the June inspection on the 8th June means that only 8 days had passed since the previous inspection (on 31st May), and that it was 52 days before the next inspection was completed (30th July). In the event of a claim being made against the Council around this time, it would be difficult to defend a claim on the basis that a robust inspection regime was in place.</p> <p>Where inspections are not undertaken in a timely manner, there is a financial risk to the Council where defences to claims will be limited.</p> |

to the inspector in that area. Normally the Snr inspector would cover the monthly inspections if an inspector is off sick but for some reason this road was not picked up.

Responsible officer

Deadline

Service Manager

November 2018

4. Priority 3 Recommendation

| Recommendation | Findings |
|--|--|
| <p>1) SharePoint's search engine is not all embracing, if the inspector has made slight changes to the address it will not be picked up in a search. It could mean that the record is on SharePoint but not in format of the search query.</p> <p>Going forward and this is mentioned in 2016 Inspection Manual.</p> | <p>In order to successfully defend claims, the Council must be able to evidence that inspections were carried out. Documents confirming the inspection route and any defects scheduled for repair should be uploaded to SharePoint to ensure these are retained and readily available to the whole team.</p> <p>Examination of the SharePoint records for a sample of 10 roads found that in 3 cases, copies of the inspections could not be located at the time of audit. However, copies of these inspections were subsequently provided.</p> <p>Where inspection documentation is not retained, there is a risk that the inspection may not have occurred and any claims may not be defensible.</p> |

TERMS OF REFERENCE

Highways Statutory Defence

1. INTRODUCTION

- 1.1 The Council is under a duty to maintain public highways under s.41 of the Highways Act 1980. The Council is afforded a defence to actions against the Council for failure to maintain the highways under s.58 of the Highways Act 1980. The Council is able to rely on this defence provided that it had taken such care as reasonably required to ensure safe passage. This includes having an inspection and maintenance regime in place and whether the Council knew the condition of the highway would have been dangerous.
- 1.2 As part of the agreed 2018/19 Internal Audit Plan, an internal audit of the Statutory Defences Against Highways and Other Claims area was identified to be undertaken.

2. OBJECTIVES AND METHOD

- 2.1 The overall audit objective is to provide an objective independent opinion on the adequacy and effectiveness of controls / processes.
- 2.2 The audit will for each controls / process being considered:
- Walkthrough the processes to consider the key controls;
 - Conduct sample testing of the identified key controls, and
 - Report on these accordingly.

3. SCOPE





- 3.1 This audit will examine the Council's arrangements in relation to the Highways Statutory Defence, and will include the following areas:

| Control Areas/Risks | Issues Identified | | |
|---|----------------------|------------------------|---------------------|
| | Priority 1 (High) | Priority 2 (Medium) | Priority 3 (Low) |
| Legislative, Organisational, and Management Requirements; | 0 | 2 | 0 |
| Highways Safety Inspections; | 0 | 1 | 1 |
| Highways Asset Management; | 0 | 0 | 0 |
| Receipt and Assessment of Claims; | 0 | 0 | 0 |
| Lessons Learned; and | 0 | 0 | 0 |
| Management Reporting. | 0 | 0 | 0 |
| TOTAL | 0 | 3 | 1 |

DEFINITIONS FOR AUDIT OPINIONS AND RECOMMENDATIONS

In order to assist management in using our reports:

We categorise our **audit assurance opinion** according to our overall assessment of the risk management system, effectiveness of the controls in place and the level of compliance with these controls and the action being taken to remedy significant findings or weaknesses.

| | | |
|---|-----------------------|---|
|  | Full Assurance | There is a sound system of control designed to achieve the system objectives and the controls are consistently applied. |
|  | Substantial Assurance | While there is basically a sound system of control to achieve the system objectives, there are weaknesses in the design or level of non-compliance which may put this achievement at risk. |
|  | Limited Assurance | There are significant weaknesses in key areas of system controls and/or non-compliance that puts achieving the system objectives at risk. |
|  | No Assurance | Controls are non-existent or weak and/or there are high levels of non-compliance, leaving the system open to the high risk of error or abuse which could result in financial loss and/or reputational damage. |

Priorities assigned to recommendations are based on the following criteria:

| | |
|--------------------------------|---|
| Priority 1 (High) | Fundamental control weaknesses that require the immediate attention of management to mitigate significant exposure to risk. |
| Priority 2 (Medium) | Control weakness that represent an exposure to risk and require timely action. |
| Priority 3 (Low) | Although control weaknesses are considered to be relatively minor and low risk, action to address still provides an opportunity for improvement. May also apply to areas considered to be of best practice. |

STATEMENT OF RESPONSIBILITY

We take responsibility to the London Borough of Croydon for this report which is prepared on the basis of the limitations set out below.

The responsibility for designing and maintaining a sound system of internal control and the prevention and detection of fraud and other irregularities rests with management, with internal audit providing a service to management to enable them to achieve this objective. Specifically, we assess the adequacy and effectiveness of the system of internal control arrangements implemented by management and perform sample testing on those controls in the period under review with a view to providing an opinion on the extent to which risks in this area are managed.

We plan our work in order to ensure that we have a reasonable expectation of detecting significant control weaknesses. However, our procedures alone should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify any circumstances of fraud or irregularity. Even sound systems of internal control can only provide reasonable and not absolute assurance and may not be proof against collusive fraud.

The matters raised in this report are only those which came to our attention during the course of our work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of our work is not and should not be taken as a substitute for management's responsibilities for the application of sound management practices.

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