Footway Tripping Hazards

Report of the Executive Director of Environment, Economy and Culture

1. Summary

This Report examines the reason the Council has adopted the threshold of 20 mm as the dimension for a footway trip level difference, below which it would not be considered a safety defect. Risk of injury, public liability case law and practicality are the key issues, which have been considered in setting the threshold.

2. Background

At its meeting of 7 September 2010, Committee resolved to receive a background report on the implications of reviewing the 20 mm tolerance for trip hazards on footways, as suggested by the Exeter Highways and Traffic Orders Committee, with a view to establishing a Task Group, if necessary.

Devon County Council, along with all highway authorities in the UK, aims to maintain footways in a condition that could be described as reasonably safe for all people using them in a lawful manner. Failure to do this would be a breach of statutory duty under the Highways Act and could lead to damages being awarded to anyone who suffers loss or injury as a consequence.

To fulfil this duty the Council undertakes regular inspections of footways and repair of safety defects found, which would include trips of over 20 mm. From time to time, there will also be planned patching or resurfacing of footways to restore their general serviceability.

The dimension of 20 mm is commonly used by highway authorities in the UK to determine whether or not a trip needs urgent repair; this dimension has been set as a result of judgements made in court cases. In finding the City of Westminster not liable for injury to a pedestrian arising from a tripping accident in Oxford Street, the following remark was made in the Judge's summing up:

"The setting of a yardstick, whilst perhaps anathema to courts in identifying what happened in an accident is, it seems to me, an inevitable ingredient of inspections which have to determine whether or not a particular disparity of level needs treatment, and there is no evidence before me that 20 mm is other than an appropriate measure."

This is helpful in that Oxford Street clearly has very busy footways, which would be the highest category of footway with the highest level of risk. It may therefore be reasonable to conclude that a review by this Council would be unlikely to lead to any dimension other than 20 mm being considered appropriate for the threshold.

There is, inevitably, a marked increase in risk of injury arising from footway trips for pedestrians who are elderly. However, to vary our standards according to the expected age profile of pedestrians at any particular location would introduce a complication to the Council's policies in relation to highway safety inspections and repairs which would always be open to challenge. This could impair the Council's ability to rely on previous court judgements relating to the size of defect that would render a highway dangerous or not reasonably safe.
This is not to say that the Council is insensitive to the fact that older people are more likely to fall in the footway and hurt themselves. The selection of locations for planned footway resurfacing schemes, to eliminate trips altogether, would generally take into account any areas of increased risk in this respect.

The Council currently has a good record of successfully refuting or defending footway trip claims. Of the 1,500 claims received between 1997 and 2010, some 280 have resulted in a payment to the claimant. With payments over the period being over £1.6 million, or an average of £125,000 per year, it is important that the Council does not set itself more onerous standards that would put a strain on resources and make public liability claims more difficult to defend.

3. Financial Considerations

If a dimension smaller than 20 mm for footway trips were to be selected for urgent repairs, this would generate more reactive work for the Council, placing additional strain on the revenue budget for highway maintenance.

4. Sustainability Considerations

None arising directly from this report.

5. Carbon Impact Considerations

None arising directly from this report.

6. Equality Considerations

No change to the existing service is recommended but any improvements to footway maintenance standards would have a positive impact for older people and people with disabilities.

7. Legal Considerations

Legal liability issues are considered in the main body of this report.

8. Risk Management Considerations

The risk of pedestrians falling and being injured in the footway and the consequences for the Council are considered in the main body of this report.

9. Options/Alternatives

A range of dimensions for the depth of a footway trip that would qualify as a safety defect could be considered if the Committee decides a review is necessary. Any dimension other than 20 mm would be at odds with that generally accepted by the courts.

10. Conclusion

The current trip threshold of 20 mm is well founded in case law, and its adoption is in line with the practice of other highway authorities.

Departure from the standard would increase budgetary pressures for reactive maintenance, and could expose the County Council to greater risk from claims.

Chris McCarthy

Electoral Divisions: All
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<th>Background Paper</th>
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<td>1. England and Wales High Court (Queen's Bench Division) Decision, Owen - v - City of Westminster.</td>
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