

## **NORTH LINCOLNSHIRE COUNCIL**

### **AUDIT COMMITTEE**

## **RISK MANAGEMENT PROGRESS REPORT**

### **1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To inform Members of key issues arising from risk management work.
- 1.2 Regular reporting on risk management issues is an important source of assurance for Members to fulfil their role and provides supporting evidence for the annual approval of the Governance Statement.

### **2. BACKGROUND INFORMATION**

- 2.1 An Internal Audit review of risk management arrangements has been concluded. Audit work undertaken provided evidence of adequate assurance on the adequacy of internal control arrangements. The issues identified are being addressed and have been reported to the Risk Management Group. The report will be followed up to ensure compliance. The main findings of the review are summarised below:
  - Risk management implications are not consistently evidenced across all council service areas, in Committee and Cabinet decision making reports.
  - Risk owner lists need to be reviewed following staff changes and staffing restructures
  - Some managers have not completed their 'Managing finance, procurement, risk management and performance management' training.
  - Some operational risk register information has not been populated in the 4Risk system.
- 2.2 An important aspect of the risk management action plan is to continue to raise awareness across the council. This is achieved through comprehensive training programmes and communication networks. In addition to information available on the web page and intralinc the 13<sup>th</sup> edition of the Risk Roundup newsletter was also issued in April (appendix A).

- 2.3 The 2013 CIPFA/ALARM risk management benchmarking questionnaire has been completed. The benchmarking club will provide comparative measures and highlight areas for improvement in current arrangements. The results are due in July/August and benchmarking club outcomes will be reported to the Committee in September.
- 2.4 An analysis of Operational Risk Registers across the council has been undertaken. Appendix B details the top 10 risks by residual risk score. The top 10 risks by the number of registers are listed in appendix C. The analysis shows:
- The top operational risks are also recognised as strategic risks to the council
  - A strong correlation in ranking of the types of risks analysed by frequency or by severity
  - No 'red' risks i.e. risks with high residual scores and ineffective mitigating controls.

### **3. OPTIONS FOR CONSIDERATION**

- 3.1 The Committee should consider whether this update provides sufficient assurance on the adequacy of risk management arrangements. The Committee is invited to ask questions about the contents of the report and seek clarification as necessary.

### **4. ANALYSIS OF OPTIONS**

- 4.1 The progress report is designed to provide this Committee with the assurance required to fulfil its role effectively.

### **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

- 5.1 Regular reviews of risk management arrangements should safeguard the council's assets and ensure that value for money is achieved in the use of resources.

### **6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)**

- 6.1 An Integrated Impact Assessment is not required.

## **7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED**

7.1 The Risk Management Group is made up of representatives from all services and therefore risk management outcomes are the result of a comprehensive consultation process.

7.2 There are no conflicts of interests to declare.

## **8. RECOMMENDATION**

8.1 That the Audit Committee considers the assurance provided by the Risk Management progress report on the adequacy of risk management arrangements

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**Background Papers used in the preparation of this report:** None

# RISK

## roundup

Issue 13  
March 2013

A quarterly digest of risk management issues

Pavement injury p3

## Ministry of Justice (MOJ) Reforms

**“There will be a significant operational impact for this authority from the MOJ reforms.”**

**The Government** is reforming civil litigation funding and costs in England and Wales. The proposals will affect the way employers' liability and public liability claims are handled across the insurance industry. In addition, the proposals will extend the limit for personal injury motor claims.

The overall aim of the new reforms is to simplify and speed up the process of claims.

Details are not yet fully known although the proposals are due to go live from the end of July.

**The Key Elements of the proposals are as follows:**

- The proposals apply to **Employers' Liability** (accident and disease) and some **Public Liability** claims (accident), valued at between £1,000 and £25,000; although in practice because we do not know the value at the outset of the claim, it will apply to all claims.

- The time to investigate the claim has drastically reduced. Employers' Liability (EL) from 90 to 30 working days and Public Liability (PL) from 90 to 40 working days.

