



Title	The Public Management of Liability Risks
Authors(s)	Halliday, Simon, Ilan, Jonathan, Scott, Colin
Publication date	2011-05
Publication information	Halliday, Simon, Jonathan Ilan, and Colin Scott. "The Public Management of Liability Risks." Oxford University Press, May 2011. https://doi.org/10.1093/ojls/gqr009 .
Publisher	Oxford University Press
Item record/more information	http://hdl.handle.net/10197/6738
Publisher's statement	This is a pre-copy-editing, author-produced PDF of an article accepted for publication in Oxford Journal of Legal Studies following peer review. The definitive publisher-authenticated version, The Public Management of Liability Risks, Oxford Journal of Legal Studies (2011) 31(3): 527-550, first published online 2011-05-17 is available online at http://dx.doi.org/10.1093/ojls/gqr009 .
Publisher's version (DOI)	10.1093/ojls/gqr009

Downloaded 2026-05-01 23:37:33

The UCD community has made this article openly available. Please share how this access benefits you. Your story matters! (@ucd_oa)



© Some rights reserved. For more information

THE PUBLIC MANAGEMENT OF LIABILITY RISKS

Simon Halliday, University of Strathclyde and University of New South Wales

Jonathan Ilan, University of Kent

Colin Scott, University College Dublin

This is a pre-copyedited, author-produced PDF of an article accepted for publication in Oxford Journal of Legal Studies following peer review. The definitive publisher-authenticated version is available online: Oxford Journal of Legal Studies, 31(3) 527-550 (doi:10.1093/ojls/gqr009)

ABSTRACT

Contemporary discussions of the relationship between negligence liability and the provision of services by both public and private organisations frequently advert to the emergence of a 'compensation culture'. Despite empirical evidence that compensation culture claims are somewhat inflated, an anxiety persists that risks of tortious liability may still undermine the implementation of public policy. Concerns about the potential negative effects of liability on public administration frame the problem in various ways. First, there is an anxiety that public authorities may over-react to liability risks by becoming excessively risk averse. Secondly, there is a fear that compensation claiming will divert financial resources away from service delivery and towards the payment of insurance premiums and compensation awards. Thirdly, there is the fear that insurance companies will, as 'risk bullies', curtail public service activities. And, finally, there is the suggestion that risk management, including legal risk management, is becoming the dominant mode of government decision-making to the exclusion of professional judgement. This article addresses these concerns through a set of empirical case studies about the management of liability risks associated with road maintenance services. Although our findings suggest that public authorities respond to liability risks in a variety of ways, we found only limited evidence of the above concerns. In general terms, it was a case of public authorities being risk aware and responsive as opposed to risk averse.

1. INTRODUCTION*

Contemporary discussions of the relationship between the law, and in particular negligence liability, and the provision of services by both public and private organisations frequently advert to the emergence of a ‘compensation culture’. Media distortions of litigation rates and compensation awards contribute to an image of compensation claims spiralling out of control and of the tort law system being abused.¹ Public anxieties about the development of a compensation culture have also been fuelled by reports estimating that its cost to society was around £10B each year for the UK² and between IR£0.66 and 1.12B for Ireland.³ Significantly, however, despite empirical evidence that general compensation culture claims are somewhat inflated,⁴ an anxiety persists that risks of tortious liability may still undermine the implementation of public policy.

Concerns about the potential negative effects of liability on public administration are diverse and frame the problem in various ways: first, there is an anxiety that public authorities may over-react to liability risks by becoming excessively risk averse in their management of public services.⁵ Second, there is a fear that compensation claiming will

* We are grateful to Jeff King and Maurice Sunkin for helpful feedback on a draft of this article. The article is based on the findings of the research project, ‘A Compensation Culture? A Comparative Investigation of the Risk Management of Legal Liability Risks in Public Services in Scotland and Ireland’. We are grateful to our funding agencies, the Economic and Social Research Council (Award Reference RES-062-23-0492) and the Irish Research Council for Humanities and Social Sciences, for their support of the research.

¹ W Haltom and M McCann, *Distorting the Law: Politics, Media and the Litigation Crisis* (Chicago University Press, 2004); K Williams, ‘State of Fear: Britain’s “Compensation Culture” Reviewed’ (2005) *Legal Studies*, 499-514; A Morris ‘Spiralling or Stabilising? The Compensation Culture and Our Propensity to Claim Damages for Personal Injury’ (2007) *Modern Law Review* 70(3), 349-78.

² Actuarial Profession, ‘The Cost of Compensation Culture’
<<http://www.actuaries.org.uk/sites/all/files/documents/pdf/lowe.pdf>> (accessed 26th November 2010)

³ Irish Business and Employers’ Confederation, *National Survey of Personal Injury Claims 2000*, (IBEC, 2001)

⁴ Better Regulation Task Force, *Better Routes to Redress* (Better Regulation Task Force, 2004); R Lewis, A Morris and K Oliphant, ‘Tort Personal Injury Claims Statistics: Is there a compensation culture in the UK?’ (2006) *Torts Law Journal*, vol. 14, pp. 158-75.

⁵ See, for example, Better Regulation Task Force (n 4); House of Commons Select Committee on Constitutional Affairs (Third Report, Session 2005-6, The Stationery Office, 2006)

undermine public policy by diverting financial resources away from service delivery and towards the payment of insurance premiums and compensation awards.⁶ Third, there is the fear that private insurance companies will, as ‘risk bullies’, effectively become private regulators of public authorities and curtail certain public service activities.⁷ And, finally, there is the related suggestion that risk management, including legal risk management, is becoming the dominant mode of government decision-making to the exclusion of professional judgement.⁸

One of the difficulties faced by UK and Irish scholars and policy-makers alike is that there is a dearth of empirical evidence about how public authorities manage the liability risks inherent in public service provision.⁹ The only major study of the impact of liability on public administration, including the impact of liability in negligence, by Charles Epp, focused mainly on the USA.¹⁰ It concluded that an alliance of reform-minded public sector professional networks and lawyers engaging in rights activism brought about a policy framework of “legalized accountability” in the US, whereby public authorities internalised compliance with legal norms as a routine mentality of good policy and practice. However, the extent to which Epp’s findings are applicable outwith the USA is open to question, not least because other jurisdictions, including Ireland and the UK, have less of a history of tort law being used as a tactic of social activists seeking political change.¹¹ Indeed, in his

⁶ See, for example, C Harlow, *State Liability* (OUP, 2004); *Stovin v Wise* [1996] AC 923, 958 (Lord Hoffman).

⁷ See A Morris, ‘Spiralling or Stabilising? The Compensation Culture and Our Propensity to Claim Damages for Personal Injury’ (2007) *Modern Law Review*, 70(3), pp. 349-78.

⁸ See, for example, M Power, *The Risk Management of Everything* (Demos, 2004); M Power, T Scheytt, K Sojin and K Sahlin, ‘Reputational Risk as a Logic of Organizing in Late Modernity’, (2009) 30 *Organization Studies*, 301-24.

⁹ See Harlow (n 6).

¹⁰ C Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State* (Chicago University Press, 2009).

