

Report of the: Director of Policy and
Resources

Agenda
Item No: 5.
Meeting: 24 September 2013

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 The annual review of strategic risks is currently underway and the revised Strategic Risk Register will be reported to this Committee at the next meeting.
- 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 14th edition of the Risk Roundup newsletter was also issued in August (appendix A). Furthermore, in addition to the risk management eLearning package that is available for new managers, an eLearning package has been developed for all council staff and members.
- 2.3 In June Members were informed that the council had submitted data to CIPFA/ALARM's risk management benchmarking club. Results have now been received which show an encouraging level of compliance with best practice and risk maturity. Data was analysed over 7 factors and scored on a scale 1 to 5 (1 being the lowest and 5 the highest). A summary of the results is provided in appendix B, and show arrangements are evaluated at level 3 (Working) in one area, 5 areas were evaluated at level 4 (Embedded and Integrated) and one area at level 5 (Driving). A comparison of results between 2012 and 2013 is also

provided in appendix C. This shows positive direction of travel across all benchmarking factors.

- 2.4 As part of a schedule of reviews of key risks and major projects, contained within the risk management action plan, a presentation on fleet management and the associated risks was delivered to the Risk Management Group. This highlighted that a number of risks have been identified however these are being managed through monitoring, training and the implementation of tracking devices.
- 2.5 Risk management and internal audit work is integrated wherever possible. Risk management arrangements are considered in the development of annual audit plans; conversely internal audit reviews provide assurance on the adequacy of controls and the management of risks. Audit reviews of three corporate systems were recently completed namely; corporate governance arrangements, partnership governance and the council's approach to the implementation and compliance with the Localism Act. The reviews showed that generally adequate controls were in place to manage risks. However further work is necessary to improve risk controls across all partnerships and monitor compliance with corporate procedures. Partnership risks were identified in the risk management action plan and registers will be examined in the next quarter.

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 14
July 2013

A quarterly digest of risk management issues



Laptop security p3

Work-related road safety

“As an organisation the council should be carrying out risk assessments for any work related driving activity.”

The article below was produced by the council's Head of Fleet Provision and outlines the requirements of the Management of Health and Safety at Work Regulations 1999 in relation to work related driving activity.

It has been estimated that within the UK up to a third of all road traffic accidents involve someone who is at work at the time. This may account for over 20 fatalities and 250 serious injuries every week. (HSE INDG382)

The Health and Safety at Work etc Act 1974 requires us to ensure, so far as is reasonably practicable, the health and safety of all employees while at work.

Under the Management of Health and Safety at Work Regulations 1999, we have a responsibility to manage health and safety effectively. We need to carry out an assessment of the risks to the health and safety of our employees, while they are at work, and to other people who may be affected by their work activities.

The regulations require us to periodically review our risk assessment so that it remains appropriate.

This includes driving!

- Members of staff driving on Council business cover approximately 4,000,000

miles per annum.

- Based on an average speed of 35mph this equates to approximately 114,300 staff hours spent driving
- In 2010 – 2011 over 3000 vehicles operated on council business

As an organisation the council should be carrying out risk assessments for any work related driving activity.

The HSE recommends a 5 step approach to risk assessments

Look for the hazard, **Decide** who may be harmed, **Evaluate** the risk, **Record** your findings, **Review** your assessment

When carrying out a risk assessment for work related driving there are a number of items that need to be considered:

The Driver

- Is the driver competent?
- Has the driver been trained?
- Is the driver fit?

The Vehicle

- Is the vehicle suitable?

- Is the vehicle in a safe condition?
- Has the vehicle got the correct safety equipment and is it functioning correctly?

The Journey

- Has the route been planned?
- Are the schedules realistic?
- Has the travelling time been considered?
- Has the distance been considered?
- Is alternative means of travel an option?
- Have you given consideration to adverse weather conditions?

Whilst the above are the main areas to consider there may be others and once an assessment has been completed you must ensure that you review it periodically to take into account changing circumstances.

Further advice on driving at work can be obtained from the Fleet Provision Team.

DATA LOSS RISKS

Five common IT administrator mistakes that lead to data loss

Based on its day-to-day experiences, Kroll Ontrack, leading data recovery provider, has listed five of the most common mistakes made by IT administrators that can lead to data loss.