Under the new proposals, relevant claims will need to be submitted by claimants'

solicitors via an electric portal, and will attract fixed claimant solicitor fees.

All earnings information for EL claims must be disclosed within 20 working days from acceptance of liability, again highlighting that timing is important.

The reforms also impact on motor claims. Currently the RTA portal process for handling personal injury claims as a result of a motor accident, applies to claims with a value of up to £10,000. This captures almost 90% of all road traffic accident claims. The MOJ proposal is to increase this financial limit to £25,000. This will mean that 95%+ of all road traffic related injuries will be handled via the RTA portal process.

**Implications for Local Authorities for EL and PL claims are summarised below:**

- There will be a significant operational impact for this authority from the MOJ reforms; timescales for accepting claims and making a decision on liability will be greatly reduced. Departments will need to respond to requests for information from

the Insurance Section and Insurers within these new timescales.

- If the specified timescales are not met, the claim will be removed from the process, which could incur **significant costs**.

- It is important to note that there is a potential cost saving related to those claims that can be handled within the MOJ process, assuming the proposed fixed solicitor costs regime going forward, is accepted and implemented.

- Local authorities and insurers will need to work more closely together to ensure the notification of new claims is more effective and efficient.

The Insurance Section are working closely with the Insurers and we will provide further information when it is available. In the mean time consideration should be given to current processes for preparing and handling insurance claim reports, bearing in mind the proposed changes, so that the Authority can meet the challenges these reforms will pose.

## 2013 Corporate risk hotspots

**Corporate risk** prevention consultancy, Riskskill, has provided a list of what it believes are the biggest corporate risk hotspots faced by organisations in 2013. These include:

### Fraud

With fraud set to reach increasingly high levels as a reflection of economic conditions, organisations face their own battle with those who are determined to defraud them. In 2013, supply chain fraud will be a major growth area, as squeezed suppliers face temptation to cheat, often using IT systems to cover their tracks. This type of fraud can range from simple 'weights and measures' issues through to credit based fraud. As a result procurement fraud is also set to reach record levels this year, where those charged with purchasing, face a range of temptations, including bribes from suppliers.

### Cyber crime attacks

Such intrusions will remain an on-going concern in 2013. Already, the daily number of automated attacks on bank and retailer systems runs into the millions. Organisations are especially vulnerable where they have ventured into online trading. Control over 'apps', such as payments through mobile and NFC (Near Field Communication) devices are also on-going risks that are growing as these solutions evolve. There was a time when individuals hacked into systems for fun. Now cyber crime ranks alongside terrorism as one of the security challenges facing the UK.

### Social and other media related risks

The huge rise in different types of mobile device platforms along with the corresponding growth of social media sites now poses a huge reputational challenge for organisations. Within minutes, organisations can be the victim of blistering customer backlashes which may or may not be justified. Many organisations are making a start by attempting to formally control how their employees release workforce information through social media. The number

of reported dismissals and legal cases for acting irresponsibly through social media is soaring. However beyond this there are increasingly huge risks posed by being seen to 'get it wrong' at the 'social-communications' front line.

### Silo mentality

Borne out of the desire to conduct business correctly, increasingly complicated silo structures have grown up in the corporate world. The problems of silos show up in the duplication of cost, effort, working at cross purposes, lack of synergy, or economies of scale. It is possible that key decisions or corporate ownership, for such as risk and fraud will fall between these silos.

### Big data risks

As a result in corporate compliance and customer contact drives, organisations now hold increasingly huge volumes of data. This development does pose its own data breach risks. However, the evolution of the 'big data' culture will also deliver huge benefits in 2013. Recent improvements in business intelligence and data analytics technology have delivered significant benefits for those working to manage big data projects along with those focussed on the risk and compliance issues raised. Organisations can now monitor high volumes of transactions continuously for patterns of potential fraud, cyber attacks and money laundering.

