

Audit Committee

Item No.

Report title:	Norfolk County Council's Insurance Cover
Date of meeting:	23 January 2018
Responsible Chief Officer:	Executive Director of Finance and Commercial Services
Strategic impact The Council's Constitution includes in the Audit Committee's Terms of Reference (part 4.4) for risk management to, 'Provide proactive leadership and direction on risk management governance issues and champion risk management throughout the council and ensure that the Full Council is kept sufficiently informed to enable it to approve the Council's risk management Policy and Framework and that proper insurance exists where appropriate. Providing insurance cover is one of the accepted methods of reducing the impact of risks to Norfolk County Council. The payment of a premium to an insurer, thus offsetting the risk allows the Council to purchase protection against a breach of its duty where the insurer will indemnify the organisation against financial loss.	

Executive summary

This report provides the Audit Committee with information relating to the current position of the insurance provision for Norfolk County Council. The Insurance function is part of the Finance and Commercial Services Department, overseen by the Policy and Resources Committee.

The report will provide members with assurance as to how the insurance provision is delivered for the County Council and how claims against the Council are managed by the Insurance Team.

Recommendations:

Committee Members are asked to:

1. note that proper insurance provision exists where appropriate, as confirmed by external and internal reviews and accept the report.

1. Proposal (or options).

- 1.1. Audit Committee members requested that they might have an annual report containing information about the insurance cover that is in place for Norfolk County Council.

- 1.2. This report seeks to provide information and assurances to Members that there is throughout the Council adequate provision regarding the placement of insurance cover, managing claims and the associated risk mitigation measures.

2. Evidence.

- 2.1. There are many risks that Norfolk County Council face in delivering the services that it is required to deliver. When risks have been identified there are a number of industry accepted methods to treat or mitigate these risk.
- 2.2. There are four accepted methods to treat and mitigate identified risks:
- **Avoid:** Decide not to start or continue with an activity that gives rise to the risk. Stop the activity or find a different way of doing it. The application of this option is often limited, especially in terms of strategic risks.
 - **Reduce:** Take actions to reduce the impact, e.g. contingency arrangements. Take action to reduce the likelihood e.g. alternative systems, increased training, physical improvements to premises etc.
 - **Tolerate:** One example of the value of risk management is recognising that it may be appropriate to place an activity 'at risk' yet continue with it.
 - **Transfer:** Share the exposure, either totally or in part, with a partner or contractor, or through insurance.
- 2.3. Risk transfer is usually accomplished through the use of an insurance policy, although not exclusively. This is at its most basic, a voluntary agreement between two parties, the insurance company and the policyholder, in this case Norfolk County Council. In such an agreement the insurance company takes on strictly defined financial risks from the policyholder. If an event occurs that is covered by the insurance policy, the insurance company will make good the agreed financial loss.
- 2.4. For providing this type of cover against loss the insurance company charges a fee, or insurance premium, for accepting the risk. In addition there may be deductibles, reserves, reinsurance and other financial agreements that modify the financial risk the insurance company takes on.
- 2.5. Not all identified risks are insurable, non-insurable risks are risks that an insurer is not willing to take on because the future losses cannot be estimated. Examples of non-insurable risks would include criminal prosecution, loss of reputation and risks around political decision making.
- 2.6. Most risks that are identified can be insured against. However the cost of insurance, the premium charged by the insurer, will reflect the level of risk the insurer believes they are taking on. The premium is very dependent upon the claims history of the particular organisation and how effective risk mitigation measures are that have already been implemented.
- 2.7. The cost of cover or the premiums are also dependent upon the level of deductible (excess) that is attached to the policy. The greater the excess generally the lower

the cost of the cover will be. The policyholder will be responsible for the full costs of any claim up to the excess, and where a claim is above the excess the insurer will be responsible for the balance.

3. Insurance provision.

- 3.1 Until 1992 Norfolk County Council was insured with “Ground-up cover”, this is where the insurer takes on the full risk of the cost of any claim settlement. The Council did not carry any deductible and as such premiums were set at a high level. In 1993 it was agreed that on the Liability policy the Council would carry a deductible of £100,000 per claim.
- 3.2 As a result of this decision a fund was required to cover the element of the self-insurance to the £100,000 level. Since the mid 1990’s our deductible across liability and motor policies has been increasing to the current £255,000, with property at £250,000. The result of the higher levels of deductibles is that insurers can reduce the risk they have to cover and thus reduce the costs of premiums they charge as the fund is used to cover settlements up to the levels of the deductibles.
- 3.3 Where the insurer takes on the full risk of the claims, under the Ground-up cover scheme, it is the insurer who will take conduct of the claims and make all decisions around the claim. The insurer will investigate, review and decide upon liability, making their recommendations to the insured. Where there is a deductible the insured will have responsibility and conduct for the claim and is responsible for all decisions made up to the value of that deductible, although in some significant cases the insurer may also be involved in decision making. This process gives the insured much more control and certainty over the settlement of claims.
- 3.4 Norfolk County Council carries a number of different insurance policies, some that are a legal requirement others that are out of necessity.

