



An Insurance Officer's view of tree root claims

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Introduction

- WHBC background
- The process – how can we work better together?
 - Notification
 - Evidence
 - Mitigation
 - Repairs
 - Recovery
- Rocks and hard places - No win for local authorities

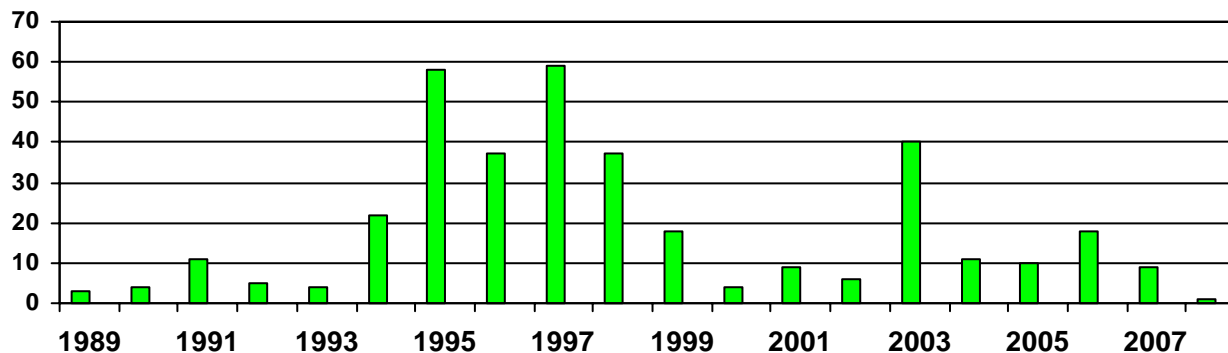
Welwyn Hatfield Borough

- Covers Welwyn Garden City, Hatfield, Welwyn & villages
- 20,240 recorded street trees, 158 tree belts, 15 conservation tree belts, 4098 mixed borders (hedges & trees), 23 woodlands
- Tree maintenance budget 09/10 - £280k
- Outstanding liabilities provision for tree root claims at 31/3/09 - £142k
- Payments on claims from Nov 07–July 09 - £370k



- No reserve - settlements met by Tree Officers budget
- No insurance so claims handled in-house
- Use own tree officers but engage external engineers
- Number of claims obviously varies & is unpredictable!

WHBC Tree root claims



Notification

- Typically standard letter, very little information
- Ideally.....

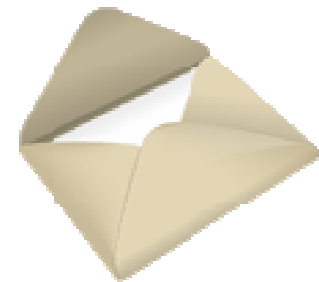
need clear identification of implicated tree

policyholder contact information

timescale for site investigation data

details of other parties involved

date on which claim notified to insurers



Evidence



- Much debate over what evidence is required to prove influence of tree
- Generally want to see localised desiccation, encroachment and seasonal movement
- Normally provided with soil analysis, root identification and eventually crack monitoring
- Remote data not always gathered, monitoring readings too far apart, level monitoring not often carried out, roots not always found

- Claimant engineer's report – more detailed information on nature & location of damage helpful (eg site sketches)
- The more conclusive the evidence, the easier the decision on mitigation
- But in some cases only minimal evidence may be required – subject to recovery position

Mitigation

- Consideration given to
 - site investigation data
 - engineer's view on cause of damage
 - tree officer's opinion on condition of tree, amenity value, capacity for reduction
 - recovery prospects & value of claim
- Decision then made to reduce or remove tree, balancing environmental, financial and reputational impacts



- Cannot look at mitigation in isolation
- Most decisions made by Insurance Officer & Tree Officer
- Pressure to have transparent decision making process, open to challenge
- Some decisions now being referred to Members



Spot the difference!



E.g...

- Mature Oak, influence proved conclusively
- Remove or face additional cost of underpinning
- Cabinet asked to make decision...



Repairs

- Most arguments on quantum relate to extent of repairs carried out
- Important for Council to be kept informed of work being undertaken
- Usually ask to see schedule asap to enable engineer to give opinion on whether repairs reasonable
- But would like early meeting with claimant engineer to agree scope of repairs attributable to tree roots
- Work required to discharge insurers obligations to policyholder not necessarily recoverable

Recovery



- In the past handled by loss adjusters – solicitors only involved if claim disputed
- Increasingly difficult for Council's to avoid liability for damage – law firmly in favour of claimants
- Communication & co-operation therefore aimed at reducing costs on both sides and promoting reasonable approach to recovery
- But insurers now appointing solicitors on CCFAs to handle recoveries

Solicitors...

- Can be involved in early stages when no legal expertise required
- Appointed as matter of course, even if claim uncontested
- Impede communication & flow of information
- Include unrecoverable costs in claim & lengthen negotiation process
- Can charge up to 100% success fee
- Place unnecessary burden on public purse



For Example....

- Straightforward claim – evidence provided of tree's influence by loss adjuster/arboriculturist
- Tree removed
- Only 1 letter received from solicitor seeking £7800 damages
- £1800 of costs unrelated to Council tree
- Offer of £5000 made in 12 days & accepted
- Solicitors costs sought in sum of £3800, including 100% success fee
- 11.2 hours claimed
- Costs bill settled at £1380

Solicitors aside.....

- Need full documentation of costs incurred – priced repair schedules, variation orders, copy invoices
- Would like unrecoverable elements taken out of claim before costs submitted – eg repainting of undamaged woodwork
- Dates when work carried out
- Confirmation when property last decorated



In General...