### Legal claims

Whenever there is a downturn in the economy, people seek out legal redress from anywhere that they can find it. The insurance industry and local authorities are tired of the 'slips and trips' type scenarios. However, many organisations seriously underestimate how big the potential legal risks can be.

### Environmental and sustainability risks

The risk is the failure to balance environmental and social responsibilities with increasingly difficult financial positions. Organisations need to take a longer term view of these decisions.



## INFORMATION MANAGEMENT

### ICO sees huge rise in data protection enforcement

**The number** of new data protection enforcement cases taken on by the Information Commissioner's Office (ICO) in 2012/13 has surged by almost 50% compared to the whole of the previous year – with three months to go, it has emerged.

The current year has so far seen 1,054 cases, compared to 712 in 2011/12. Figures for Q3 show a record of new cases (424) for a quarter. Potential reasons for the rises include the introduction in the NHS of routine reporting of all data security breaches to the ICO. Previously

only serious breaches involving particularly sensitive data or many individuals were reported. Another factor could be the impact of monetary penalties, with organisations aware that the watchdog looks favourably on those that self-report breaches than try to hide them. Health has been the sector responsible for the most enforcement cases in the year so far: 229. It was followed by local government (151 cases), general business (76), education (64) and central government (46). Solicitors and barristers were responsible for 27 cases.

## Local councils fined over £300,000 for losing personal data

**“NLC has developed an Information Security Policy which sets out the council’s commitment to information security.”**

**Four local** authorities have recently been issued civil monetary penalties as follows:

### **Leeds City Council (£95,000 penalty)**

Sensitive personal details about a child in care were sent to the wrong person, revealing details of a criminal offence, school attendance and information about the child’s relationship with their mother. When sending internal mail, the council re-use envelopes that have been used for external mail. In this case the external address was not crossed out so the sensitive file was sent to someone who had nothing to do with the case.

### **Plymouth City Council (£60,000 penalty)**

Information was passed to the wrong recipient including highly sensitive personal information about two parents and four children, notably allegations of child neglect relating to ongoing care

proceedings. The breach occurred when two reports about separate child neglect cases were sent to the same shared printer. Three pages from the first report were mistakenly collected with the papers from the second, and so were handed to the wrong family.

### **Devon County Council (£90,000 penalty)**

A social worker used a previous case as a template for an adoption panel report they were writing, but a copy of the old report was sent out instead of the new one. The mistake revealed personal data of 22 people, including details of alleged criminal offences and mental and physical health.

### **London Borough of Lewisham (£70,000 penalty)**

A social worker left sensitive documents in a plastic shopping bag, taking them home to work on. The files, which were later, recovered

from the rail company’s lost property office, included GP and police reports and allegations of sexual abuse and neglect.

The above penalties mean that nineteen local councils have now received monetary penalties for breaching the Data Protection Act, totalling £1,885,000.

NLC has developed an Information Security Policy which sets out the council’s commitment to information security and provides the guidelines and frameworks for ensuring all forms of information, supporting systems and networks are protected from security threats, unauthorised access, computer misuse, IT failures and physical security threats. Coupled with the Policy a mandatory training programme is being rolled out across the council via an eLearning package.

The insurers Zurich Municipal publish important insurance articles for councils to consider important risk management messages. A sample of these claims reports are detailed on the next few pages.

## Injury was exaggerated

**HIGHWAYS – TRIP – GROSS EXAGGERATION – CONTEMPT OF COURT**  
**Fari v Homes for Haringey, 09.10.12, Central London County Court**

**In 2008** the claimant, F, allegedly tripped on an uneven section of pavement on a public highway, injuring her right knee. She claimed damages from the defendant, D, an ‘Arm’s Length Management Organisation’ set up by Haringey Council to manage over 21,000 leasehold and tenanted homes for the borough’s residents.

F, who had a pre-existing deformity in her knee, claimed approximately £740,000, alleging her injury was caused by D’s negligence and breach of duty to maintain the highway. She claimed her injury was so severe that it resulted in extensive disability for which she would need significant future care.

