

Play Streets Scrutiny Review – Insurance element

Report of the Insurance Manager

1. Introduction

- 1.1 In 2018, the insurance team became aware of an initiative called Play Streets where members of the public can apply for a regular road closure to give children on the street an opportunity to play out in a safe environment.
- 1.2 Following consultation with our liability insurance brokers and insurers plus engagement with other Local Authorities, Stockport MBC stipulated that the organiser of a Play Street must have their own public liability (PL) insurance cover. This cover will come at a cost to the organiser. We understand there is currently one active Play Street in Stockport and the organiser does pay for their own PL insurance cover.
- 1.3 Due to the COVID19 pandemic, the ability for children to play out has been impacted so the Play Streets initiative has been revived in Stockport. However the feedback from potential new Play Street organiser/s is that purchasing PL insurance cover themselves makes the initiative financially prohibitive.
- 1.4 This scrutiny review is asking Stockport MBC to re-review their 2018 decision in light of new information.

2. The risk considerations

- 2.1 Stockport MBC procures a public liability PL insurance policy with QBE Europe. This policy currently carries a £500k excess which is applicable to each and every claim. All liability claims below this level are funded by Stockport MBC so it is vital that we have good risk management controls.
- 2.2 The 2018 requirement for the organiser to have their own PL insurance cover was imposed for a number of reasonable and valid reasons. These are outlined below:-
 - Following approval of an event and the subsequent road closure, the management and operation of this event will be the responsibility of the event organiser/s.
 - Stockport Council do not have any involvement or control over the activity and therefore it would be unreasonable for the liability risk to fall back to the Council.
 - The Council currently operates with a considerable Public Liability excess, see above. In essence this means that as an organisation we self-insure for the majority of claims we receive.

- We have a duty to tax payers to limit the exposure of public funds to an increased risk of claims which are the result of incidents which happen outside of our control.

- 2.3 The Council accepts that we would remain responsible for any claims made where there has been an alleged breach of our duties under the Highways Act. For example if there is dangerous pothole in the carriageway and someone trips and injures themselves.

However the named organiser may be liable if the cause of the injury or damage is due to the way the event was planned or set up. This is why Stockport Council asks for organisers to have their own PL insurance cover in order to protect themselves from the risk of being personally liable to compensate a third party(s) who have suffered injury or damage as a result of their alleged negligence. An example of this type of claim could be something small in impact but high in likelihood such as child damaging a car with a scooter to something higher in impact but lower in likelihood such as a child being injured by a car due to a lack of control over the road closure.

3. Alternative proposal

- 3.1 An alternative proposal has been put forward by Stockport MBC's Transportation team which replicates the model operating at Leeds City Council.
- 3.2 Their model recommends that the organiser/s has PL insurance cover, instead of being mandatory. This recommendation then sits alongside the below indemnity clause as part of the agreement:

Insurance and liability

Under no circumstances will the Council be held liable for any injury, loss or damage arising from the organisation of a play street event. Any claims made against Leeds City Council with regard to damage or injuries caused by play street events will be passed on to the relevant organiser(s). Play Street organisers should be aware that there may be circumstances in which they would be held liable for any accidents. Leeds City Council encourages everyone involved to be sensible and respectful about other people and their property. Whilst not a requirement, it is strongly recommended that organisers should consider taking out Public Liability Insurance.

- 3.3 This proposal leaves the decision to the organiser/s to make a personal choice whether they wish to purchase their own PL insurance cover. Members of the public putting themselves forward to organise Play Streets may have no previous experience of being responsible for such an activity and/or may not fully appreciate any potential personal liability associated with performing such a task. This may make it difficult for them to make a fully informed decision whether to purchase their own PL insurance cover or not. It is the Council's duty to ensure all risks are brought to their attention in a supportive but cautionary way.
- 3.4 This alternative proposal means that Stockport MBC is agreeing to be a contingent insurer for the risk should the organiser/s chose not to purchase cover.
- 3.4 Apart from approving the road closure, Stockport MBC's involvement in managing the Play Street is limited. There is no Stockport MBC presence during the closure and all risk assessments are completed by the operator/s. There is a

potential for injury and/or damage to occur as a result of the operator/s negligence. The impact and likelihood of this risk is unknown and may be street/organiser specific.

- 3.5 If Stockport MBC moves to a model where PL insurance cover is recommended rather than mandatory, we suspect organiser/s will choose not to purchase their own PL cover, leaving the liability exposure to fall to Stockport MBC. As Stockport MBC is then insuring them against any risk, it may create more of a carefree approach to planning and managing closures. In addition, if an organiser/s behaviour is not just negligent but reckless, there may be an element of personal responsibility which Stockport MBC is unable to protect them against.
- 3.7 If Stockport MBC does choose to move to this model, they should have a mechanism for checking which organiser/s purchase their own PL insurance cover and which choose to rely on Stockport MBC's so at all times we are aware of the potential scope of the financial risk.
- 3.6 We appreciate the proposed indemnity clause does provide a right of recourse for the Council against a negligent operator/s in the event of a claim. However in reality it may not be financial beneficial nor good for our reputation to proceed with a claim against the individual to recoup our money.

4. Feedback from other Local Authorities and our Insurance Brokers/Insurers

- 4.1 We were advised that other Greater Manchester Authorities were looking to put in place a similar Play Streets model to that of Leeds Council. Namely Trafford, Bury, Manchester and Wigan. To date, only Trafford and Bury's insurance teams have replied simply stating that they are not aware of the initiative to support the insurance of these events.
- 4.2 Our insurers and brokers have provided a cautionary advice against allowing the contingent PL insurance cover for Play Streets. The lack of participation by Stockport MBC during the road closure means we have very little control over the management of the event and therefore the level of risk exposure.

5. Summary and recommendation

- 5.1 We would ask the scrutiny committee to consider closely the increased risk exposure which would fall directly on to council funds should they feel allowing the purchase of PL insurance cover for operator/s to no longer be mandatory.
- 5.2 If this is agreed, we recommend closer oversight and management controls by Stockport MBC over the Play Streets. This should include risk based inspections and sight of all risk assessment documents. This should be put in place to provide assurance that operator/s are managing the closures in line with our guidance to minimise the likelihood of an incident occurring.

BACKGROUND PAPERS

There are none.

Anyone wishing to inspect the above background papers or requiring further information should contact Sarah Cook on Tel: 0161 474 4030 or by email on sarah.s.cook@stockport.gov.uk