There are four main policy types that Norfolk County Council holds cover on:

- **Employers Liability** – As an employer the Council has insurance against claims from employees for breach of our duties towards them. The insurance will allow the Council to meet the costs of compensation for injury or illness as a result of the actions or inactions of the Council. Currently the limit of indemnity on this policy is £50 million with an excess of £255K
- **Public Liability** – This policy covers members of the public (non-employees) against claims for breach of duty or where the Council is the occupier of a premises that the public have a right of access to. This policy would also cover claims made against the Council for incidents relating to the Highway. Currently the limit of indemnity on this policy is £50 million with an excess of £255K.
- **Property or material damage insurance** – Cover for material damage to the Council’s property and contents of such properties as a result of applicable perils. Currently the limit of indemnity on this policy is the individual property valuation assessed by NPS with an excess of £250K.

- **Motor insurance** – Cover for any motor vehicle which is the property of or in the custody of or control of the council. Currently the limit of indemnity on this policy is £50 million with an excess of £255K.

3.5 Some of the additional policies that the Council currently holds are as follows:

- **Airside cover** – Cover for incidents on the airside (live side) at an airport.
- **Terrorism cover** - Policy to cover acts of terrorism against County Hall only.
- **Fidelity Guarantee** – Cover for direct acts of fraud, theft or dishonesty by an employee in the course of their employment.
- **Contract works** - All risks policy to cover loss or damage to contract works undertaken for and on behalf of the Council.
- **Fine Art All Risks cover** – Cover for art and collectables owned or on loan to the council.
- **Travel insurance** – Cover for all authorised trip members worldwide, including specialist medical assistance.
- **Professional Indemnity** – Covers financial loss as a result of acts or omissions in the professional services provided by the Council.

3.6 As part of the insurance service provided by the Insurance Team there are a number of small, individual and specific or bespoke policies that have been purchased to cover very specific risks. Examples would be cover for asbestos surveys and removal and hired in plant cover.

3.7 Policies cover all the activities that are undertaken by Norfolk County Council. In addition cover is provided to all Local Authority schools, the Norse Group and all other wholly owned companies, such as Independence Matters.

3.8 Premiums are paid on an annual basis to the insurer to purchase cover for the designated period. In addition to the premium we have to pay tax on all insurance policies purchased.

3.9 Currently the Property damage policy is in the tender stage with the insurance market. The current policy with AIG comes to an end on 31 March 2018 and will be renewed for 1 April 2018 once the full tender process and award has been completed. The Insurance Team is working closely with our Procurement Team and our broker, Aon to ensure the best possible outcome.

4. Claims Handling

4.1 Being self-insured to the level of £255,000 (£250,000 – property) means that the Insurance Team has full conduct of all claims that are valued below that figure and have the capacity and experience to make final decisions on all such claims.

4.2 All areas of claims brought against the County Council are handled in-house by a dedicated professional team of claims investigators and managers, including those claims that ultimately become litigated. The Insurance Team has been managing claims for over 20 years and has considerable experience in all classes of business. Being in-house means that there is ready access to the appropriate officers and

Senior Managers in departments against which claims have been brought and access to IT systems and electronic data as required. Data that is stored is available to investigators without special permissions as it remains within the Council being used for Council activities.

- 4.3 Claims can be brought against the Council in a number of ways, a claimant in person may complete a claim form or write a formal letter of claim, claims may come in through the Ministry of Justice portal which is a mechanism that allows solicitors to bring claims electronically with specific fixed costs or directly from a solicitor through a traditional letter of claim. Once the claim has entered the system it is allocated to the appropriate level of handler for investigation and response.
- 4.4 As noted, each claim is allocated to a specific handler who is managed by a Claims Manager. The Claims Manager carries out regular audits on claim files and authorises all payments to ensure there is a consistent approach to claims handling throughout the team.
- 4.5 Norfolk County Council receives approximately 2500 claims a year. Nearly 1000 of these are liability claims, the majority of which are brought as Public Liability claims. These claims include alleged slips and trips on the highway, damage to vehicles and claims arising from alleged failures in both Children's and Adult Services. A small number of claims are brought as Employers Liability claims where the individual is an employee or is treated as an employee for the purpose of insurance such as volunteers acting in the appropriate capacity.
- 4.6 All claims on the Motor Policy will be related on an incident involving one of our vehicles, some will have a third party involvement where our vehicle has collided with a vehicle or property owned by the third party. All property claims will relate to damage to a property owned by the Council. Motor claims are averaging just under 900 a year and Property claims are averaging just under 500 a year.
- 4.7 Claims are reserved (the potential cost of settlement, should it be necessary, including all potential legal costs) against the information provided by the third party. Where a claim reserve is higher than the excess the insurer has a right to take over conduct of the claim, working alongside the claims handler and Manager, to ensure an appropriate outcome.
- 4.8 All liability claim allegations must be associated with a breach of statute. It is for the claimant to bring the allegations of what statute/s they consider have been breached and for the claims handler to fully investigate the allegations and determine if the Council does have a defence or if there is a legal precedent (case law) to consider.
- 4.9 Where there are property damage claims the team act as the loss adjustor and provides immediate recovery provisions. This will include, particularly in flood and fire circumstances, managing recovery experts to ensure the property is returned to the pre incident condition as soon as possible. The team will liaise with the occupiers and the specialists to ensure that the service delivery disruption is minimised. This will also include working with contractors and NPS where building works are

necessary. Where property damage exceeds the excess we will work with the insurer and the nominated Loss Adjuster to ensure the best possible outcome for the organisation.