D admitted liability but disputed the amount claimed, suspecting F of exaggerating the extent

of her injury.

D instructed surveillance agents to observe and film F. The resulting surveillance footage was copied to the parties’ medical experts, who agreed F’s injury was minor. The experts estimated the injury would have caused minor aggravation and acceleration of the pre-existing condition in her knee, for two to three months at most.

D applied to strike out the claim, contending it was an abuse of the process of the court. D relied on the recent decision of the Supreme Court, Fairclough Homes Ltd v Summers (Court Circular, September 2012) where the Court gave guidance for the circumstances under which claims may be struck out as an abuse of process.

At the hearing of D’s application that C’s claim



**“C had sustained an injury to her knee but it was so minor as to be worth not more than £1,500 in damages.”**

be struck out, the judge held C had sustained an injury to her knee but it was so minor as to be worth not more than £1,500 in damages. This was just 0.5% of the amount C had claimed.

The judge considered the circumstances under which a court may strike out a claim as an abuse of process, referring to the Supreme Court’s guidance in *Fairclough Homes Ltd v Summers*.

The judge held that, although D had admitted liability, the true value of her claim was so nominal, in relation to the amount she had

claimed, as to constitute fraudulent exaggeration. The extent of C’s attempted deception was the kind the Supreme Court had envisaged would justify being struck out as an abuse of process.

The judge therefore struck out C’s claim. The judge also gave permission for the proceedings to be transferred to the High Court so that D may apply to the court for both C and her husband, who had supported her claim, to be committed to prison for contempt of court.

This notable county court ruling, which received national press coverage, represents the robust stance judges are prepared to take against the continual battle against attempted fraud. It is an important demonstration of the type of fraud the Supreme Court envisaged, in its landmark decision in *Fairclough Homes Ltd v Summers*, would warrant a claim being struck out. Not only did the claimant fail in the exaggerated element of her claim, but she was also deprived of the genuine element of it due to her attempted fraud. We will monitor developments with the committal proceedings and will feature any relevant outcome in a future edition of Court Circular.

## School not liable for staff injury

### PUPILS WITH SPECIAL NEEDS – STAFF INJURY – FORESEEABILITY

**Bevan v Bridgend County Borough Council, 09.10.12, Cardiff County Court**

**The claimant, C,** was employed as a learning support assistant at school for pupils with learning difficulties. Despite no formal qualifications he had a wealth of experience working with pupils with special needs.

In April 2008, while standing in a corridor during a break, one of the pupils, X, suddenly ran along the corridor and careered into C, injuring him. C said he sustained a severe spinal injury in the incident, necessitating the use of a wheelchair when he is outdoors.

C claimed damages in excess of £100,000 from the defendant, D, who were responsible for the school. C alleged D’s negligence caused the incident. His allegations included that, due to the deterioration in X’s behaviour, X should have been removed from the school before the incident or should have been supervised on a two to one basis. C alleged a suitable risk assessment would have identified the need for more rigorous supervision of X or the fact that X should not remain at the school.

X was aged 13 at the time. He was assessed in 2007 as being “happy slappy” and “aggressive”. However, by early 2008 his behaviour had improved. C’s expert in developmental medicine conceded the school was appropriate for X’s needs.

D’s expert witness said it was well known that unstructured time created a problem with X but there was suitable structure to pupils’ break times and appropriate systems to reduce unsettled behaviour. The former head teacher said the school’s policy was that staff shared knowledge of all pupils. He said that, as a tier 1

school, the school was expected to take in the most challenging of pupils and that X was not the most challenging at the school. He said staff knew of the risks and that exposure to physical aggression was part of the job.

The judge rejected the allegation that X should not have remained at the school. X’s behaviour had been improving; it was not perfect but was manageable. The judge rejected the allegation that X should have been supervised on a two to one basis. There were good levels of experienced and knowledgeable staff. The judge held that although X had challenging behaviour, the incident could not reasonably have been foreseen. The claim was dismissed.

