

Our Ref 800-000224-1-MM

Your Ref

11th December 2018



MEMORANDUM

To: **Rose Crozier**
Director (Operational)
City & Neighbourhood Department

Re: **PROVISION OF GRIT BOXES**

I have been asked to provide advice to the People and Communities Committee in relation to a proposal for the Council to help communities deal with the effects and potential hazards caused by snow and ice in streets and neighbourhoods not currently being treated by other statutory organisations. I have identified two issues from a legal point of view which should be considered in reaching a decision.

1. The statutory duty to treat roads and public places in snow and ice conditions falls to the Department for Infrastructure
2. The Council has a duty to take such care as in all circumstances of the case is reasonable to see that a visitor will be reasonably safe on land owned by the Council.

There are two pieces of legislation which should be considered. The first deals with the statutory duty to treat roads and public places in snow and ice conditions, and the second deals with the Council's own responsibilities in keeping members of the public safe on land owned by it.

Firstly, it is clear under Article 9 of the Road (Northern Ireland) Order 1993 that the statutory duty for clearing snow and ice falls to the Department for Infrastructure. The duty imposed on the Department for Infrastructure is to "take such steps as it considers reasonable and practicable to prevent snow or ice interfering with the safe passage of persons and vehicles using a road." Under Article 9(3) of the 1993 Order the Department enjoys a statutory immunity from a right of action in tort for failing to exercise any power conferred on it under Article 9. There is no such statutory duty imposed upon Belfast City Council. The statutory immunity enjoyed by the Department does not therefore assist or affect the Council in the provision of services to prevent snow and ice interfering with the safe passage of persons. I

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note that there is currently an agreement in place between the Department for Infrastructure and the Council in which council resources are used to treat predefined areas when severe icy conditions are forecast. Under Article 2 of the 1993 Order the onus is on the Department to enter into arrangements with any person "for the treatment of roads affected by snow or ice, and to place receptacles on roads for the purpose of making available to persons using a road affected by snow or ice material for the treatment of that road." The legal position is clear that the responsibility to provide grit boxes falls to the Department for Infrastructure.

Secondly, the proposal to provide grit boxes must be considered within the context of the Occupier's Liability Act (Northern Ireland) 1957. It is noted that the proposal is for grit boxes to be placed upon land owned by Belfast City Council for members of the public to access grit in the required quantities to treat the areas around their home. That land on which the boxes would theoretically be placed would be subject to the Occupier's Liability Act (Northern Ireland) 1957. Under the proposal one can envisage that the Council would be inviting people onto their land to access grit in adverse weather conditions. It can be envisaged that the Council's land would be icy and slippery underfoot. Under the Occupier's Liability Act (Northern Ireland) 1957 members of the public visiting land owned by the Council are owed a common duty of care which is defined as "the duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there." The common duty of care is more than a duty to avoid negligent acts but extends to negligent omissions as well. Thus the occupier must avoid creating dangers himself, but must also take reasonable steps to protect his visitors from dangers which he did not himself create. In considering whether the duty has been discharged by the Council or not the Court would look, amongst other things, to the nature of the risk posed to the visitor by the danger, the likelihood of the injury occurring and the costs and logistics of obviating or reducing that risk.

The Council currently grits its own land on a risk assessment basis identifying areas which have a higher footfall and carrying out gritting responsibilities in accordance therewith. In the situation proposed the Council would be inviting people onto their land to access grit. One could foresee that if a person were to fall on Council land due to the presence of snow or ice whilst accessing grit boxes, the Courts would expect to see a robust system in place for gritting the areas around, to and from the grit boxes to ensure persons are kept safe and to satisfy the Council's duties under the Occupier's Liability Act (Northern Ireland) 1957.

If you wish to discuss please do not hesitate to contact me.

Kind regards



Miriam Marshall
Solicitor

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