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# **Annual Insurance Report 2020**

Audit & Risk Committee

Date of meeting: 23<sup>rd</sup> September 2020

Lead director: Director of Finance

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## **Useful information**

- Ward(s) affected: All
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- Report version number: 1

### **1. Summary**

This report:

- presents an overview of the Council's internal and external insurance arrangements;
- provides information on the claims received in recent years, and the results of the claims handling process.

### **2. Recommended actions/decision**

The Committee is recommended to note the contents of the report, and the Council's approach to ensuring it is managing the financial risk associated with claims.

### **3. Background**

This report updates the information presented to Audit & Risk Committee on 24<sup>th</sup> July 2019.

### **4. Report**

#### **4.1 Risk Financing**

4.1.1 Risk Financing may be defined as the process by which the Council ensures sufficient funds are available to pay for financial losses, using the most cost effective sources of finance. For insurable risks (it should be noted that not all risks are insurable) this requires a balance between the amount of risk the Council is prepared to take, and the premium payable. The overall approach to risk financing is set out in the Risk Management Policy.

4.1.2 The most significant decision which affects this cost:risk balance is the level of "deductible" (excess) that the Council meets from its own resources. As with household policies, we can save money by taking a higher excess. High deductibles, however, also expose the Council to greater risk. The deductible is generally on a "per claim" basis, although the risk can be reduced further by including an aggregate limit which caps the total annual amount of the Council's exposure. The Council accepts very high deductibles, bearing the full cost of most claims itself, through the insurance fund (see below). This is because the Council is big enough to accept a

lot more risk than individual householders, and sees its external insurance primarily as cover for catastrophes.

4.1.3 Robust risk management across the organisation will reduce both the amounts payable in self-insured amounts and the external premium charged. However, it is neither possible nor desirable to eliminate all risks from service delivery. An effective strategy for financing these residual risks is therefore required.

## **4.2 Insurance Fund**

4.2.1 From 2020/21, the annual costs of insurance are held as a corporate revenue budget, outside departmental budgets. This funds the costs of external premiums, deductible payments on claims, and claims handling costs. (In previous years, these costs were recharged to all Council departments, but this was simplified for the current year and departmental budgets were adjusted to compensate.) Schools also pay for relevant insurances from their delegated budgets. The annual budget has reduced by £0.5m from its previous like-for-like level as a result of reduced claim costs and external premiums after a tender exercise in 2018, which has reduced the pressure on the Council's overall budget position. As with all corporate budgets, this will be reviewed as part of the annual budget setting process to ensure the amount remains appropriate for 2021/22.

4.2.2 The Council also holds a corporate insurance fund to smooth out the impact of actual costs on the annual corporate revenue budget from year to year, and to ensure that funds are available to meet claims when they occur.

4.2.3 The Council's policy is to maintain sufficient funding to meet all claims on a "claims occurring" basis. This includes legal and other costs associated with defending the claim, as well as any compensation due to the claimant. As a minimum, therefore, the fund will hold:

- Amounts required for claims received but not yet settled;
- Amounts required for claims relating to events that have occurred, but no claim has yet been notified to the Council (e.g. a person who is injured has 3 years to bring a claim against the Council in most cases).

4.2.4 The amount required in the fund at any time cannot be accurately calculated, and depends on a number of assumptions about liability and settlement amounts. The balance on the fund will be reviewed at least annually, informed by officers' assessments of specific large claims and historical data. Further assurance is provided by an external actuary's report, normally every 2 years.

4.2.5 The actuary's report commissioned in 2019 confirmed that there was a surplus on the fund, compared to the estimated amount required to meet claims. As a result, £5m was transferred out of the fund during 2019/20 to support the Council's capital programme.

4.2.6 As at 31<sup>st</sup> March 2020, the balance on the insurance fund was £12.3m. For accounting purposes, this is split between a provision (for “known” claims) and a earmarked reserve for other costs, but in practice it is managed as a single fund. Evidence from the 2019 actuarial review and subsequent claims received indicates that this amount will be sufficient to meet claims to date, and may allow for a surplus. If future reviews confirm a further surplus is available, this can be made available for other purposes.

### 4.3 External insurance

4.3.1 In financial terms, the most significant classes of insurance are Property, Motor and Combined Liability (Employers’ and Public Liability). The current insurance contract is in place until 30<sup>th</sup> September 2021, with an option to extend for a further 2 years. This provides some stability in costs, but it should be noted that the rates could still change under some circumstances. At the time of writing, the renewal of the insurance policies for the final year of the current contract is under way.