- 4.10 Where a claimant or the claimant's representative is dissatisfied with a denial they are able to refer the claim to the Courts and the claim will become litigated. The handler will work in conjunction with one of our panel solicitors to develop our defence to the allegations. Handlers will take witness statements, collate additional documentation, meet with barristers and eventually attend court to support our witnesses. Whilst in court they will record the salient points of the case for future learning.
- 4.11 Denial rates (closing a claim with no payment to the third party) forms part of the suite of KPI's for the Insurance Team. Currently the rate for Employers Liability denials is at 60% (it should be noted that this figure is based on a very small sample as there are on average, less than 50 of this class of claim per year). The overall Public Liability denial rate (including highway related claims) is 75%. Both of these are considered by our external solicitors to be excellent outcomes. Clearly denial rates are very dependent upon what the individual departments and teams are doing and what policies and practices they are working to. Claims can only be defended and denied if there is sufficient documentation and evidence to prove the Council has complied with all that is required to do.
- 4.12 Where a claim has to be settled the Claims Manager and claims handlers will provide feedback to the individual departments and managers. This process is used to improve and enhance further our future ability to defend similar claims. Sometimes this will require a change in working practices or consideration of how the activity can be delivered in a different way.
- 4.13 As part of the handling process a number of fraud indicators are checked at each stage in the life of the claim. Where there are concerns further investigation and checking is undertaken. The insurance industry is seeing fraudulent claims in two main areas, motor and the exaggeration of injuries. Recent Court cases have seen the judiciary willing to dismiss claims for exaggerated injuries and in extreme cases charge those who brought the claim.
- 4.14 The Motor insurance industry has seen numerous "staged incident" claims with gangs working to defraud the insurers. From a Council perspective every motor incident involves one of our vehicles and is being driven by one of our own employees. This results in a greatly reduced opportunity for a fraudulent claim to be made as there is no benefit to our drivers.
- 4.15 Where we consider that there may be exaggeration of injuries, rather than a fraudulent claim, based on expert medical evidence we work with our legal providers to determine the extents of the injury. This will include checking social media, further medical evidence and in some specific and proportionate situations undertaking surveillance of the individual concerned with relevant approval and controls.

5. Insurance Fund

- 5.1 The Insurance Fund is the financial provision that is used to pay settlement compensation and costs to successful claimants including any associated legal and medical costs. The fund is maintained by the collection of premiums paid by the departments against the policy cover provided.
- 5.2 For some classes of insurance it can take several months or even years to report, investigate, pay and close claims. For some large and complex claims, courts may need to decide on liability and this can add more time to the process. Claims relating to abuse or long-term disease such as mesothelioma can be open for many years until a final settlement can be agreed.
- 5.3 As noted, each claim will have a reserve set as an estimate of future potential payments (the outstanding amount). Insurers and claims handlers adjust the outstanding amounts as the claim progresses. The total value of a claim (the incurred amount) is the amount paid to date plus the “outstanding” amount still to be paid. As money is paid out on a claim, the reserve will be reduced, however when calculating the total liability for a claim both the incurred and outstanding is combined to provide a total commitment.
- 5.4 The Council carries does carry a large deductible and we hold financial provisions in the Insurance Fund to meet the liabilities from claims for incidents in the current and previous years. The fund, comprising of departmental premiums, is drawn down to pay compensation to successful claimants up to the full value of the deductible. There needs to be sufficient money within the Fund to meet the historical liabilities, losses arising in previous years as well as claims in the current policy year.

6. Assurance

- 6.1. The Insurance Fund is reviewed on an annual basis by our broker to provide the Council with the confidence and assurance that there are sufficient monies within the fund to cover actual and potential losses. The review uses actual claim figures and statistical analysis to calculate how claims are expected to change over time before they are eventually concluded.
- 6.2. In addition to the Fund Review, the handling policies and procedures are reviewed when claims are litigated by our representing solicitor. In addition our insurers carry out audits and last year Zurich undertook the audit, the report states “Norfolk CC achieved an excellent result following this technical file review, and scored highly in the majority of their claims handling phases. The overall quality of claims handling found at Norfolk CC was of an excellent standard.” In conclusion Zurich have decided that they do not need to audit our process until next year at the earliest.
- 6.3. As part of the general auditing process Claims Managers carry out random reviews of files at various times throughout the life of a claim to ensure consistency. In addition we have sessions with members of our panel solicitors who provide training and assurance in the context of national standards. Where a claim is litigated all documentation and information will be reviewed in conjunction with legal experts to ensure there is an effective course of action in defending.

Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, eg equality impact assessment, please get in touch with:

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