

STATES OF JERSEY



ROADS AND PAVEMENTS: LEGAL LIABILITY IN CASE OF NEGLIGENCE (P.75/2011) – COMMENTS

**Presented to the States on 4th July 2011
by the Minister for Transport and Technical Services**

STATES GREFFE

COMMENTS

I consider the proposition to be laudable, but cannot at this time support the proposition without ensuring that the full implications of the introduction of a new Law are fully explored from a judicial, financial and technical consideration.

Most Commonwealth countries have adopted a law change that provides a solution to the intent of the proposition by imposing a common-law duty of care to maintain the highway as an absolute obligation, but then provides for a statutory defence. In Guernsey they share the same legal situation as Jersey by not permitting claims for damages against the highway authority. Whereas the Isle of Man does accept claims, but they are low in number and they have not experienced a claims culture like the UK. It is reported that the Isle of Man legal licensing laws restrict the influx of 'no win no fee' solicitors.

This situation requires investigating by the Jersey Law Commission as recommended by the Royal Court judgement of the then Deputy Bailiff, M.C. St. John Birt, in 2003, as it may provide an answer to the concerns expressed below.

Financial and manpower implications

The Deputy's claim that there are no financial or manpower implications is not correct, and evidence gathered to date demonstrates that, if the UK model were followed, substantial costs would be incurred assessing, managing and dealing with claims that would require the recruitment of additional staff. In addition, there is the risk that the introduction of such a Law could encourage the development of a local claims culture.

The true cost to TTS and the Parishes is unknown. The current non-feasence legal situation stops cases coming to the attention of the Authorities, thereby preventing an assessment of the quantum of claims from being estimated. However, what can be evidenced from the UK is that insurance premiums will inevitably rise to take account of the additional volume of claims that are likely to be received as a result of the proposition.

Law Officers have indicated that additional and significant legal representation would be required to assist Highway Authorities in defending claims.

One lesson that can be drawn from the UK experience is that, whilst additional costs are incurred in implementing systems to protect the Highway Authority from third party claims, this does not necessarily result in safer roads or better maintenance. The cost of claims and claims management comes from the highway maintenance budget, which, invariably results in less money available for repairs.

In summary, the financial and manpower implications could be significant for TTS and all the Parishes.

- The true cost to TTS and the Parishes is unknown.

- TTS and the Parishes consider that the proposition will lead to a substantial increase in compensation claims, increase parish rates and increase insurance premiums. Additional staff and training will be required to handle claims and legal representation engaged to provide a robust defence.

I shall not be supporting this proposition. The Minister therefore recommends that the proposition is rejected.