These are:

- Failure to document and execute established IT, retention and backup procedures.
- Failure to keep OS and anti-virus software up to date. Days are busy and resources are stretched, but failing to update OS security patches and anti-virus software can result in treacherous security breaches and extensive data loss.
- Failure to backup effectively. Failure to establish and follow backup procedures, or test and verify backup integrity is a guaranteed recipe for data loss.
- Deleting data that is still in active use.
- Failure to test IT security policies. Even the smallest failure in IT security can lead to devastating results, including critical data loss and huge expense.

INFORMATION GOVERNANCE

Two councils added to Information Commissioner's FOI watchlist

The Information

Commissioner's Office (ICO) has said that Barnet and Manchester City councils are to be monitored this quarter over concerns about the timeliness of their responses to FOI requests. Under the Freedom of Information Act, a public authority must respond to an FOI request within 20 working

days and the two councils are being monitored after the ICO received a significant number of complaints about their failure to respond to requests within the statutory time limit. The Metropolitan Police Service is also to be monitored for the same reason. Failure to show signs of improvement during the monitoring period may

result in enforcement action.

North Lincolnshire Council has developed a Freedom of Information Policy which sets out the council's arrangements for handling and responding to FOI requests within statutory timescales. The policy is published on Intralinc and the website.

Council student social worker breaches child assessment data

East Riding of Yorkshire Council has formally agreed to improve its data protection measures after two separate incidents led to the council breaching UK data laws, the Information Commissioner's Office has confirmed.

The watchdog said it had received reports of two separate incidents which took place in April and May of 2012.

In one incident an employee was said to have mistakenly included sensitive personal data about one family in a response to a subject access request made by another.

And in the other a student social worker was said to have revealed to

the parent of a child under assessment the first name of an individual who had made an anonymous referral about that parent to the council's children's services team.

The ICO, which has the power to issue fines of up to £500,000 for serious breaches of the Data Protection Act, said both incidents could be attributed to a "general lack of data protection awareness and training, together with a lack of proper management or checking procedures when dealing with subject access requests or supervising non-employees, such as students on placement".

It is understood that no fine was issued to the council and the ICO reached the conclusion that the risk of substantial damage or distress was remote.



Watchdog amazed by mass laptop loss

Glasgow City Council's alleged carelessness with unencrypted laptops "beggars belief", the Information Commissioner's Office has said.

It has fined the authority £150,000 following the loss of two unencrypted laptops, one containing personal data on 20,143 people, for what it said was "flagrant disregard" of data protection laws.

Glasgow was also unable to account for the whereabouts of a further 74 unencrypted laptops, at least six of which were known to be stolen, the ICO said.

The two laptops were stolen in May last year from council offices, undergoing refurbishment. One was left in an unlocked drawer along with the key to the drawer which held the other.

The ICO said Glasgow had issued a number of staff with unencrypted laptops after encountering problems with the encryption software, 74 of which had vanished.

ICO assistant commissioner for Scotland Ken Macdonald, said: "How an organisation can fail to notice that 74 unencrypted laptops have gone missing beggars belief."

"Public bodies have spent more than £3.9m over the last two years paying private investigators"

Councils accused of illegal 'snooping'

A range of public bodies including 27 councils have been dragged into a row over the use of private detectives, following a report from a civil liberties campaign group.

In total, public bodies have spent more than £3.9m over the last two years paying private investigators, according to Big Brother Watch. In a FOI request, it found 29 public bodies employed outside companies to do surveillance work since 2010. This included 27 councils.

Big Brother Watch also claimed that 14 organisations – 10 councils and 4 public authorities – paid private firms to undertake surveillance work that was not covered by the

Regulation of Investigatory Powers Act (RIPA). RIPA governs the use of covert techniques by public authorities – allowing actions such as intercepting telephone calls, emails and other communications, covert surveillance and acquiring communications such as a telephone billing.

The rights of the citizens are paramount to NLC. In order to protect these rights whilst exercising powers under RIPA, the council has put in place effective procedures which are continuously monitored and reviewed. From 1 November 2012 Local Authorities are required to obtain judicial approval prior to using covert techniques.

COURT CIRCULAR

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.