¹¹ See L. Mather, ‘Lawyers and Solicitors Separated by a Common Legal System: Anti-Tobacco Litigation in the United States and Britain’, in D Engel, and M McCann (eds) *Fault Lines: Tort Law as Cultural Practice* (Stanford University Press, 2009).

comparative look at British policing, Epp found that his model of legalized accountability was less evident.¹² Further, despite the significance of Epp's work, the scope and design of his study leaves some of the above-noted compensation culture fears unexamined.

It is against this background that this article explores the public management of liability risks in the UK and Ireland. The article addresses the compensation culture fears noted above through a set of case studies which examined empirically how local authorities in Scotland and Ireland managed the liability risks associated with the provision of a public roads maintenance service. In terms of the incidence of compensation claims against local authorities generally, the provision of a roads service is amongst the riskiest of all activities. Roads represent the sector which attracts the highest volume of compensation claims and the highest financial payout to claimants. The Accounts Commission for Scotland, for example, has reported that as many as seven out of ten liability claims made against Scottish local authorities related to road defects.¹³

Our findings suggest that public authorities respond to liability risks in a variety of ways, including measures which seek directly to reduce the likelihood of liability as well as actions calculated to mitigate the consequences of liability when it arises. However, we found only limited evidence of the concerns outlined above. Of course, given our case study approach, we can only account for the behaviour of the local authorities which took part in the research project and only in relation to the delivery of a roads maintenance service. Nonetheless, our findings are valuable for assessing more generally the significance of tort law to public authority behaviour and public service delivery. We are able to use our data, first, to map out ways in which public authorities *can* manage their liability risks. Second,

¹² See Epp (n 10, chapter 7).

¹³ Accounts Commission for Scotland, *A Costly Trip? Management of Road Safety Defects* (Accounts Commission for Scotland, 1996).

our findings offer suggestions about some of the conditions that may structure which of these approaches will be stronger in a given context. Third, we are also able to use our data to explore why the above-mentioned fears about the potential negative effects of legal liability had only limited purchase in our case studies. This should equip us to assess better when and how tortious liability may pose an operational risk to the delivery of various public services.

We present our data and develop these arguments in due course. Before doing so, however, we must make some introductory remarks about the research project itself and about the law of tort/delict in Ireland and Scotland as it relates to road maintenance.

2. THE RESEARCH PROJECT

The research project was organized in two parts. The first phase involved the collection of survey data from all local authorities in Scotland and Ireland relating to (1) compensation claiming, compensation payments, and insurance provision; and (2) the delivery of road maintenance services. The second phase of the project involved a qualitative assessment of road maintenance service delivery and organizational responses to liability risks in selected authorities within the two jurisdictions. Three case studies were conducted in Scotland in 2008-9: in 'Sodor', 'Beulah' and 'Knockbrenn' Councils, fieldwork in each case being conducted over the period of one month. Observation and interviews were deployed as key research methods, supplemented by documentary analysis. Additional interviews in Scotland were conducted with a wide range of actors concerned with road maintenance and/or liability issues: lawyers employed by or representing local authorities, local authority risk managers, local authority road engineers, private insurance personnel, private

insurance claims handlers, representatives of the Society of Chief Officers of Transport in Scotland, the Public Risk Management Association, Audit Scotland and the UK Roads Liaison Group. In Ireland, four shorter case studies were conducted, also during 2008-9: in 'Bovarra', 'Riverton', 'Hillgrove' and 'Manorvale' Councils. Additional interviews were conducted with private lawyers representing plaintiffs, other local authority engineers and representatives from the monopoly public authority insurer and the Personal Injuries Assessment Board ('PIAB'), the government agency which has, since 2004, been charged with assessing and determining damages in negligence claims.

3. ROAD MAINTENANCE LAW IN IRELAND AND SCOTLAND

There are important points of difference between Ireland and Scotland in relation to their liability regimes as they affect road maintenance. In Ireland, local authorities retain a statutory immunity from liability for their operations under roads legislation.¹⁴ Liability is, instead, restricted to harm caused by breaches of the common law duty of care.¹⁵ However, even at common law a strong distinction has been maintained between the misfeasance and nonfeasance of public authorities. Authorities are not legally responsible for nonfeasance. This means that, doctrinally, no liability attaches for the failure to maintain a road. Liability arises only if a repair is carried out negligently. Longstanding arguments about the injustice of the principle of immunity for nonfeasance underpinned its abolition in

¹⁴ Roads Act 1993, s 13; Road Traffic Act 1961, s 95.

¹⁵ *Flynn v Waterford County Council* [2004] IEHC 335. Provision was made to abolish local authority immunity in respect of provision and maintenance of roads, (Civil Liability Act 1961, s 60) but the order to activate the provision has not been adopted.

England and Wales in 1961.¹⁶ Beyond the justice issues the doctrine incentivizes roads authorities to neglect the maintenance of roads.

In Scots law, a distinction between nonfeasance and misfeasance has not been recognised.¹⁷ The long-established common law position is that local authorities have a duty to maintain roads in a safe and secure condition for the passage of those entitled to use them.¹⁸ Further, like local authorities in England and Wales,¹⁹ Scottish authorities have a statutory obligation to manage and maintain roads.²⁰ Failure to meet this statutory obligation would give rise to liability. The standard of care required is that authorities must inspect carriageways and footways for safety defects in accordance with the common and accepted practice of local authorities.²¹ Where hazards are found, or are otherwise brought to the attention of the authority, it has a duty to carry out the repair to make the road safe again.²² Litigants in delictual actions commonly refer to a professional code of practice²³ to substantiate their arguments about what is the “common and accepted” practice of local authorities. Although the Scottish courts have generally been reluctant to formally rule on the exact status of the code in relation to standards of care, it is clear that certain aspects of it, particularly relating to inspection frequencies, have been accepted as indicating accepted standards and so acceptable practice,²⁴ a position similar to the English courts.²⁵ In other

¹⁶ G Dworkin, ‘Highways (Miscellaneous Provisions) Act, 1961: The Deathknell of Nonfeasance Immunity for Highway Authorities’ (1962) 25 *Modern Law Review* 336-340.

¹⁷ *Laurie v Magistrates of Aberdeen* 1911 SC 1226.

¹⁸ See, for example, *Innes v Magistrates of Edinburgh* (1798) Mor 13189 and 13967; *Black v Glasgow Corporation* 1959 SC 188; *Fraser v Glasgow Corporation* (1972) SLT 177.

¹⁹ Highways Act 1980, s 41.

²⁰ Roads (S) Act 1984, s 1.

²¹ *Hutchison v North Lanarkshire Council* (unreported, OH, 7th February 2007); *Nugent v Glasgow City Council* (unreported, OH, 24th June 2009).

²² *Gibson v Strathclyde Regional Council* 1993 SLT 1243.

²³ Roads Liaison Group, *Well Maintained Highways - Code of Practice for Highway Maintenance Management* (The Stationery Office, 2005).

²⁴ See, for example, *Hutchison v North Lanarkshire Council* (unreported, OH, 7th February 2007) and *Nugent v Glasgow City Council* (unreported, OH, 24th June 2009).