4.3.2 A summary of the current package of insurance is attached at Appendix One.

4.3.3 In the longer term, insurance rates will be affected by developments in the wider market. Some of the current issues include:

- Last year, the Government reviewed the “discount rate” used to calculate lump-sum settlements in personal injury cases. This is the interest rate that the recipient can expect to receive by investing the lump sum, based on low risk investments. In cases of serious, long-term injury, a small change in the discount rate can result in a large change in the amount due to the claimant. The rate increased from August 2019 (which *decreases* the cost of settling claims); however, this was less than the insurance industry had hoped for, which will put upwards pressure on premiums.
- Ongoing reforms to the statutory framework around personal injury cases, with a particular focus on reducing “whiplash” claims from motor accidents. If successful, these should reduce the cost to the insurance fund in the longer term; although some changes have now been delayed due to the pandemic.
- Liability claims relating to social care (both Children’s and Adults’), which have increased nationally in recent years. Case law in this area is still evolving, and many claims received date back several years and could not have been known about at the time – it is difficult to estimate the scale of the overall cost to local authorities and their insurers.
- Changes to Insurance Premium Tax (IPT), which has increased from 6% in 2015 to 12% currently, with ongoing expectations that it will increase further in future, particularly since the government may be looking to increase its tax revenue in future budgets. Unlike VAT, IPT cannot be reclaimed and is a real cost to the Council; also, changes to IPT are excluded from the rate certainty given by the 3-year insurance contract.

#### **4.4 Impacts of COVID-19**

4.4.1 As with all services, the COVID-19 pandemic has had significant impacts on the insurance market and on the Council's arrangements. Short-term actions have focused on ensuring cover is in place, and advising on the insurance implications of a rapidly-changing situation. This has included the implications of staff working from home, staff (and volunteers) using vehicles to support Council business, and working with private and voluntary sector organisations to deliver a co-ordinated response to the pandemic.

4.4.2 It is too early at this stage to estimate the overall impact of the pandemic on the insurance fund.

- The Council has not, to date, received any claims referring directly to COVID-19. However, the potential for these claims remains and is of concern to insurers nationally (e.g. claims alleging that an employee or member of the public contracted COVID-19 on Council premises);
- Progress on some existing claims has been delayed during lockdown, particularly among litigated claims. While this should not greatly affect the final costs, it makes forecasts more uncertain;
- Some types of claim may have *reduced* during lockdown restrictions – e.g. fewer vehicles on the roads leads to fewer motor incidents and reduced claims for pothole-type damage to vehicles;
- There is an ongoing risk that disruption to normal working practice and service levels will leave the Council open to claims that are not directly COVID-related. For example, if maintenance could not be carried out to its normal standard, the Council could be liable for damage or injury. As with all claims, robust procedures to identify and mitigate these risks will reduce the Council's liability. No particular impact of COVID-related disruption has not been reflected in the claims received to date, although the impact may take some time to be seen.

#### **4.5. Claims information**

4.5.1 The greatest numbers of claims arise from activities connected to Highways Maintenance; motor claims; and Housing services. This is because of the nature of these service areas, and should not necessarily be taken to suggest poor performance.

4.5.2 The following tables provide a summary of the claims received in significant categories, and the results of the claims investigations, from the past 3 years.

4.5.3 For Highways-related claims, repudiation rates (i.e. the proportion of claims where liability is successfully denied) are generally over 80%. While reliable comparator data are not currently available, informal discussions with other authorities suggest that this is a significantly better result than the East Midlands average. Successful repudiation of Highways claims requires evidence of a robust inspection and repairs process, which provides a legal defence to these claims.

### Public Liability – Highways – Personal Injury

Financial Year	LCC at fault	No fault
2017-18	13 (21.3%)	48 (78.7%)
2018-19	12 (17.9%)	55 (82.1%)
2019-20	6 (9.1%)	60 (90.9%)

### Public Liability – Highways – Property Damage

Financial Year	LCC at fault	No fault
2017-18*	34 (45.9%)	40 (54.1%)
2018-19	10 (18.5%)	44 (81.5%)
2019-20	4 (9.1%)	40 (90.9%)

\* The 2017-18 year included a period of severe winter weather (the “Beast from the East”) which caused damage to road surfaces and consequently affected the claims position.