No council duty to fell tree

ROOT DAMAGE – UNDERGROUND DRAINS

Kennedy v Bournemouth Borough Council, 17.09.12, Bournemouth County Court

The claimant, C, owned and occupied a property in Bournemouth. The defendant, D, is responsible for a maple tree standing next to the property.

C alleged that in early 2009 the drains to her property became blocked and her garden was flooded. Later that year a survey was carried out showing roots from the tree had encroached into the drains, causing the blockage.

C said she cleared the roots on several occasions. C said that despite repeatedly notifying D of the problem they failed to address her complaints adequately. She therefore sought damages from D, alleging nuisance and negligence. Her claim included reimbursement

of the costs of repairing and restoring her property.

C's allegations included that D permitted a tree to be planted which was unsuitable for the area, that they failed to carry out proper measures to protect the surrounding drainage, and failed to prevent the roots from encroaching into the drains to her property.

C also applied for an injunction requiring D to carry out works to prevent the roots from blocking her drains. D denied liability. They said, among other things, that roots will not damage drains but they can grow into drains through existing cracks caused by other means. D denied the tree constituted a nuisance or a hazard.

“There was the risk of the floodgates being opened to require councils to deal with thousands of trees for which they are responsible”

The court held that by the spring of 2009 it was reasonably foreseeable to D that the maple tree’s roots could cause blockages to the drains to C’s property. D was then under a duty to consider what, if anything, would be reasonable to do about this, having regard to the amenity value of the tree and the cost of dealing with the problem.

The court noted that local authorities are responsible for thousands of trees and that

expenditure has to be prioritised. Ordering this maple tree to be felled due to a blocked drain would, the court held, be a disproportionate response.

The court held that the roots did not cause cracks in the drains. The owner of a property is primarily responsible for closing gaps in their drains and this would be the most effective way to solve the problem. The claim was dismissed.

The council defended this claim for damages for root encroachment to drains, citing the recent judgment in *Berent v Family Mosaic Housing*. In that case, the Court of Appeal held that if a tree creates a ‘real risk’ of property damage, consideration should be given to what action, if any, should be taken to address that risk. It might be appropriate to take no action if the risk of damage is reasonably assessed as very low. In this claim, the court also supported the council defending it from a costs perspective, accepting that, in the current economic climate of strict financial constraints, care must be taken to prioritise expenditure; had it not defended the claim there was the risk of the floodgates being opened to require councils to deal with thousands of trees for which they are responsible.

Council did not ensure safety

PUBLIC PARKS – ZIP WIRE RIDE – UNEVEN GROUND

Vaughan v Walsall Metropolitan Borough Council, 26.11.12, Birmingham County Court

The claimant, C, took his sons to a park for which the defendant, D, was the occupier responsible.

C was helping his two sons to play on a newly installed zip wire. As C’s youngest son was too short to reach the ground, C helped him along the wire. C said that as he was walking along he lost his footing and fell on the edge of the flooring, injuring his ankle. He alleged the flooring was raised more than 30mm above the surrounding area.

C claimed damages from D for his injuries, alleging the accident was caused by their breach of duty under the Occupiers’ liability Act 1957.

His allegations included that D permitted the floor below the zip wire to remain at a different level to the surrounding area, that this was dangerous, and that D failed to warn C of the differing flooring levels.

D denied liability, contending the area was not dangerous and there had been no other complaints or similar incidents since the installation of the wire.

D also alleged that if the accident occurred as alleged, it was wholly or partly caused by C’s negligence in, among other things, failing to watch where he was walking.

The parties disputed whether C was running or walking at the

time of the accident but the judge held he was walking. The judge noted that D’s records showed some appreciation that there was a risk involved with soil settlement levels at the site. He held D could have taken steps to prevent the zip wire ride being used, such as removing the seat, which other councils had done due to vandalism concerns.

The judge also held D would have found difficulty with preventing use of the ride by maintaining protective fencing around it. The judge held D had failed to take reasonable steps to ensure C’s safety. The claim succeeded and C was awarded a little under £7,700 plus his costs of just over £31,500.