²⁵ See *Harrison v Derby City Council* [2008] EWCA Civ 583.

words, the courts have deferred to and incorporated into their jurisprudence the code's assertions about good road maintenance practice.

The standard of care owed by Scottish local authorities to road users can be broken down into three components. First, local authorities must operate an inspection system to detect safety defects. *Well Maintained Highways*²⁶ stipulates that local authorities should adopt a hierarchy of roads within its network and assign carriageways and footways to a category which reflects their priority and use. Frequency of inspections should vary, in the main, according to the category within the network hierarchy:

Insert figure 1 here

Second, local authorities must determine which defects constitute a hazard requiring repair. Unlike the issue of inspection frequency, the code is not prescriptive about the precise parameters of hazardousness. Rather, it recommends a risk assessment approach and the use of local discretion about what constitutes a safety risk. The stipulations of the code on this issue, then, are more at a level of principle than detailed rule, mirroring the approach of the courts.²⁷ The code sets out the features of a defect which should be considered when making such local individual risk assessments, including the depth, surface area or other degree of deficiency of the defect, and the volume, characteristics and speed of traffic. It then goes on to give three examples of local authority practice in England, Scotland and Northern Ireland, each of which has a safety threshold different from the others. This serves to reinforce the code's message that risk assessment based on local standards is required.

²⁶ n 22.

²⁷ Compare, for example, the approach of the courts in assessing defects in the following cases: *McClafferty v British Telecommunications* 1987 SLT 327; *McMillan v Lord Advocate* 1991 SLT 150; *McLaughlin v Strathclyde Regional Council* 1992 SLT 959; *Hutchison v North Lanarkshire Council* (OH, 7th February 2007); *Nugent v Glasgow City Council* (OH, 24th June 2009).

The third component of the standard of care owed by Scottish local authorities is the issue of how quickly a hazardous defect should be made safe. The code, in keeping with its risk assessment approach, recommends that local authorities rate defects on a 1 – 4 scale in relation to the two dimensions of risk: (1) the probability of the risk eventuating; and (2) the likely impact should this occur. The combination of these two risk measurements produces a suggested risk matrix, as follows:

Insert Figure 2 here

The matrix, as we can see, produces a risk factor associated with individual carriageway or footway defects. In turn, these risk factors correspond to a sliding scale relating to how quickly the defect should be made safe:

Insert Figure 3 here

Category 1 defects (“those that require prompt attention because they represent an immediate or imminent hazard or because there is a risk of short-term structural deterioration”) should, according to the code, be repaired or made safe immediately on inspection. Where this is not possible, they should, at the latest, be repaired or made safe within 24 hours (though the code recognises that some local authorities have adopted a target response time of 2 hours). The code does not stipulate how quickly Category 2 risks (i.e. all other safety defects) should be repaired. Rather, it states

[t]hese defects are not required to be urgently rectified, and those for which repairs are required shall be undertaken within a planned programme of works, with the priority as determined by risk assessment”.²⁸

²⁸ Roads Liaison Group (n 22) 96.

For Scottish authorities, then, the duty of care in relation to road maintenance comprises a mix of rules and principles. Liability attaches where (1) there has been a failure to comply with the rules about inspection frequency; (2) where defects have not been adequately recognised as hazardous; or (3) where safety defects have not been repaired sufficiently quickly.

Just as significant as the differences in legal doctrine between Ireland and Scotland, however, are the perceptions within local authorities in the two jurisdictions concerning legal certainty. Whilst authorities in Ireland are apparently protected by the misfeasance/nonfeasance distinction and a more general recognition by the Irish Courts of public policy reasons for not applying too extensive principles of liability to public authorities,²⁹ the local authority staff in our Irish case studies acted on the basis that outcomes of litigation were difficult to predict. Whereas some Irish authorities applied the nonfeasance doctrine in refraining from repairing certain sections of road, other authorities paid little attention to it. There was a perception amongst some that judges in the lower courts were as likely to have their judgments shaped by the justice of the particular case as by the strict application of legal doctrine. One local authority risk manager, for example, suggested to us that “the attitude of the legal system is that our public liability insurance is in fact accident insurance” and that the court’s main concern is to ensure that claimants receive payouts for accidents.

This situation contrasts with Scotland where, notwithstanding the mix of rules and principles constituting the duty of care, local authorities developed practice rules for establishing thresholds of hazardousness and repair deadlines in addition to complying with the rules of inspection frequency stipulated in the code. Sodor and Beulah Councils, for

²⁹ *Beatty v The Rent Tribunal*, IESC, 21st October 2005. See also the English House of Lords decision *Gorringe v Calderdale MBC* [2004] 1 WLR 1057.

example, used thresholds of 20mm depth for footways and 40mm depth for carriageways to determine the hazardousness of defects whilst Knockbex used thresholds of 25mm and 50mm. In relation to Sodor's repair times, repairs could be ordered for completion within 2 hours for imminent risks requiring immediate repair, or within 24 hours for serious risks requiring urgent repair. For category 2 defects, repairs could be ordered within 5 days, 28 days or up to 6 months. In Knockbex, repairs could be ordered immediately for defects "presenting an immediate and critical hazard to road users" or within 2 days for defects "presenting an urgent or imminent hazard or risk of rapid structural deterioration". Category 2 defects in Knockbex could be ordered for repair within 10 days or 20 days. Buelah's category 1 repairs could be ordered immediately or within 2 days. Category 2 defects in Beulah could be ordered for repair within 5 days.

The internal development of rules and routines in order to streamline bureaucratic action is, of course, a familiar and inevitable feature of public administration.³⁰ Significantly for our purposes here, though, in each of our case study authorities in Scotland, this mix of internal and external rules was applied in the firm conviction that such would fulfil the duty of care and avoid liability. This conviction was in part, as we noted above, because of judicial support for the code of practice, particularly in relation to inspection frequencies. More significant, however, was the fact that the vast majority of roads compensation claims in Scotland did not reach the stage of litigation. As with most civil disputes,³¹ very few compensation claims against roads departments ended up in court.³² Despite the three Scottish case study authorities receiving around 1500 compensation claims per year

³⁰ M Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services* (Russell Sage Foundation, 1980); S Halliday, *Judicial Review and Compliance with Administrative Law* (Hart Publishing, 2004).

³¹ See, for example, R Miller and A Sarat, 'Grievances, Claims and Disputes: Assessing the Adversary Culture' (1981) 15 *Law & Society Review*, pp. 252-66; H Genn, *Paths to Justice: What People Do and Think about Going to Law* (Hart Publishing, 1999).

³² Accounts Commission for Scotland, n 13.

between them, almost none of their road inspectors, all of whom had long service, had given evidence in court proceedings. In Scotland, the majority of authorities had contracted out their claims handling to firms arranged through their insurers regardless of whether the claim was for a sum below or above the insurance excess. Compensation claims generally did not proceed beyond the stage of the decision of the private claims handler. The approach of the claims handlers to local authorities' internal rules, then, was arguably much more significant to legal certainty than the approach of the courts. Our interview data suggest that claims companies were generally supportive of local authorities' internal rules about safety thresholds and repair time targets, notwithstanding that they varied from each other and, at times, from the terms of the code. It would only be when a local authority had breached its own rules, or where the rules were untenable, that the claims company would find the local authority liable for breach of duty of care. As one claims handler put it, "[the local authorities] are the experts. We can only go on the information they give us." Another noted, "if the local authority has thought about it, we'll defend it unless it's rubbish." In contrast to Irish local authorities, then, Scottish authorities operated in a quasi-private legal realm which offered legal certainty.