The judge confirmed that the system of work operated by the defendant was not required to guarantee that all incidents such as this would not occur. The system was reasonable in all the circumstances. The staff knew of the daily risks of working with pupils with challenging behaviour, the claimant did not have regular close involvement with the pupil who ran into him and the incident could not reasonably have been foreseeable to the defendant. Further, this emphasises the need to examine the medical evidence to ascertain whether a claimant’s symptoms have been caused as alleged – here the medical evidence exposed a lack of causal link between the claimant’s continued disability and the injury complained of, and that in reality it was a claim of relatively low value.

## Ice slip claim succeeded

### ICE – CAR PARKS – FAILURE OF GRITTING SYSTEM

**Wright v Stoke on Trent Council, 09.10.12, Stoke County Court**

**On the** morning of 28 December 2009, the claimant, C, then aged 82, parked his car in a small public car park serving a shopping centre. As C walked across the car park he slipped and fell, sustaining multiple injuries.

The defendant, D, was the occupier of the car park. C claimed damages from D for his injury, alleging negligence and breach of duty under the Occupiers' Liability Act 1957 (the Act). C's allegations included that D failed to grit the car park, failed to operate an adequate inspection system, and failed to warn C of the present danger. D denied

liability, contending they operated a suitable inspection system.

On the day before C's accident, D's Parking Operations Manager decided not to grit the car park because no snow or ice was forecast for that day. Further, the day of the accident was a Sunday and the shops would not open until late morning. The weather forecast indicated prevailing temperatures between -1.9 and 2.7 degrees Celsius. Snow fell on 27 and 29 December. The car park had not been gritted since 24 December and was not gritted again until January. The shops' sales

started on the day of the accident.

The judge held that, bearing in mind the car park would have been busy, D failed to take reasonable care for C. The claim succeeded. C was awarded just over £32,000 including general damages of £15,000.

Although an occupier is not under an absolute duty to take care, the occupier here should have gritted the car park, bearing in mind the weather forecast and having not gritted it on the preceding three days.

## School not liable for pupil injury

### SCHOOLS – SWING DOORS – ACCIDENT – FORESEEABILITY

**Richards v Bromley London Borough Council, 16.11.12, Court of Appeal**

**The claimant,** C, was a pupil at a school for which the defendant, D, were responsible. As C was walking through a pair of swing doors of a school building, one of the doors caught her left heel, lacerating it.

C, then aged 15, had attended the school since she was aged 11. The doors had been in situ for 30 years. D had only received one report of a similar incident, approximately four months before C's, where another pupil, O, cut her heel on the doors in slightly different circumstances.

The injury was very minor and not formally recorded, although the caretaker completed a risk assessment report form suggesting works be undertaken to reduce the risk of future similar incidents. C claimed damages from D, alleging

her injury was caused by their negligence and/or breach of duty under the Occupiers' Liability Act 1957. She alleged, among other things, that had D acted on the risk identified in the caretaker's report the hazard would have been removed.

The county court dismissed her claim but C appealed. The Court of Appeal held that C's accident was reasonably foreseeable to D but D had proposed to carry out remedial works, to alleviate the risk of future incidents, within a reasonable timescale.

Further, O's accident was only superficially similar to C's. Thousands of staff and pupils had for years passed safely through the doors. The appeal was dismissed.

**“Not every misfortune occurring on school premises attracts compensation.”**

The Court of Appeal has reiterated here that “not every misfortune occurring on school premises attracts compensation”. The school's proposal for addressing a reasonably foreseeable hazard was reasonable in the circumstances.

## Hole was not dangerous

### CLASSIFICATION OF DEFECT – DEFECTS ILLEGITIMATELY PAINTED

**Smith v Dudley Metropolitan Borough Council, 20.04.12, Walsall County Court**

**One November** evening the claimant, C, was walking along a footpath when she fell, injuring herself.

C claimed damages from the defendant highway authority, D, alleging, among other things, it failed in its duty, under the Highways Act 1980

(the Act), to repair the highway. C alleged a difference in levels in the footpath caused a foreseeable risk of injury to her. She alleged the area had



been highlighted in white paint, indicating D had identified the defect, but that D had failed to repair it.