This claim succeeded because the judge held the defendant occupier had not taken reasonable steps to ensure the safety of visitors to the play area in question, despite some awareness of the risk created by the different ground settlement levels. Although the defendant contended they could have closed the ride and fitted security fencing around it, the defendant said this measure was not taken due to the risk of vandals damaging the zip wire ride. The court held the defendant liable for appreciating the risks present but failing to take reasonable steps to avoid consequential harm to the claimant. Where a claim succeeds on liability, it is nonetheless important to defend certain elements of damages claimed where there is insufficient evidence of their reasonableness – here, the judge rejected the claimant’s claim for the cost of buying automatic car because it was not clear that this was necessary.

‘Unfair’ reference claim dismissed

DUTY TO PROVIDE ACCURATE REFERENCE

(1) Walker and (2) Public Sector Solutions Ltd v Bristol City Council, 31.01.13, Bristol County Court

The first claimant, C1, was a director and employee of the second claimant, C2. C2 provides consultancy services to the public sector.

A company, Sands Resources, SR, acted as an agent for the defendant, D, in relation to, among other things, tenders and contracts. Under such a contract, C2 agreed that C1 would provide consultancy services for nearly four months in early 2010, relating to one of D’s programmes, for which D would pay C2 a fee of £525 per day. Part of the task involved C1 reporting to D’s employee, T. The contract was extended to October. In December, C1 tendered his services for another role with D, a contract for consultancy services for a term of six months. He was offered it subject to references. One of C1’s referees had moved to a different council and D

therefore obtained a reference from T. This was not favourable to C1. T’s comments included that C1 failed to keep T properly informed, he caused organisation confusion and disruption, he lost his colleagues’ trust, and failed to fulfil one of his ‘outcomes’. As a result of this reference, D withdrew its offer to C1. The claimants sought damages from D, alleging the reference contained inaccuracies and was produced negligently. D denied liability, denying the reference was inaccurate in any way, or negligently produced. The parties accepted an employer owes a duty to an employee to

exercise reasonable care and skill when providing a reference. D disputed owing a similar duty to C2. The court held joining C2 in this claim added nothing. The judge considered each statement complained of, evidence as to the truth of it, and whether parts of the reference were inaccurate but other parts were not. The judge concluded that all the statements were fair except for one. However, overall, D would have withdrawn their offer to C1, even had that one unfair statement been removed from the reference. The claim was dismissed.

This judgment revisits the extent of an employer’s duty of care when providing a reference for a former employee or contractor. The reference must be accurate, fair and balanced so that, overall, it does not give an unfair impression. A detailed analysis of the statements complained of is essential – here, the evidence demonstrated that, save for one statement, the reference was fair and accurate.

Claimant also had duty to take care

RAISED PATHWAYS – EXTENT OF CARE OF ORDINARY PERSON

Tacagni v (1) Cornwall County Council, (2) Penwith District Council and (3) Hayle Town Council, 24.04.13, Court of Appeal

One night in 2007, the claimant, C, was walking home with her partner, P, having consumed alcohol during the evening. As they walked along a pathway raised approximately two metres above an adjacent road, they turned back as it was too dark. P went in search of a phone signal to call a taxi. C proceeded, using a fence alongside the pathway to guide her. The fence continued across several metres of grass. C followed but fell off the edge on to the road below.

C claimed damages from the defendants, alleging breach of duty under the Occupiers’ liability Act 1957 (the Act). She said the fence bordered part of a retaining wall that had

collapsed in 2001. The second defendant’s (D2’s) supervisor of open spaces, b, said there had been no previous accidents since the fence was erected. The trial judge held D2 primarily liable for failing to erect a suitable fence to prevent persons falling over the edge. but C was two-thirds liable for her contributory negligence. D2 appealed.