4. INCIDENCE OF CLAIMS

As we noted in our introduction, empirical evidence about general trends in the UK suggests that the incidence of personal injury claims has broadly plateaued over the last decade or

so.³³ However, given that local authorities have asserted an increase in claims against them in recent years³⁴ and that claims against roads departments more often relate to vehicle damage rather than to personal injury, one of the preliminary issues we wished to explore in the project was the extent to which fears about a rise in the volume of compensation claims were founded in relation to the roads sector. Though our survey data is far from comprehensive, it enables something of a picture of contemporary claiming practices to be formed. Five of Ireland's 34 local authorities and 13 of Scotland's 32 authorities were able to provide data on claims received over a 5 year period. Notwithstanding these data limitations, the evidence we have obtained suggests that the roads sectors in Scotland and Ireland have not experienced a significant increase in the incidence of claims. The data in both jurisdictions, shown in Figures 1 and 2 below, suggest a modest decline over the 5 year period.

Insert Figure 4 Here

Insert Figure 5 Here

In relation to Scotland specifically, however, a more reliable picture over a longer period is available given the existence of data from the Accounts Commission for Scotland in the mid-1990s about roads claims against Scottish local authorities. When this data is compared to our survey data from 2006, there similarly appears to have been a small decrease in rates of claiming over the period. For the three years between 1992/3 and 1994/5, individual local authorities were receiving, on average, 267, 229 and 225 claims per

³³ R Lewis *et al*, n 4; A Morris, n 1.

³⁴ Local Government Association, *Suing the Council – Helping the Citizen or Harming the Community* (Local Government Association, 2004).

year respectively.³⁵ This compares with an average of 202 claims in 2006, based on our survey data from 19 of the 32 Scottish authorities. This lends further weight to the suggestion that, in the roads sector too, fears of a compensation culture are somewhat overstated.

Nonetheless, there remains the question of how local authorities respond to the risks of liability attached to their operations, irrespective of claiming rates. It is to this issue that we turn in the next section.

5. RESPONSES TO LIABILITY RISKS

It is common within the practice of risk management to conceive of 'risk' as comprising two dimensions: (1) the likelihood of an event happening; and (2) its impact should it happen.³⁶ The potential public authority responses to liability risks can be mapped along these two dimensions. First, accordingly, there are risk management approaches which seek to reduce the likelihood of liability arising. Second, there are approaches which accept the presence of risks and focus on minimising the impact of liability when it occurs.

A. Minimising the likelihood of liability

I. Fulfilling the duty of care to public service users

³⁵ Prior to local government reorganization in 1996, roads were maintained by 12 regional authorities. Post-1996, they are maintained by 32 unitary authorities. To facilitate comparison between pre-1996 and post-1996 averages, the total claims received across Scotland as a whole were divided by 32.

³⁶ See, for example, R Ericson and A Doyle, *Uncertain Business: Risk, Insurance and the Limits of Knowledge* (University of Toronto Press, 2004), 4.

The thrust of Epp's thesis³⁷ noted in our introduction is that rights activism and reform-oriented professionalism has combined in the USA to produce what he calls a 'legalistic state' whereby legal compliance is a basic mode of public authority decision-making. If we re-frame his thesis for the purposes of this analysis, we might expect to find that the first approach to minimising the likelihood of liability arising when delivering public services is to seek to fulfil the duty of care owed to service users. This was evident in both jurisdictions in our study but was most clearly observable in Scotland where systems of proactive cyclical road inspection were ubiquitous, with a significant majority of authorities complying with the system of rules prescribed in the professional code of practice, *Well Maintained Highways*.³⁸ Unlike Epp's findings, however, rights activism on the part of lawyers played no role in promoting legal compliance. As we explore in detail elsewhere,³⁹ an increase in legal compliance amongst Scottish authorities was a result of both the perceptions of legal certainty amongst local authorities and the promotion of legal compliance by the Accounts Commission for Scotland and a local professional network (the Society of Chief Officers for Transport in Scotland - 'SCOTS').

However, although legal certainty in Scotland provided a solid platform for managing liability risk through legal compliance, it is important to note that legal certainty is something of a double-edged sword in terms of its relationship to the underlying aims of the legal doctrine. The clear rationale of both the professional code of practice and the legal standard of care in relation to road maintenance is that such systems of pro-active inspection and repair will result in a reduction of harm to road users. But the cost of legal

³⁷ n 10.

³⁸ n 22.

³⁹ S Halliday, J Ilan and C Scott, 'Liability as Regulation' *forthcoming*.

certainty is that, as it increases, so does the potential for ‘creative legal compliance’.⁴⁰ By this we mean that legal certainty is vulnerable to exploitation whereby, in the context of our study, public authorities may comply confidently with the letter of tort law while neglecting its spirit. In other words, it is possible to reduce the likelihood of liability without correspondingly minimising the likelihood of harm to potential plaintiffs.

In our case studies, we saw evidence of this in relation to both the carrying out of inspections and the execution of repairs.⁴¹ For example, there was a degree of tolerance of incomplete inspections. As one officer noted, “you’re allowed to miss things [on inspections].” He went on to say that if he detected 4 or 5 defects on an inspection and recorded such, then it could subsequently be argued that it was unlikely that he had missed a defect that would give rise to liability. The implication is that any such defect would have emerged after his inspection, thereby not triggering liability. Alternatively, given the capacity for minor defects to worsen over time, local authorities may argue that at the time of the inspection the defect was not unsafe, but only became so subsequently. Equally, Scottish authorities were tolerant of temporary repairs which were expected to fail quickly and so not prevent future harms for very long. One example observed was a footway repair in Beulah. On a routine inspection, the road workers spotted deterioration to the footway on the bend of a road in a residential area. The workmen were familiar with this defect and had already repaired it a number of times on previous inspections. The extent of the defect meant that they could only make a temporary repair. Permanent remedial work needed to be carried out by another council section. The defect was caused by buses mounting the

⁴⁰ See D McBarnet and C Whelan, ‘The Elusive Spirit of the Law: Formalism and the Struggle for Legal Control’, *Modern Law Review* (1991) 54, 848-873.

⁴¹ Unlike Epp (n 10), we were not able to use quantitative methods to determine whether, as he suggests, the extent of public authorities’ engagement with professional networks is significant for deep, as opposed to ‘creative’, compliance.

kerb when coming round the corner, causing the kerb stones to be dislodged and the footway surface to be broken up. Although the workmen repaired it again, they joked that if they returned after lunch they would find that the repair had already failed, noting “let’s fix that wee bugger for all the good it’ll do.” The point here is that although the reduction of the safety risk to footway users endured only until the temporary repair failed (which was expected to be less than 24 hours), the reduction of the liability risk to the local authority endured much longer – until the next inspection (which could be in one month, 3 months, 6 months or a year’s time) or the next complaint from a member of the public.