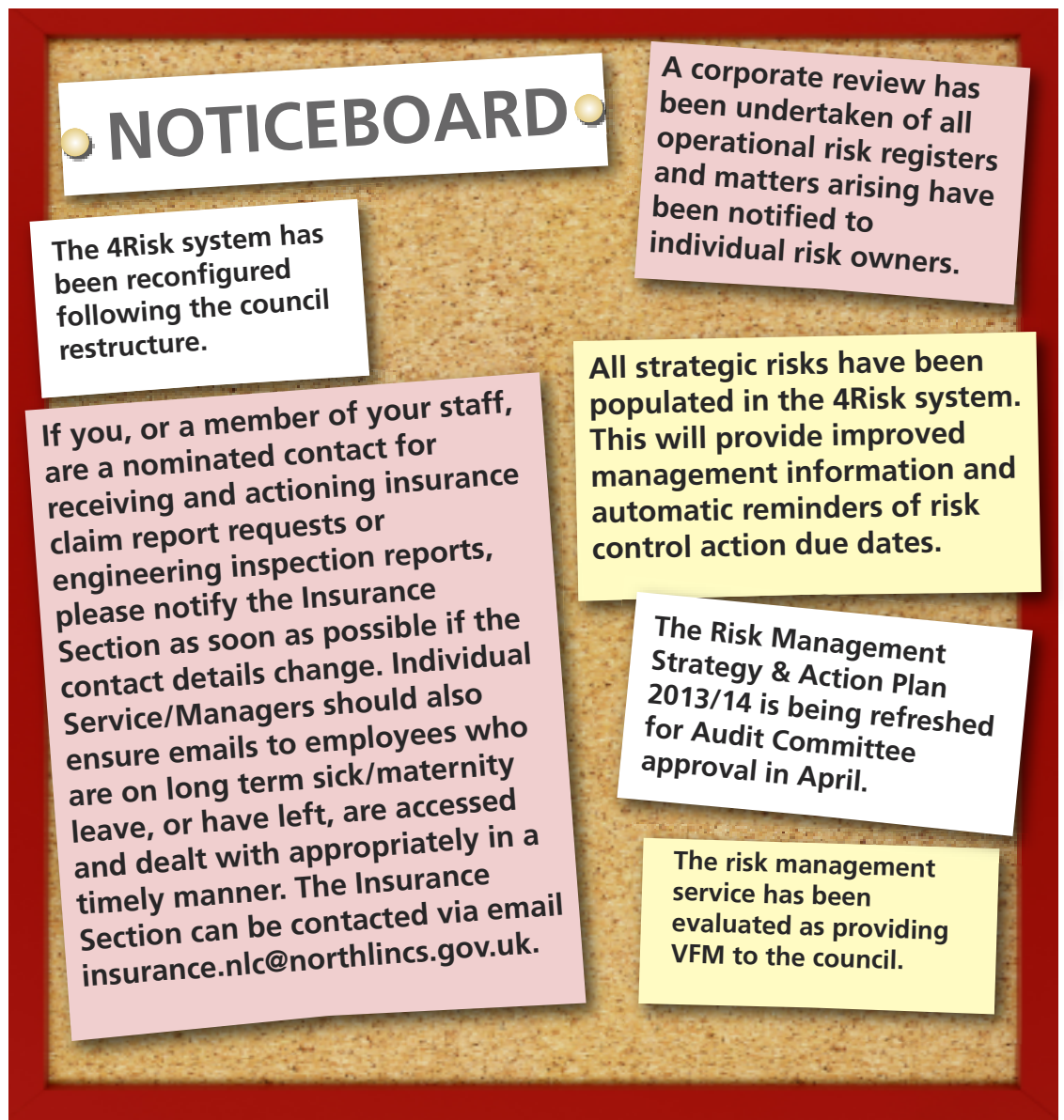
D denied liability. It argued it was entitled to the statutory defence under s.58 of the Act, on the grounds that its quarterly walked inspection of the area was suitable. The area had been identified as

containing a category 2 defect, presenting no danger to the public. It had not received complaints about the area in the preceding 12 months. With regard to the defect being outlined in white paint, D said it did not use white paint to identify defects in the highway.

