

PUBLIC LIABILITY INSURANCE – LEGAL BRIEFING NOTE

Report of the

INTRODUCTION

- 1.1 At its meeting on 29 March 2021 the Scrutiny Review Panel requested a legal briefing note in relation to where liability for possible incidents might arise during a closure of the road as a play street, to be provided at its next meeting on 14 April 2021.
- 1.2 The Council is both highway and traffic authority for Stockport. The primary purpose of a public highway is for the public to pass and re-pass over it and the Council as highway authority has a statutory duty to assert and protect the public's use and enjoyment of the highway network, and to maintain any adopted highways to a standard suitable for the traffic which uses them. As traffic authority the Council's statutory duty is to manage its road network to achieve (as far it can with regard to its other obligations, policies and objectives) the efficient movement of traffic.
- 1.3 However, there is provision in legislation for highway and traffic authorities to use their powers to control the use of and traffic over highways, streets and roads. For example, to permit the siting of tables and chairs on the highway in connection with the operation of restaurants and cafes, or by the use of the provisions of the Town Police Clauses Act 1847 and the Road Traffic Regulation Act 1984 to prohibit traffic on roads authorised to be used as playgrounds.
- 1.4 In the use of the highway and road network, the public needs to be mindful of other highway and road users and it is not the case that the Council is responsible for all incidents which occur on its highways and streets. In relation to the play streets schemes, where a road has been designated for play under an order or other statutory authorisation, parents still have responsibility for supervising their children at play and road users still need to have consideration for other members of the public using the highways and roads legitimately.
- 1.5 For the Council to be held liable in the event of a claim, it would be necessary for the claimant to demonstrate that the Council had failed in its statutory duty, or been negligent in the exercise of its powers. No liability would attach to the Council merely as a consequence of authorising the use of the street for play purposes under statutory powers.
- 1.6 If the Council can justify the granting of an order or authority to use a road as a playground, by demonstrating that it has considered the suitability of any particular street for that purpose in the light of any relevant policy it has, is satisfied at the measures in place to administer the event, and addressed any

concerns in the drafting of the order, then it is considered that there would be little risk of the Council being found to be negligent in authorising such use, or acting outside its statutory powers. It is understood that the Council may be concerned at reputational damage, should an issue occur which results in a claim. However, as with any other claims for accidents and incidents occurring on the highways and roads, it is often an issue between private individuals and similarly in the case of roads used as playgrounds the relevant parties would need to establish liability and call on their vehicle or household insurance to cover the cost, if possible.

- 1.7 Unfortunately, there is little or no caselaw relating specifically to the use of roads as playgrounds, possibly because there have been no or few incidents meriting a claim, or that the use of this legislation for this purpose is relatively recent.
- 1.8 There is no central government obligation for the organisers of a play street event to obtain public liability insurance and no statutory obligation for local councils to insist on it, although it is appreciated that having it in place gives the Council some level of comfort. It is understood that the premium would be around £270 per year. Dependant upon the number of residents on a street (or those in favour of the scheme at least) it could be considered affordable if the cost could be shared between residents, but the Council may prefer not to make it a condition of the scheme. The Council, however, would not be advised, in the light of advice from the insurance team, to commit to set a precedent of payment of PLI in relation to any particular scheme, although, as has been mentioned, it can assist with the provision of signs in relation to the schemes. It does seem reasonable that the Council may consider a suitable compromise being the provision of an indemnity clause and recommendation as mentioned in the report of the Council's insurance manager which was presented to the Panel at its last meeting on 29 March 2021.

2. CONCLUSION

Whilst a road is being used as a play street, liability might arise for incidents such as damage or personal injury to property or persons as a consequence of them sharing space. However, for liability to attach to the Council it would be necessary for the claimant to establish that the Council had failed in its statutory duty or been negligent in its exercise of its statutory powers, for instance, in failing to use the appropriate legislation, or to properly take into account its relevant policies, or the suitability of the road for that purpose, or not notifying the organisers of their responsibilities.

Jackie Connelly, Planning and Highways Team, Legal Services, Town Hall, Stockport.