II. Cessation of activity which risks liability

A second and more extreme way of minimising the likelihood of liability arising is for public authorities simply to cease the activity which might give rise to liability in negligence. This is the response envisaged by those who fear public authorities may become excessively risk averse in the shadow of the law. Interestingly, in relation to the provision of a roads maintenance service, this was a response available only to Irish authorities. Scottish local authorities, as we noted above, are under a statutory duty to manage public roads and failure to fulfil this duty may give rise to liability. In Ireland, however, by virtue of the nonfeasance doctrine, local authorities could withdraw road maintenance services as a result of fear of liability. Some local authorities did adopt this approach, though they were in the minority. Most local authorities did not take such a drastic approach. Indeed, a few Irish authorities carried out pro-active cyclical road inspections to detect defects and undertake repairs, though most were reactive to complaints of poor road conditions or requests for repairs.

This approach on the part of these Irish authorities was partly a result, we suggest, of the perceptions of uncertainty about how lower courts might make their decisions. More positively, however, it was also a product of a professional commitment on the part of roads officers to the maintenance of a high quality roads network and of additional accountability pressures such as complaints systems. Tortious liability was only one of a number of accountability regimes within which the local authorities had to operate. A familiar theme of administrative justice research is that public authorities are subject to many and, at times, conflicting accountability pressures.⁴² The demands of tort law similarly have to compete with those of other accountability regimes. These other accountability regimes can weaken the grip of liability risks on public service delivery. User demands through complaints systems for road repairs often trumped the concerns local authorities in Ireland may have had about the liability risks inherent in undertaking such repairs.

B. Minimising the Impact of Liability

I. Insurance

All local authorities use insurance as part of their response to risks of liability. The traditional model was to be fully insured so that any claim against the authority would substantially be investigated and met (where founded) by the insurer. Until the early 1990s the model of insurance provision in Scottish and Irish local government was similar, in the sense that the

⁴² See, for example, C Scott, 'Accountability in the Regulatory State' *Journal of Law & Society*, (2000) 27, 38-60; D Galligan, 'Authoritarianism in Government and Administration: The Promise of Administrative Justice' in Michael Freeman (ed), *Current Legal Problems 2001 (Volume 54)* (OUP 2001); S Halliday and C Scott, 'Administrative Justice' in P Cane and H Kritzer, (eds) *The Oxford Handbook of Empirical Legal Research* (OUP 2010).

authorities were members of a mutual insurer, Municipal Mutual in Scotland (which extended to England and Wales also) and Irish Public Bodies Municipal Insurances Limited (IPB) in Ireland. Municipal Mutual was failing, in part due its inability to respond effectively to an environment of increasing claims, and was taken over in 1993 by leading general insurer Zurich Financial Services Group, and a subsidiary established called Zurich Municipal (ZM).⁴³ Consequently there is now considerable variation between Scotland and Ireland in relation to insurance arrangements. Whereas in Ireland IPB remains the public liability insurer for all authorities, at the time of our survey, ZM was the insurer for fewer than half of the Scottish authorities. AIG insured the same number of Scottish authorities as ZM (15 each) and Travelers insured the remaining two Scottish authorities.

A key aspect of the relationship between authorities and insurers concerns the level of 'excess'. The excess is the part of any settlement sum which must be covered by the insured – what is called the 'deductible' in some other jurisdictions. Our survey shows that excesses in both Ireland and Scotland were quite varied in 2007. Scotland in particular had considerable variation in excess amounts between authorities. For presentation we have banded the authorities into four categories ('High', 'Medium', 'Low' and 'No/Minimal') by reference to the amount of any excess in their contracts. Figure 6 shows the distribution of excesses on public liability insurance for all authorities in Scotland (32) and Ireland (34). The pattern reveals that the authorities in Scotland are more evenly spread between the different bands when compared to Ireland where the bulk of authorities have 'no/minimal' or 'low' excess. In Scotland only one of the authorities reported having no excess for liability and the highest reported was £300,000. A large percentage of Irish authorities have no excess, and the highest excess disclosed was €500,000.

⁴³ J Hood and S Kelly, 'The Emergence of Public Sector Risk Management: The Case of Local Authorities in Scotland' *Policy Studies* (1999) 20, 273-283.

Insert Figure 6 Here

Insert Table 1 Here

Although insurance has traditionally been a means of mitigating the impact of liability when it arises, the variation within local authorities' insurance policies allowed us to test some hypotheses about the relationship between excess levels and risk management approaches targeted at reducing the likelihood of liability arising in the first place. One hypothesis here, suggested by Hood and Kelly,⁴⁴ is that liability insurance creates an element of moral hazard to the extent that authorities lack incentives to minimize the likelihood of liability arising. Conversely, an authority which has opted for a high insurance excess might be expected to manage its operations more proactively to reduce the likelihood of liability in order to protect its own funds. The difficulty with this analysis, however, is that it reduces the complexity of a local authority to an imagined *homo economicus*, developing policy on the basis of a rational calculus. The social reality is more complicated and less predictable. In Ireland, for example, the case study authority most proactive in trying to reduce its exposure to liability was 'Bovarra Council' which had no excess at all on its insurance policy. Largely on the personal initiative of its risk control officer, it analysed its claims data to identify 'hot spots' where re-surfacing work would pre-empt further claims. In 'Manorvale Council', by way of contrast, which had a 'high' excess, similar attempts were hampered by a fragmented budgeting and decision-making structure:

⁴⁴ *ibid.*

I made a list of all the claims that this road had generated and I sent them to one of the Senior Executive Engineers. I said: “this is what you are paying out for two months alone this year, €17,500, and this is just damage to vehicles... This isn’t even personal injury claims. If things carry on the way that they are, there are bound to be some of them and then we’ll really have to pay” ... Well, apparently the order to resurface should come from the local area office...but they say they don’t have the money. Road maintenance (central) claim that they don’t have the money either. To my mind this defeats the whole point of proactive road management altogether. **(Assistant Claims Manager, Manorvale Council).**

Two of our Scottish authorities, ‘Knockbrex’ and ‘Sodor’ Councils had ‘high’ insurance excesses while ‘Beulah Council’ had a ‘minimal’ excess. All three of them, however, based their maintenance policies on the code of practice, *Well Maintained Highways*,⁴⁵ and relied on such to minimise exposure to liability. Further, this common approach to liability risk management existed despite the fact that, for internal budgetary reasons, liability costs were not directly or proportionately charged to the road departments. In other words, there were no direct economic incentives for road managers to limit their exposure to liability. Consistent with the arguments of institutionalist organizational sociology, this shows that normative pressures from professional communities can be more exacting than purely economic cost-benefit analyses.⁴⁶ As we noted above, SCOTS, the professional network of local authority road engineers, was far more significant in promoting compliance with tort law than local authority risk managers. Indeed, the local authority risk managers (who were responsible for insurance) did not, as one of them put it, seek to “micro-manage” the roads departments’ routine operations.

There is a second and contrary hypothesis about the relationship between insurance excesses and risk management approaches targeted at reducing the likelihood of liability

⁴⁵ n 22.

