

EXECUTIVE

DATE: 25TH APRIL 2005

SUBJECT: INSURANCE CLAIM

REPORT BY: EXCHEQUER SERVICES MANAGER

CONTACT OFFICER: ANGELA CLARIDGE 01582 546062

IMPLICATIONS:

LEGAL	✓	STAFFING	
EQUALITIES		COMMUNITY SAFETY	
FINANCIAL	✓	RISKS	✓

OTHER

CONSULTATIONS:

COUNCILLORS CONSULTED	✓	SCRUTINY COMMITTEE CONSULTED
STAKEHOLDERS CONSULTED		OTHER

WARDS AFFECTED: ALL

LEAD EXECUTIVE MEMBER(S): COUNCILLOR HOWES

RECOMMENDATION(S)

- 1. Executive is recommended to turn down the request for settlement from insurance claimant reference number: TP2004/19130A.**

REPORT

- 2. The Council received an insurance claim from a claimant known as claim reference number: TP2004/19130A. She was driving down Stockingstone Road last July when her car windscreen was shattered by a cricket ball which had been hit from the cricket ground on Wardown Park. She is claiming £150 from the Council, which is her windscreen replacement cost. The cricket match was a community Memorial Shield event organised in honour of a deceased Luton youth. The council provided free use of the cricket ground, but had not organised the event, which was supported by Circle 33, Sports Action Zone, Sport England, Dallow Development Group & the Police. Due to the nature of the match there were a number of local clubs and players involved included some of county & national standard.**

3. Zurich Municipal, the Council's insurers, turned the claim down on the basis that they do not believe the Council can be held liable for the incident. Last September, Zurich wrote to the claimant stating;

"The Council are unaware of any previous incidents of cricket balls leaving the ground and causing damage. The event on the day of your accident was an unusual event and it would not have been reasonable to expect the Council to have incurred great cost in building special fencing to stop such an unlikely incident".

4. Our five-year contract for insurance cover with Zurich Municipal includes insurance claims handling and we always accept their professional advice. At the time the claimant received Zurich Municipal's repudiation of her claim, she turned to her Councillor for assistance.

5. At her Councillor's request, Zurich Municipal were asked to revisit their justification for turning the claim down. Their representative's comments, quoting legal precedent, for turning the claim down were:

"This is a classic Stone v Bolton (1952). In this instance there appears to be no record of previous similar incidents and the cricket ground has been in situ for about 50 years. Apart from judicial precedent, we also have reasonable foreseeability defence as well as the relevance of costs. In the light of the above, I would uphold our decision on liability. The Stone v Bolton case is old, but deals with negligence. In Stone v Bolton the ball was hit over the fence six times in twenty-eight years. We have no records of any other incidents here".

6. The Councillor has also produced other law reports, which he claims demonstrate precedent that the claim should be settled in the claimant's favour, however Zurich Municipal disagrees. From an officer viewpoint this is the final position, and no payment should be made. However, the Councillor is not satisfied with this, and has asked the Executive, who has ultimate responsibility in relation to insurance, to make a decision.

LEGAL IMPLICATIONS

7. There are the following legal implications to this report as agreed with the relevant solicitor in Legal Services on 1 April 2005. Legal precedents in similar cases, which have contributed to Zurich Municipal's decision making process, are referred to in the main body of the report.
8. If the claim is not paid the Claimant could issue County Court proceedings against the Council (which would be referred to the Insurers to defend) or complain to the Financial Services Ombudsman who deals with insurance complaints.

FINANCIAL IMPLICATIONS

9. The cost of settling the claim is £150, however the Executive should be mindful of setting a precedent for further claims. The Finance Manager, Corporate & Customer Services department on 31.03.2005, cleared this report.

RISK IMPLICATIONS

10. If this claim is settled in the claimant's favour, the risk is that other claimants, who've had a claim turned down by the Council's insurer, will also appeal to the Executive.

COUNCILLORS CONSULTATIONS

11. Portfolio holder, Cllr Howes consulted.

OPTIONS

12. The claim is settled in the claimant's favour.
13. Zurich Municipal's decision is upheld - the claim is not settled.
14. The claimant approaches the event's organisers for recompense in place of the Council.

BACKGROUND PAPERS

15. Insurance policy documentation held by Gloria Johnson-Ashman ext 6105.