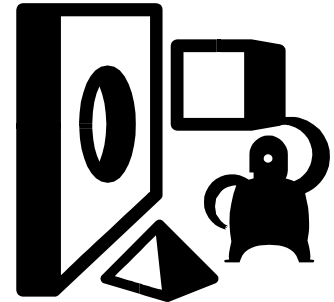
- Cannot separate mitigation from recovery – value of claim inevitably considered with ‘value’ of tree
- Difficult to standardise processes eg level of evidence for mitigation & recovery
- So some flexibility required to respond to individual circumstances
- Communication and co-operation vital for efficient & effective resolution of claims
- Use of solicitors in opposition to improving relationship between insurers and local authorities

The Rock...

- We acknowledge Trees + Clay + Building *can* = Damage
- Legal view – knowledge of trees potential to cause damage is notice damage *may* occur & therefore foreseeable
- Does not allow for unsuitable construction (shallow foundations) or other vegetation
- Even with minimal evidence of influence, liability attaches on first incidence of subsidence
- *But* number of claims compared to number of trees in influencing distance of properties is very small
- So which tree, which house?

The Hard Place.....

- What can we do to manage risk of trees causing subsidence damage?
- More regular pruning?
 - Only really viable in known problem areas
 - May control incidences of subsidence but liability can still attach
 - Can lower amenity value of tree, increase maintenance cost
 - Large canopy trees encouraged to aid urban cooling
 - Argued ineffective by claimants
- Tree replacement programme – which house, which tree?
- Only effective solution - remove all trees in influencing distance of properties!
- Not acceptable, so no reasonable means of avoiding financial burden of claims



... & The Deep Blue Sea

- Very active environmental & historical groups in Borough
- Tree Warden scheme encourages public involvement in their management
- Tree removals - very emotive issue, decisions questioned
- Reputational risks - bad press
- Policyholder pressure
- Everyone loves trees & we're the bad guys!

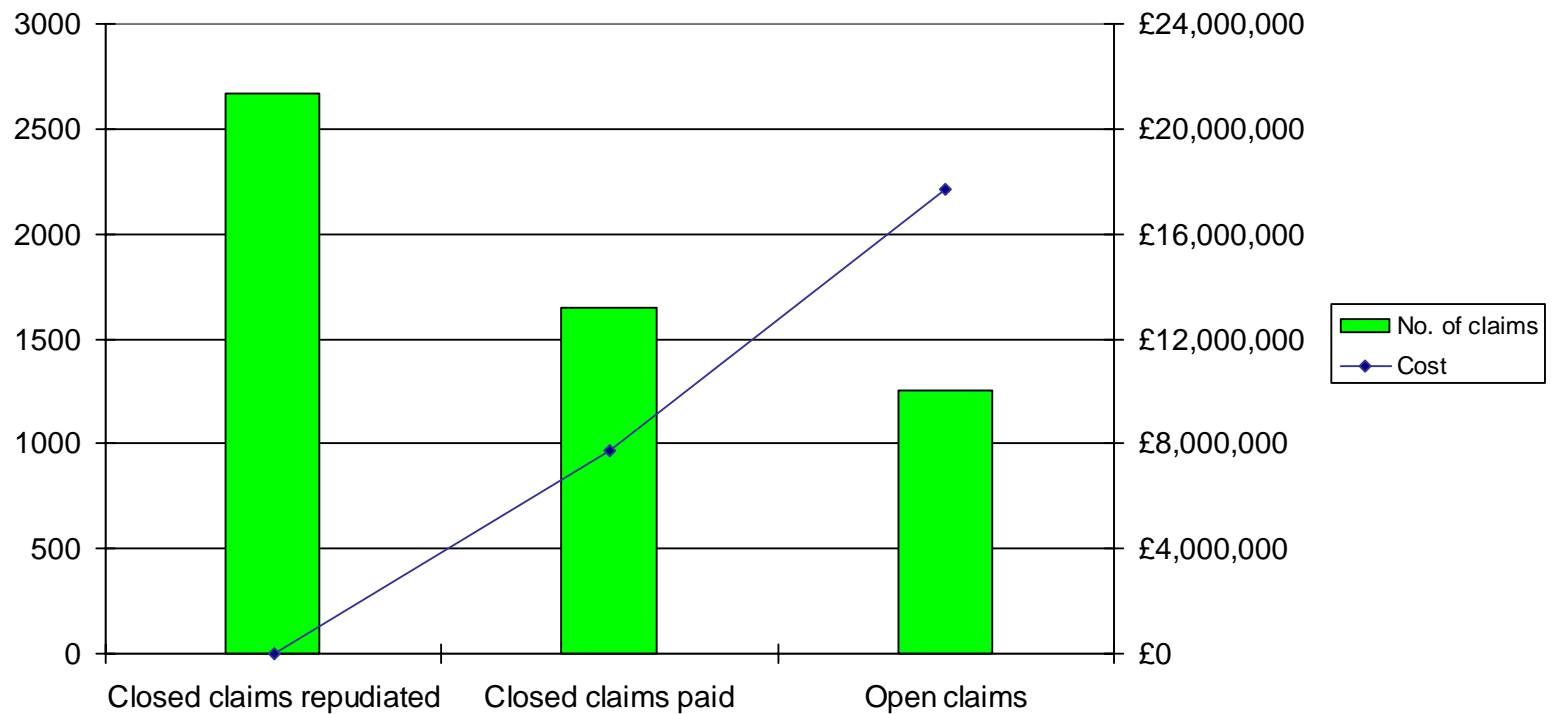


In Conclusion..

- Nothing to be gained from being adversarial
- Appreciation & understanding of each other's position required
- Better communication & co-operation key to earlier and cheaper resolution of claims
- Flexibility required to respond to different approaches
- Keep solicitors out if no conflict exists



CIPFA Insurance benchmarking 2008 – Tree claims 2002-07 36 Authorities



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