⁴⁶ See, for example, P Di Maggio and W Powell, ‘The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields’ *American Sociological Review* (1983) 48, 147-60.

arising. This hypothesis focuses on the attitudes and actions of insurance companies to risk control. Consistent with literature framing insurers as increasingly powerful regulators in contemporary society,⁴⁷ we might suggest that, where excesses are low, insurance companies are more likely to be 'risk bullies' and require change in public practices in order to limit financial exposure. At neither an informal nor formal contractual level did our study reveal evidence of this in relation to liability.

In Scotland, where there is a private insurance market, local authorities put out an invitation to tender for insurance services every three to five years. Our analysis of the tendering documents in two of the authorities, one with a 'minimal' excess (Beulah) and the other with a 'high' excess (Knockbex), indicated that insurance companies, for the purposes of tendering a premium, were interested in risk reduction measures only in relation to property, and not in relation to liability. By virtue of the fact that an insurance contract covers a host of issues of which liability is just one, the amount of information gathered by the local authority insurance officers during the tendering processes was considerable. The insurance companies requested a very large amount of data about local authority property and operations in order to assess their insurance risk. The information requested can be broken down into three main sections. First, they sought information about the staff profile of the local authorities. Second, they sought information about the local authorities' property profile.⁴⁸ Third, they sought information about risk control measures. However, information on risk control measures related to property insurance rather than liability insurance. For example, the insurance officers had to provide information in relation to fire

⁴⁷ See, for example, C Scott, 'Private Regulation of the Public Sector: A Neglected Facet of Contemporary Governance', *Journal of Law and Society* (2002) 29, 56-76; R Ericson, A Doyle and D Barry, *Insurance as Governance* (University of Toronto Press, 2003).

⁴⁸ Local authorities' property profiles are both large and varied, covering everything from buildings and IT facilities to ice cream vending machines, the council regalia and golf carts.

risks such as the number of sprinklers systems and smoke alarms in council properties and, in relation to burglary risks, information about CCTV cameras, anti-climb measures, and so forth. A great deal of this information related to schools which, the insurance officers indicated, were regarded as particularly high risks by insurance companies.

Insurance contracts, then, do not appear to have bullied local authorities' into minimising the likelihood of liability arising. Indeed, our study reveals only a gentle dynamic between insurance and local authority practice whereby insurers offer 'risk control' advice as an added extra to their insurance services. In Scotland, this took the form of advice about reducing the likelihood of liability through the improving of inspection systems and better records keeping. In Ireland, it took the form mainly of advice about, and support for, better claims management.

II. Claims Management

In addition to insurance, a second way of reducing the financial impact of liability is to manage the claims process towards minimising the quantum of settlements. Given the fact, already noted above, that almost all Scottish authorities contracted out claims handling, our observations here are based on our Irish data. In contrast to Scotland, many Irish local authorities process a majority of the claims received. Irish local authority claims handlers tend to identify themselves as a prime response to liability risks. Given the uncertainties of legal outcomes, particularly in the lower courts, these units or individuals effectively mitigate financial risk by ensuring that claims settle in the most expedient and cost effective manner. Early direct contact and settlement offers were highlighted as techniques which promoted lower settlement figures. Equally, the vigorous investigation and contestation of suspected spurious claims offered a stronger platform to repudiate false claims. Whilst

there was clear evidence of such practices in our case studies, the intensity of the practices varied. Further, there are grounds for suggesting that such variation would be replicated nationally. Whilst many Irish authorities have created institutional structures designed to address claims, there is considerable variety amongst them. Many authorities have created claims units, designed to offer a more systematic response to claims received and, in some instances, to feed back information from claims into maintenance operations. In a significant proportion of Irish authorities, however, there are no specific claims handlers and the investigative and administrative tasks are performed by engineers and general administrators operating at a localised 'area' level within the authorities.

III. Transferring Liability to another Party

A final practice identified in our study, one which was only evident in Ireland, was the attempt to transfer liability to another party. Irish local authorities sometimes responded to compensation claims by seeking to transfer liability to utility companies who may have worked on the relevant section of road in order to, for example, lay a telecommunications cable or fix a water pipe. If the local authority was able to identify such a utility company as having been the organisation which had worked on the section of road most recently, it would divert the claimant to the relevant utility company. Somewhat peculiarly, this sometimes involved the local authority digging up the section of road anew to be able to identify the company, thereby itself engaging in a legally risky activity.

6. DISCUSSION

Having mapped out the responses of public authorities to liability risks, it is important to stress that we do not present these as mutually exclusive. Most, if not all, public authorities will adopt various risk management approaches, seeking both to minimise the likelihood of liability arising as well as planning to mitigate its impact when it does occur. Nonetheless, our comparison between Ireland and Scotland offers some suggestions as to some of the conditions which may structure public authority responses.

Clearly, the nature of the legal regime curtails certain responses to liability risks. As we have noted, the option of precluding liability by withdrawing from service provision was not open to Scottish local authorities. Equally, certain bureaucratic arrangements concerning the management of compensation claims place limits on how public authorities may respond to liability risks. The focus in Irish local authorities on claims management was not substantially replicable in Scotland by virtue of the fact that most Scottish local authorities have contracted out this function. Our data suggests that Scottish authorities tended not to interfere with this decision-making process, though insurance companies' record of claims management would play a part in the cyclical insurance tendering process.

More broadly, what is the role which legal certainty plays in structuring the management of liability risks? It is tempting to suggest that in conditions of high legal certainty public authorities are more likely to focus on minimising the likelihood of liability arising whilst still delivering public services and, conversely, that in conditions of low legal certainty public authorities are more likely to either withdraw from certain public services to avoid liability or to focus on mitigating the impact of liability when it arises. Our comparative data, however, cannot support a conclusion to this effect and we must remain agnostic on this question on the basis of this study. Although Scottish local authorities placed considerable stress on legal compliance as a liability risk-management approach, they could

neither withdraw from service provision nor target claims management as a response to liability risk. Equally, our Irish data suggests that, even in conditions of low legal certainty, authorities may remain conscientious about seeking to fulfil the duty of care whilst nevertheless sceptical about how the courts would resolve a compensation claim.

However, our data does permit a separate conclusion about the legal certainty enjoyed by Scottish authorities: it is not simply a product of precise legal rules.⁴⁹ Much of the legal certainty enjoyed by Scottish local authorities was a product of the relationship between themselves and their claims handlers and the approach of the claims handlers to liability decision-making. The private claims handlers were supportive of the bureaucratic rules developed by local authorities in seeking to meet the duty of care. Given that they resolved the vast majority of compensation claims, this permitted local authorities to operate with a sense of legal certainty.