The judge accepted C fell where alleged. However, on

the evidence and established case law he held that, although the depression was about 12-15 inches long and 4-6 inches wide, it was not a hole and was not dangerous. The judge held such depressions were regularly found in urban footpaths and D had correctly classified it. The claim was dismissed.

A particular feature of this claim was the alleged defect had apparently been outlined in white paint, a colour this defendant highway authority did not use to highlight defects requiring repair. This alerts authorities to such methods being employed against them in apparent attempt to support a possible future claim.



The council gratefully acknowledges the contribution made by its insurers, Zurich Municipal, in providing articles for this publication.

While every effort has been made to ensure the accuracy of these reports, this publication is intended as a general overview and is not intended, and should not be used, as a substitute for taking legal advice in any specific situation. Neither Zurich Municipal, nor any member of the Zurich group of companies, will accept any responsibility for any actions taken or not taken on the basis of this publication.

Any employee intending to take action arising out of these articles should, if in any doubt, contact the council's legal section for advice before doing so.

## Appendix B

### Analysis of Operational Risk Registers – by residual score

Operational Risk	Places	P & R	People	Total
1. IT failure – corporate, bespoke, telephony	9	20	10	39
	2 Amber	4 A	1 A	7 A
	7 Green	16 G	9 G	32 G
2. Failure to recruit qualified staff/loss of key staff	16	6	16	38
	4 A	4 A	3 A	11 A
	12 G	2 G	13 G	27 G
3. Major event e.g. fire, terrorism, pandemic flu	9	4	16	29
	3 A	2 A	3 A	8 A
	6 G	2 G	13 G	21 G
4. Safety of staff/risks to staff working alone	11	1	14	26
	4 A		3 A	7 A
	7 G	1 G	11 G	19 G
5. Lack of trained staff	6	8	10	24
		3 A		3 A
	6 G	5 G	10 G	21 G

6. Inadequate information governance	3	15	5	23
	1 A 2 G	12 A 3 G	5 G	13 A 10 G
7. Non compliance with legislation	3	9	9	21
	1 A 2 G	6 A 3 G	1 A 8 G	8 A 13 G
8. Inadequate/loss of/changes to funding	9	1	9	19
	7 A 2 G	1 A	4 A 5 G	12 A 7 G
9. Failure of major supplier/contractor	5	8	6	19
	5 G	3 A 5 G	6 G	3 A 16 G
10. Failure to comply with Health & Safety requirements	10	1	1	12
	4 A 6 G	1 G	1 G	4 A 8 G

## Appendix C

### Analysis of Operational Risk Registers

#### Top Ten Operational Risks – by frequency

Operational Risk	Listing per Risk Score Analysis	Places	P & R	People	Total
1. IT failure – corporate, bespoke, telephony	1	9	20	10	39
2. Failure to recruit qualified staff/loss of key staff	2	16	6	16	38
3. Major event e.g. fire, terrorism, pandemic flu	3	9	4	16	29
4. Safety of staff/risks to staff working alone	4	11	1	14	26
5. Lack of trained staff	5	6	8	10	24
6. Inadequate information governance	6	3	15	5	23
7. Non compliance with legislation	7	3	9	9	21
8. Inadequate/loss of/changes to funding	8	9	1	9	19
9. Failure of major supplier/contractor	9	5	8	6	19
10. Failure to comply with Health & Safety requirements	10	10	1	1	12