

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	TRAFFIC MANAGEMENT SUB-COMMITTEE		
DATE:	3 November 2015	AGENDA ITEM:	14
TITLE:	PUBLIC LIABILITY INSURANCE ON THE PUBLIC HIGHWAY		
LEAD COUNCILLOR:	COUNCILLOR TONY PAGE	PORTFOLIO :	STRATEGIC ENVIRONMENT, PLANNING & TRANSPORT
SERVICE:	DEVELOPMENT AND REGULATORY SERVICES / TRANSPORTATION AND STREETCARE	WARDS:	BOROUGH WIDE
LEAD OFFICER:	GIORGIO FRAMAICCO / SAM SHEAN	TEL:	0118 937 2069 / 62604 0118 937 2138 / 72138
JOB TITLE:	HEAD OF PLANNING DEVELOPMENT AND REGULATORY SERVICES / STREETCARE SERVICES MANAGER	E-MAIL:	<a href="mailto:giorgio.framalicco@reading.gov.uk">giorgio.framalicco@reading.gov.uk</a> <a href="mailto:sam.shean@reading.gov.uk">sam.shean@reading.gov.uk</a>

1. EXECUTIVE SUMMARY

- 1.1 This report summaries the current requirement for applicants to have Public Liability Insurance when working on the public highway. The key matter is whether the Council requires £10 Million Public Liability Insurance for low risk activities to bring them in line with highway works requirements or should a two tier system be brought in so that low risk activities on the public highway would require a £5 Million Public Liability Insurance cover level.

2. RECOMMENDED ACTION

- 2.1 That the Sub-Committee endorses the two tier Public Liability Insurance proposal.

### 3. POLICY CONTEXT

- 3.1 According to the delegations register, as agreed by the Council on 25 May 2010 the Head of Environment & Consumer Services in conjunction with the Head of Transport is authorised to grant Pavement Café Licences provided there are no objections.
- 3.2 To secure the most effective use of resources in the delivery of high quality, best value public service.

### 4. BACKGROUND

- 4.1 Currently the Council's Streetcare Services requires applicants to have a minimum of £10 Million Public Liability Insurance for any work carried out on, under or over the public highway, including the placing of material and plant on the public highway by a third party, for example the following:
  - Section 184 Licence - vehicle crossing construction
  - Scaffolding /hoarding licences
  - Cranes/cherry pickers licences
  - Section 171 Licence -contractor trial holes and storing materials on highway
  - Any contractor/sub - contractor working on the public highway
  - Section 38 new adoptable road construction
  - Section 278 developer road improvement works
- 4.2 Street Café Licences (on the public highway) are processed through the Licencing Team in Regulatory Services who, up until 2011, required £2 Million Public Liability Insurance cover. Improvements in the town centre resulted in the Licencing Team reviewing its terms and conditions to place tables and chairs on the public highway. As a result of the review, Public Liability Insurance cover was raised to £5 Million.
- 4.3 A benchmarking exercise has been carried out to ascertain what the Public Liability Insurance requirement is for Street Café Licences with other Local Authorities.
- 4.4 The results tabulated in Appendix A show that £5 Million Public Liability Insurance for Street Café Licences is the amount required by the majority of these Local Authorities.
- 4.5 Streetcare Services have contacted The Local Government Association (LGA) for advice; the key paragraph in their response is shown below:

*'The setting public liability insurance requirement by Local Authorities is an incidental function to the normal statutory functions (such as licensing) imposed by legislation. Accordingly it is down to each Local Authority to set the particular requirement and in so doing you would expect it to take*

*into account the normal decision making requirements (being fair, reasonable and proportionate) to the activity being licensed'.*

- 4.6 The Council's Insurance Section has also confirmed that there is no statutory basis for setting the Public Liability Insurance indemnity limit, however, based on risk assessment, there is a case for requiring a lower indemnity limit where activity on the highway is less inherently likely to give rise to a loss (street trading being one example). Other licencing conditions and inspections/enforcement act as a useful risk control measure.
- 4.7 The key question is whether the Council require applicants to have £10 Million Public Liability Insurance for low risk Planning licence activities on the public highway to bring them in line with current highway requirements or whether a two tier system be brought in so that low risk activities on the public highway remain at £5 Million Public Liability Insurance cover level?
- 4.8 Officers within the Regulatory Services team have reported that the increase in cost to the customer to seek a higher level of insurance (often from £150 to £500) is prohibitively expensive and is unnecessary. It is recognised that outdoor seating, in the right location, can add to the vibrancy of the town and a proportionate approach to insurance requirements should be found.

## 5. PROPOSAL

- 5.1 **Option 1** - to maintain the Public Liability Insurance requirement at £10 Million for all works on the public highway which will now include Street Café Licences and all other Street Trading Licences.
- 5.2 **Option 2** - to consider a two tier system for Public Liability Insurance for works on the public highway:

**Tier 1:** A requirement for £10 Million Public Liability Insurance for all 'high risk' work activity affecting the public highway, including excavation, working at height, and materials and plant placed under Highway Licences, for example the following:

- All excavation works
- All highway maintenance work
- Vehicle crossing construction works
- Works over-sailing the public highway
- Developer works affecting the public highway
- Any contractor/sub - contractor carrying our highway improvement works
- Works under Highways Licence
- Scaffolding/hoarding licences
- Skip Licences

- Cranes/cherry pickers Licences
- Planting/landscaping work

**Tier 2:** A requirement of £5 Million Public Liability Insurance for low risk activities on the public highway and non-highway licences issued under Planning, for example the following:

- Street Café Licences
- Displays
- Promotional events
- Trade Stalls

## **6. CONTRIBUTION TO STRATEGIC AIMS**

6.1 Corporate Plan Service priority: Keeping the town clean, safe, green and active.

## **7. COMMUNITY ENGAGEMENT AND INFORMATION**

7.1 The policy will be placed in the public domain.

## **8. LEGAL IMPLICATIONS**

8.1 The Highways Act 1980 requires Local Authorities to set particular requirements for licences on the public highway taking into account the normal decision making requirements (being fair, reasonable and proportionate) to the activity being licensed.

8.2 The Council may have to bear the costs of defending its policies if challenged in the courts.

## **9. EQUALITY IMPACT ASSESSMENT**

9.1 In addition to the Human Rights Act 1998 the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:-

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 No equality impact assessment is required in respect of this report.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 None - the costs of the Public Liability Insurance cover and the applications for licences are funded by the applicant. It is noted above that the customer seeking the licence would have a reduced insurance cost for low risk activities.

## **11. RISK ASSESSMENT**

- 11.1 Local Highway Authorities are required to carry out their designated statutory duties, as described in the Highways Act 1980. Risks which cannot be mitigated against will result in refusal for permissions.

## **12. BACKGROUND PAPERS**

- 12.1 Appendix A - Outcome of benchmarking on Public Liability Insurance requirement for Street Café Licences with other Local Authorities.
- 12.2 Email from Streetcare Services to LGA requesting advice regarding Public Liability Insurance requirement for Local Authorities and response received from LGA.