Our data further demonstrates that professional networks can also play a part in facilitating legal certainty. We noted above that SCOTS, a local network of Scottish roads officers, was involved in promoting legal compliance. Much more significant for the production of legal certainty, however, was the role played by a UK network of roads professionals called the Roads Liaison Group. This group was responsible for the development and publication of *Well Maintained Highways*. As we noted above, these professional standards have been supported by the courts in terms of fleshing out the standard of care owed to road users. In this sense, the professionals who are subject to the duty of care have played a role in shaping it and lending certainty to it. This is a clear

⁴⁹ See also R Bagshaw, 'Monetary Remedies in Public Law: Misdiagnosis and Misprescription' (2006) *Legal Studies*, 26(1), 4–25.

illustration of what Edelman⁵⁰ has called ‘endogenous law’ – the notion that law and organisations form part of each other. Rather than seeing law as an entirely separate and external (‘exogenous’) entity which may simply be embraced or resisted by organisations, we should see law and organisations as inhabiting ‘fields’ which overlap and penetrate each other. Just as legal norms may be received into organizational logics, so may organizational logics be received into legal norms. Courts may defer to and incorporate organizational understandings of rational modes of legal compliance.⁵¹ Where networks or communities of professionals are engaged in both the development and formal pronouncement of professional standards, they may shape the impact of tort law.

And, in light of our findings, how should we assess the compensation culture fears outlined in our introduction? In terms of excessive risk-aversion, our data certainly confirms that this is a response on the part of some local authorities. However, our data also suggests that excessively risk-averse instincts have to compete with conflicting accountability pressures. Clearly, how such conflicts are resolved will vary from context to context. Much will depend on the strength of bottom-up pressures, such as complaints systems, to continue the public service activity which gives rise to the liability risk or similar top down pressures such as performance audit or regulation. Equally, much will depend on what is at stake for public authorities should liability attach. The stakes extend beyond the financial losses associated with liability. Most organisations will additionally be concerned to protect

⁵⁰ L Edelman, ‘Overlapping Fields and Constructed Legalities: The Endogeneity of Law’ in J O’Brien, (ed) *Private Equity, Corporate Governance and the Dynamics of Capital Market Regulation* (Imperial College Press, 2004).

⁵¹ Such an understanding of the relationship between law and society has much in common with aspects of regulation scholarship. For example, on the negotiated meaning of compliance between regulator and regulatee, see B Hutter, *Compliance: Regulation and Environment* (OUP, 1997). On the ‘productive disintegration’ of regulatory law and private law, see H Collins, *Regulating Contracts* (OUP, 1999). On practices of ‘productive cherry-picking’ whereby courts selectively acknowledge and apply regulatory norms in private law decision-making see J Black, ‘Law and Regulation: The Case of Finance’ in C Parker, C Scott, N Lacey and J Braithwaite (eds) *Regulating Law* (OUP, 2004).

against reputational harm associated with legal processes.⁵² The reputational costs of liability from road maintenance operations are, arguably, less than in the fields of, for example, social work, education or policing.

In terms of the financial implications of liability risk management and the potential diversion of public resources towards insurance premiums and compensation awards, our data suggests that we should be wary of an easy calculus here. The internal financial management of insurance costs (including compensation awards) can mean that, at a departmental level, there is no direct relationship between liability costs and service budgets. In our Scottish case study authorities, liability costs were spread over the local authority as a whole. Of course, more broadly, it is certainly incontestable that where local authority resources are devoted to insurance premiums and compensation awards there will be less money in general for service provision. Equally, insurance companies, when setting premiums, will take into account an authority's 'claims history' – i.e. its record of compensation claims which resulted in damages being paid. However, there are two important points to bear in mind here. First, local authority insurance contracts are fairly comprehensive and liability is a relatively small area of coverage within the policy. In Beulah, for example, public liability insurance accounted for just over 20% of the premium. In Knockbex, it accounted for approximately eight per cent of the premium. Costs incurred as a result of claims in tort, then, could easily be marginal for the price of future premiums. Second, and more significantly, the factor which makes the greatest difference to the cost of insurance premiums is not the claims history or risk control record of the local authority, but the state of the stock market.⁵³ As one Scottish insurance officer put it, the insurance

⁵² See Epp, n 10; Power *et al*, n 8.

⁵³ See R Ericson and A Doyle, n 46.

market is like a “roller-coaster”, oscillating between ‘soft’ and ‘hard’ positions. Much of the power to influence premiums, then, is beyond the power of local authorities.

In relation to potential ‘risk-bullying’ on the part of insurance companies, making local authorities into ‘agents of prevention’ as Ericson, Doyle and Barry⁵⁴ put it, we found little evidence of it. Insurance companies certainly offered advice about how better to avoid liability, but such was only to entice local authorities to give them their business – an add-on to their insurance services which is characteristic of a ‘soft’ insurance market.⁵⁵ Equally, we found little evidence of local authority risk managers being ‘risk bullies’ or of subverting professional judgment through techniques of risk management. We found roads officers to be skeptical of the language of ‘risk management’, asserting that it is simply what they had been doing all their careers. Our Scottish data certainly confirmed that the impetus to adopt the inspection routines of the code of practice and so better comply with the legal duty of care came not from risk managers, but from the exhortations of the professional association of roads officers and the Accounts Commission for Scotland, and the risk control suggestions of insurance companies.⁵⁶

7. CONCLUSION

Deterrent theories of tort law, which stress the regulatory potential of tort law for public administration, have been criticised on the grounds that they are premised on a flawed

⁵⁴ *ibid*

⁵⁵ *Ibid.*

⁵⁶ For further details, see S Halliday *et al*, n 38.

image of the rationality of potential defendants.⁵⁷ Our data suggests that this critique of *homo economicus* should also be applied to theories which stress the operational risks posed by tort law to the implementation of public policy. There is much in the messy and prosaic quality of public administration which militates against tort law having the presumed negative and unintended effects which constitute compensation culture fears. We do not suggest, of course, that tort law is irrelevant to public administration or that it poses no operational risks. Nor do we suggest that the responses we observed to liability risks in the road maintenance sector will necessarily be replicated in other sectors of government. However, our research does demonstrate that the mundane complexities of public administration mediate the significance of liability of risks to service delivery in a host of ways, making the task of evaluating the appropriateness of state liability rather challenging. A large number of factors require to be considered when thinking, context by context, about the promise or threat of tort law: the nature of the legal regime, perceptions of legal certainty, the work of professional networks, the management of claims handling, the budgeting practices of individual public authority, the scale of reputational risk associated with liability, and so on.

Further, although our study offers a framework for the further exploration of public authorities' responses to liability risks, it leaves unanswered important questions about the relationship between the management of liability risks and the quality of public service provision - in our study a roads maintenance service. Although the Scottish legal and policy environment seems more conducive to systematic legal compliance, it is not clear whether this generates the safer, better or more responsive system for administering local road provision. Such an assessment was considerably beyond the scope of this study. Although

⁵⁷ See, for example, C Harlow (n 6) 127.

recent attempts have been made to probe the relationship between judicial review litigation in England and Wales and the overall quality of public service delivery,⁵⁸ this research agenda is still in its relative infancy and faces difficult methodological challenges. In addition to the problem of identifying cause and effect, the legal certainty which provides a platform for systematic legal compliance is, as our study shows, at the same time vulnerable to creative compliance. This serves to further reinforce the point that the relationship between the quality of public service delivery and the legal duty of care owed in the process is, unfortunately, by no means straightforward.

