

# Audit Committee

Item No.

<b>Report title:</b>	<b>Norfolk County Council's Insurance Cover</b>
<b>Date of meeting:</b>	<b>31 January 2019</b>
<b>Responsible Chief Officer:</b>	<b>Executive Director of Finance and Commercial Services</b>
<b>Strategic impact</b>  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. Consider and agree 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 risks.
- 2.2. There are four main methods to treat and mitigate identified risks used by the industry:
- **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 of the activity, e.g. contingency arrangements. Act 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 with agreed constraints.
  - **Transfer:** Share the exposure, either totally or in part, with a partner or contractor, or through insurance.
- 2.3. Risk transfer is usually accomplished using 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 insurer takes on strictly defined financial risks from the policyholder. If an event occurs that is covered by the insurance policy, the insurer will make good the agreed financial loss.
- 2.4. For providing this type of cover against loss the insurer charges a fee, or insurance premium, for accepting the risk which is based on the level of perceived risk. In addition, there may be deductibles, reserves, reinsurance and other financial agreements that modify the financial risk the insurer 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 as all the risk was held by the insurer. In 1993 it was agreed that on the Liability policy the Council would carry a deductible of £100,000 per claim.
- 3.2 To accommodate this decision, it was necessary to create a fund to cover the element of the self-insurance to the £100,000 level as the Council would be responsible for all claim payments up to that value. Since the mid 1990’s our deductible across liability and motor policies has been increasing to the current £260,000, with Material Damage 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; the fund is then 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 in conjunction with the insured. 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 £260K
- **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 £260K.

- **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 no excess.

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 explicit or bespoke policies that have been purchased to cover very specific risks. Examples would be cover for asbestos surveys and removal, use of drones 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 and Repton Developments.

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 are required to pay tax on all insurance policies purchased. The current level of Insurance Premium Tax (IPT) is 12%, at the time of writing the Insurance Industry is lobbying central government to review the tax downwards to encourage growth.

3.9 We receive a competitive market rate on premiums charged by the insurer for the risks related to the activities of the Council. Those rates are then passed on to the individual areas through the annual premium calculations. If an individual area was to look to the market for a premium it would find that the rates would be much higher because the risks are more concentrated within a smaller portfolio. The insurer is more comfortable when spreading the risk over a number of areas/elements rather than a single entity.

3.10 The Material Damage or Property Damage policy was retendered at the beginning of 2018 and was awarded to Zurich Municipal (ZM) who commenced as our insurer on

1<sup>st</sup> April 2018. ZM was already our insurer for all our other main policies and were keen to win this tender. The Insurance Team worked 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 £260,000 (£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. The insurer has, in the contract, authorised the team to act on its behalf within the excess layer.
- 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. The introduction of the General Data Protection Rules (GDPR) has not caused any major concerns about the use of data to defend claims as this is seen as a legal use of that data.
- 4.3 Claims can be brought against the Council in several 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. No matter how the claim is brought it must contain clear and specific allegations of a breach and a clear description of the location. Once the claim has entered the system it is allocated to the appropriate level of handler for investigation and response.
- 4.4 In February 2018 a new claims management system was introduced to replace the system that had been in use since 1999 (with version developments). The new system is cloud based and linked with SharePoint, which is used to manage the storage of all documents. The system can be accessed from any location providing there is adequate WiFi coverage, thus enabling mobile working. The new system is a full reconfiguration of former versions and has been developed by NTT Data in conjunction with the Council, a relationship that goes back to 1999.
- 4.5 Each claim, when processed, is allocated to a specific handler who is managed by a Claims Manager. The handler will carry out a full investigation into the allegations and make decisions on the validity of the claim. 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. This also enables the managers to identify trends and have an insight into developing areas of concerns. These are fed back to departments and often discussed at industry forums where representatives from other local authorities, insurers, legal representatives and brokers come together to review such trends.

- 4.6 Norfolk County Council received more than 2,700 claims in 2018. Approximately 1,400 of these were liability claims, the majority of which were 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 (30) were 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.
- 4.7 As a result of adverse and even extreme weather conditions at the beginning of 2018 (Storm Doris and The Beast from the East) there was an increase in claims brought against the Council. There was a significant increase in highway related claims and to a lesser extent, property damage. In 2017 there were 604 claims relating to highway defects, in 2018 this increased by almost 100% to 1153. Most of the increase related to vehicle damage caused by potholes and carriageway deterioration. In some cases, Councils in the East and Central England saw increases in claim numbers (particularly in highway related areas) in excess of 300%.
- 4.8 All claims on the Motor Policy will be related to 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 800 a year and Property claims are averaging just under 500 a year.
- 4.9 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.
- 4.10 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.
- 4.11 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.
- 4.12 Where a claimant or the claimant's representative is dissatisfied with a denial they can 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.

- 4.13 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). The overall Public Liability denial rate (including highway related claims) is 65%. Clearly denial rates are very dependent upon what the individual departments and teams are doing and what policies and practices they are working to. This year has seen a reduction in the denial rates as a result of the increase in highway related claims and the condition of the highway network following the extreme weather activity at the start of the year. 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.
- 4.14 Where a claim must 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.
- 4.15 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.
- 4.16 As part of this investigation process, claims handlers are looking for signs of fraud, comparing photographs, statements, allegations and medical records for inconsistencies. Where fraud is suspected we can refer a claim to one of our panel solicitors who have teams with access to sophisticated fraud detection systems.
- 4.17 Reports are regularly produced from the Claims Management System to identify and address any specific claim trends and where these are identified, referred to the departments involved. This has proved very useful to the Highways Team in that it enables Engineers to target areas of need when considering proactive maintenance works.

## **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 accordingly.
- 5.4 The Council carries 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 actual claims held on the book of liabilities the review also looks at the whole insurance market to determine what may be brought against the Council in future years. These claims are known as incurred but not reported (INBR), the incident may have occurred but has not been developed into a claim or notified to the Council and the review provides statistical analysis of what value may be placed on such claims. An allowance is then made within the fund to cover such claims should they arise at a future date.
- 6.3. The handling policies and procedures are reviewed when claims are litigated by our representing solicitor who ensure that the claim has been handled in an appropriate way and to industry standards. Furthermore, our insurers carry out audits on open and closed claims, the overall quality of claims handling found at Norfolk CC has been of an excellent standard. As a result, ZM have agreed that they will undertake another audit in July 2019 to ensure that the team is still delivering the high industry standards required.
- 6.4. 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. We also 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:

**Officer name :** Steve Rayner

**Tel No. :** 01603 224372

**Email address :** [steve.rayner@norfolk.gov.uk](mailto:steve.rayner@norfolk.gov.uk)



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