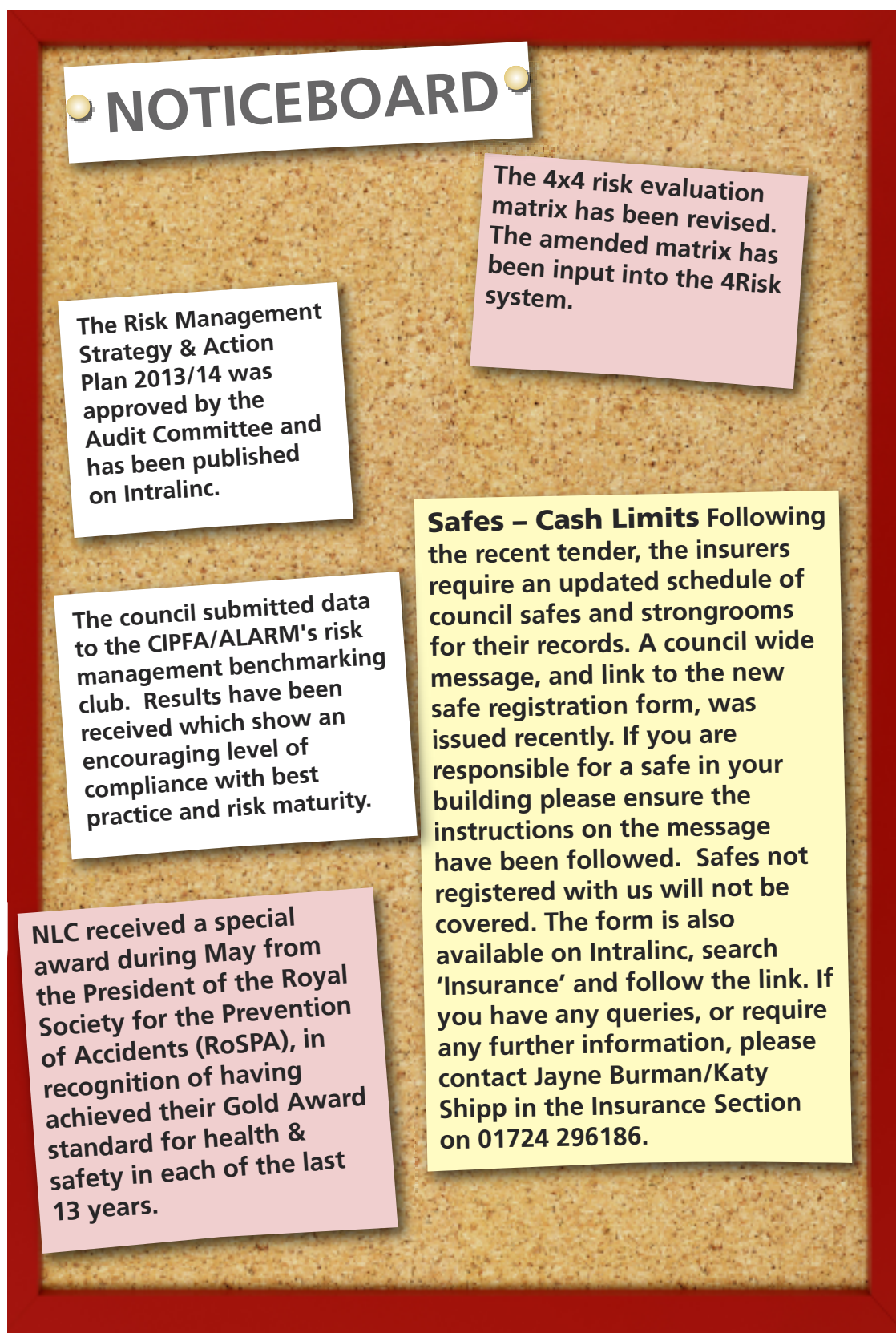
The Court of Appeal held D2 had not unreasonably failed to guard against the risk of falling as C had done. It was difficult

to imagine a person would use the fence as a guide and it should have been obvious to C she had left the path, walking across grassland.

Further, the trial judge had failed to consider the extent of care expected of an ordinary visitor under s.2(3) of the Act. C was walking under the influence of alcohol, at night, without a torch, in uncomfortable new shoes. That failure impaired his conclusion. The appeal was allowed.

This Court of Appeal judgment raises the important question, in occupiers’ liability claims, of the duty expected not only of the occupier but also of the injured visitor, under s 2(3) of the Act. This emphasises the importance of taking into account the visitor’s own acts and omissions, not reasonably foreseeable to the occupier.

“This Court of Appeal judgment raises the important question, in occupiers’ liability claims, of the duty expected not only of the occupier but also of the injured visitor”



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.