⁵⁸ See L Platt, M Sunkin and K Calvo 'Judicial Review Litigation as an Incentive to Change in Local Authority Public Services in England & Wales' (2010) *Journal of Public Administration Theory and Research*, 20 (suppl 2), 243-60.

FIGURES

CARRIAGEWAY		FOOTWAY	
Carriageway Category	Inspection Frequency	Footway Category	Inspection Frequency
Main Distributor	Monthly	Prestige walkway	Monthly
Secondary Distributor	Monthly	Primary route	Monthly
Link road	Quarterly	Secondary walkway	Quarterly
Local access	Yearly	Link footway	Half-yearly
		Local access	Yearly

Figure 1: *Well Maintained Highways* (Roads Liaison Group, 2005: 94)

		IMPACT			
		Very low (1)	Low (2)	Medium (3)	High (4)
PROBABILITY	Negligible (1)	1	2	3	4
	Low (2)	2	4	6	8
	Noticeable (3)	3	6	9	12
	High (4)	4	8	12	16

Figure 2: *Well Maintained Highways* (Roads Liaison Group, 2005: 98)

Category 2 (low)	Category 2 (medium)	Category 2 (high)	Category 1
------------------	---------------------	-------------------	------------

Figure 3: *Well Maintained Highways* (Roads Liaison Group, 2005: 98)

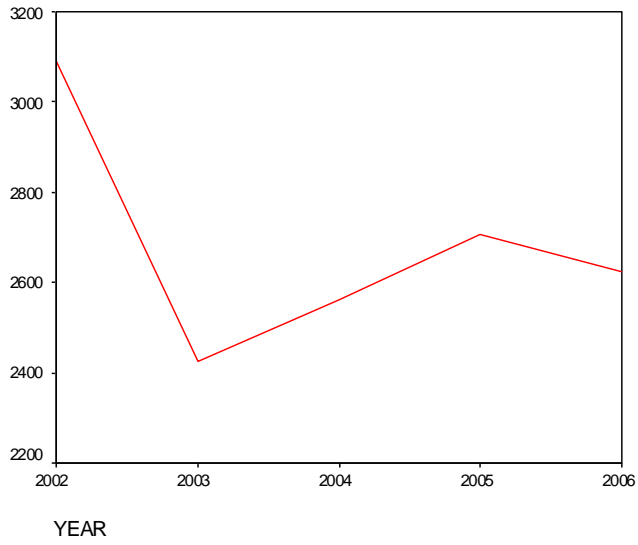


Figure 4: Claims Against Thirteen Authorities in Scotland, 2002-2006 *Source: Project Survey*

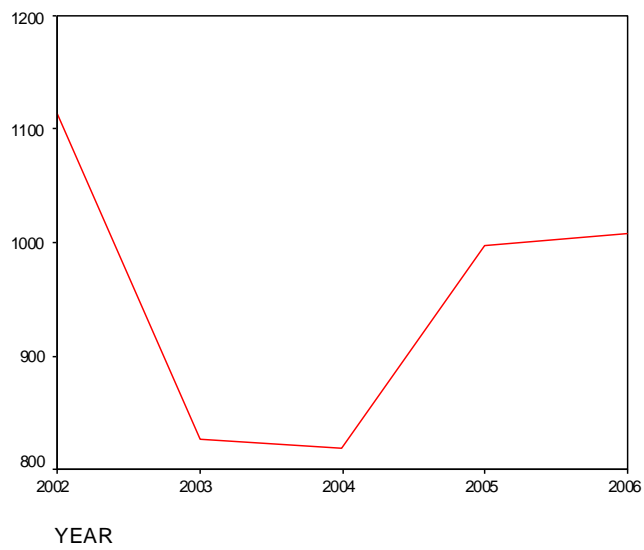
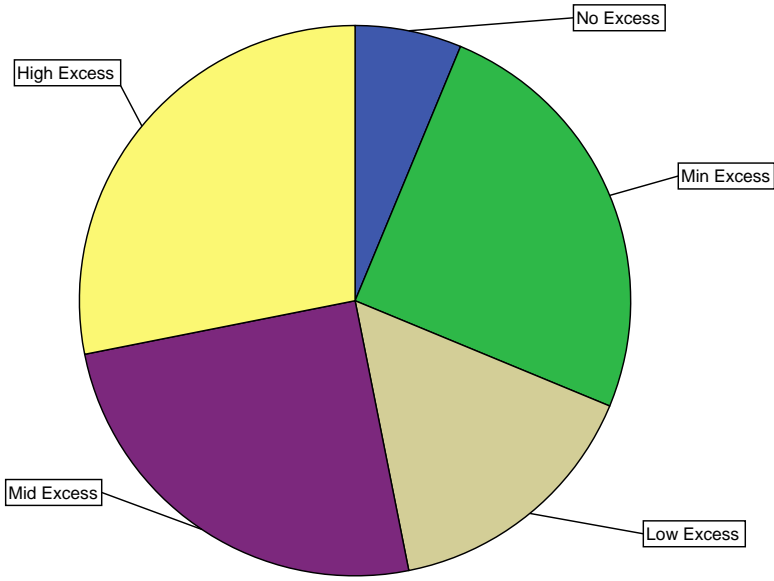


Figure 5: Claims Against Nine Authorities in Ireland 2002-2006 *Source: Project Survey*

COUNTRY: Scotland



COUNTRY: Ireland

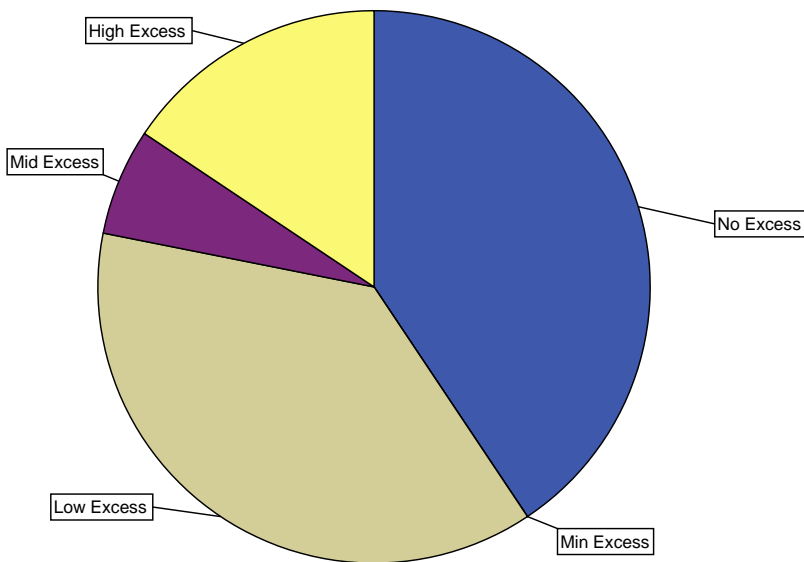


Fig 6: Banding of Insurance Excesses in Scotland and Ireland, all authorities, 2006-7

Band	Excess	
	Scotland £	Ireland €
No	0	0
Min	1-4,999	1-6,299*
Low	5,000-10,000	6,300-12,700
Medium	10,001-99,999	12,701-125,999
High	100,000+	126,000

Table 1 – Banding Scheme for Insurance Excesses