### Motor Policy claims

Financial Year	LCC at fault	Third Party at fault	50/50 fault	Theft / vandalism against LCC vehicles
2017-18	145 (66.2%)	49 (22.4%)	3 (1.4%)	22 (10.0%)
2018-19	103 (59.5%)	59 (34.1%)	3 (1.7%)	8 (4.6%)
2019-20	125 (70.6%)	39 (22.0%)	5 (2.8%)	8 (4.5%)

The motor claims data implies a deterioration in the proportion of “fault” claims against the Council, although this is partly due to a reduction in the number of third-party fault incidents rather than an increase in incidents where the Council’s drivers were at fault. Work is ongoing to identify any underlying causes of this, and to obtain benchmarking data for comparisons with other authorities.

### Public Liability – Council Housing

Financial Year	LCC at fault	No fault	Contractor at fault
2017-18	35 (25.4%)	102 (73.9%)	1 (0.7%)
2018-19	11 (9.9%)	98 (88.3%)	2 (1.8%)
2019-20	15 (13.3%)	97 (85.8%)	1 (0.9%)

4.5.4 Complex claims will often not be finalised until some years after the incident. As a result, the cost of claims arising in 2019/20 will not be finally known for some years. The amount actually *paid* from the insurance fund in each year (regardless of when the claim originated) on each of the major types of claim is shown below. (This does not include amounts met by insurers on large claims):

Policy Type	2017-18 £000's	2018-19 £000's	2019-20 £000's	3-year total £000's
General Property	38.4	118.5	66.9	223.8
Commercial Property	35.7	23.2	0.3	59.2
Employer's Liability	202.1	298.9	508.5	1,009.5
Public Liability	503.1	1,102.4	518.4	2,123.9
Officials / Professional Indemnity	54.2	36.7	7.7	98.6
Motor	464.0	601.9	353.2	1,419.1
<b>Total</b>	<b>1,297.5</b>	<b>2,181.6</b>	<b>1,455.0</b>	<b>4,934.1</b>

4.5.5 Amounts paid in an individual year are variable (for example, a number of larger public liability claims were settled in 2018/19, having been outstanding for some time; and some large historic employers' liability claims were paid in 2019/20). However, the general pattern is that public liability and motor claims consistently have the greatest costs to the Council. Employers' liability claims tend to be higher value per claim, but are fewer in number. Other classes of insurance claim have a relatively small financial impact in most years.

## **5. Financial, legal, equalities, climate emergency and other implications**

### **5.1 Financial implications**

The report is concerned throughout with financial implications.

### **5.2 Legal implications**

There are no legal implications arising from this report. (Emma Jackman, Head of Law, tel: 454 1426)

### **5.3 Equalities implications**

No Equality Impact Assessment has been carried out as this is a briefing report and no policy changes are proposed.

### **5.4 Other implications**

No other implications are noted as this is a briefing report and no policy changes are proposed.

## **6. Summary of appendices:**

Appendix One – Summary of External Insurance Cover

### **7. Is this a private report?**

No

### **8. Is this a “key decision”?**

No

## Summary of External Insurance Cover – from January 2019

	<b>Main features of cover</b>	<b>Insurer</b>	<b>Deductible (per claim)</b>
General Property	Buildings & contents insurance (including schools); including works in progress, and increased cost of working following a claim	AIG	£100,000 (general) £1m for social housing stock
Industrial & Commercial Property	Buildings cover for properties owned by the Council and rented out to third parties (e.g. shops, industrial units).	AIG	£250
Casualty (Combined Liability)	a) Employer's Liability – legal liability for injury / illness to employees (plus others carrying out Council business, e.g. elected Members and school governors). Employer's Liability insurance is a legal requirement. b) Public Liability – claims for personal injury or property damage by external third parties c) Professional Indemnity – claims alleging that professional services or advice have not been carried out correctly.	QBE	£200,000  £200,000  £200,000
General Motor Fleet	Comprehensive motor policy for Council vehicles. Motor insurance is a legal requirement.	QBE	£200,000
Personal Accident / Travel and School Activities	Personal accident cover for employees on Council business; travel insurance for employees on Council business and for school trips	Chubb	N/A
Engineering & Inspection	Inspection contract to meet statutory requirements on equipment; and associated insurance cover	Aviva	N/A
Fine Arts	Specialist cover for museum & art gallery collections	Axa Art	Nil

Please note that the table above presents only a broad summary of the insurance arrangements, and not the full detail of cover or exclusions.