	Leadership & Management	Strategy & Policy	People	Partnership & Resources	Processes	Risk Handling & Assurance	Outcomes & Delivery
Level 5 Driving	Senior management uses consideration of risk to drive excellence through the business, with strong support with reward for well- managed risk taking	Risk management capability in policy and strategy making helps to drive organisational excellence	All staff are empowered to be responsible for risk management The organisation has a good record of innovation and well managed risk taking Absence of a blame culture	Clear evidence of improved partnership delivery through risk management and that key risks to the community are being effectively managed	Management of risk and uncertainty is well-integrated with all key business processes and shown to be in key driver in business success	Clear evidence that risks are being effectively managed throughout the organisation Considered risk-taking part of the organisational culture	Risk management arrangements clearly acting as a driver for change and linked for plans and planning cycles
Level 4 Embedded & Integrated	Risk management is championed by the CEO The Board and senior managers challenge the risks to the organisation and understand their risk appetite Management leads risk management by example	Risk handling is an inherent feature of policy and strategy making processes Risk management system is benchmarked and best practices identified and shared across the organisation	People are encouraged and supported to take managed risks through innovation Regular training and clear communication of risk is in place	Sound governance arrangements are established Partners support one another's risk management capability and capacity	A framework of risk management processes in place and used to support service delivery Robust business continuity management system in place	Evidence that risk management is being effective and useful for the organization and producing clear benefits Evidence of innovation risk-taking	Clear evidence of significant improved delivery of all relevant outcomes and evidence of positive and sustained improvement
Level 3 Working	Senior managers take the lead to apply risk management thoroughly across the organisation	Risk management principles are reflected in the organisation's strategies and	A core group of people have the skills and knowledge to manage risk effectively and	Risk with partners and suppliers is well managed across organisational boundaries	Risk management processes used to support key business processes	Clear evidence that risk management is being effective in all key areas	Clear evidence that risk management is supporting delivery of key outcomes in all relevant areas

	They own and manage a register of key strategic risks and set the risk appetite	<p>policies</p> <p>Risk framework is reviewed, refined and communicated</p>	<p>implement the risk management framework</p> <p>Staff are aware of key risks and responsibilities</p>	Appropriate resources in place to manage risk	<p>Early warning indicators and lessons learned and reported</p> <p>Critical services supported through continuity plans</p>	Capability assessed within a formal assurance framework and against best practice standards	
Level 2 Happening	Board/ Councillors and senior managers take the lead to ensure that approaches for addressing risk are being developed and implemented	<p>Risk management strategy and policies drawn up, communicated and being acted upon</p> <p>Roles and responsibilities established, key stakeholders engaged</p>	Suitable guidance available and a training programme has been implemented to develop risk capability	<p>Approaches for addressing risk with partners are being developed and implemented</p> <p>Appropriate tools are developed and resources for risk identified</p>	<p>Risk management processes are being implemented and reported upon in key areas</p> <p>Service continually arrangements are being developed in key service areas</p>	<p>Some evidence that risk management is being effective</p> <p>Performance monitoring and assurance reporting being developed</p>	Limited evidence that risk management is being effective in, at least, the most relevant areas
Level 1 Engaging	Senior management are aware of the need to manage uncertainty and risk and have made resources available to improve	<p>The need for a risk strategy and risk-related policies has been identified and accepted</p> <p>The risk management system may be undocumented with few formal processes present</p>	Key people are aware of the need to understand risk principles and increase capacity and competency in risk management techniques though appropriate training	Key people are aware of areas of potential risk in partnerships and the need to allocate resources to manage risk	<p>Some stand-alone risk processes have been identified and are being developed</p> <p>The need for service continuity arrangements has been identified</p>	No clear evidence that risk management is being effective	No clear evidence of improved outcomes

Appendix C

Alarm CIPFA Risk Management Benchmarking Club 2013 – Comparison to 2012

Category	NLC Result 2013	Club Average 2013	NLC Result 2012	Club Average 2012	Direction of Travel
Leadership & Management	79%	76%	78%	74%	↑
Policy & Strategy	74%	77%	65%	73%	↑
People	83%	76%	81%	74%	↑
Partnerships & Resources	66%	70%	65%	67%	↑
Processes	87%	78%	88%	77%	↓
Risk Handling & Assurance	73%	71%	73%	66%	=
Outcomes & Delivery	75%	68%	70%	64%	↑
Overall Score	77%	74%	74%	71%	↑