

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 revised Strategic Risk Register was reported to Members in January. An evaluation of controls to manage the risks is underway. The outcome of this work will be reported in the Risk Management Progress report in September.
- 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 16th edition of the Risk Roundup newsletter was also issued in April (appendix A).
- 2.3 In March it was reported to Members that a council-wide review of operational risk registers could not be completed until all risk registers were available. Whilst efforts have been made to obtain the registers not all registers have been made available. Work however is in progress to develop the Public Health Operational Risk Register.
- 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 how risks are managed in Children's Social Care was delivered to the Risk Management Group. The presentation highlighted that risks are effectively managed and there are a number of controls in place

particularly in the areas of risk analysis, risk assessment and risk management.

2.5 Work currently ongoing includes the following:

- Develop and implement a risk appetite model for the council
- Produce a Risk Management Guidance leaflet
- Embed risk management in schools.

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

A digest of risk management issues

All councils can learn from Highland power project failure p2

“One of the major areas of attack expected is a fresh onslaught of new viruses”

Top Business Risks 2014

Business risk consultancy Riskskill has highlighted what it sees as the main areas of increasing risk for UK organisations in 2014:

Fraud Risks In 2014 fraud risks are likely to be the main contender for exposing many businesses to significant risk as the closure of the government’s National Fraud Authority (NFA) could be seen by fraudsters as a huge victory for the bad guys. The NFA was set up to consolidate and focus upon the handling and approach of combating fraud and also to direct the strategic elements of the attack on the fraudster. The NFA objectives were previously diluted from eight to three, with more ‘strategic issues’ removed. Now its remaining operational functions have been atomized into several government silos.

On the commercial side, payment markets will continue to evolve very quickly. New payment systems and software solutions are appearing daily. Many of these do not put in place effective authentication, security, standards or best practice systems. Often, this is because these have yet to be created in a market that is changing so rapidly. New

mobile payment and wallet solutions are being developed with the backing of ‘big’ funding and strong marketing campaigns. Only a few of these will win through though. Many will fail, either commercially or because of serious fraud attacks that exploit the lack of authentication.

Identity Validation

Who am I dealing with? This will become an increasingly important risk related question in 2014 for consumers and businesses alike. Anti-money laundering legislation requires that businesses properly identify who they are doing business with, know what customers do, regularly check, watch and look out for unusual transactions that may be illegal, and report anything suspect.

There are however several weaknesses in this area. For example, some small operators of ‘new’ payment solutions think that they are excluded from these requirements. There are also some insurance company policy sellers, who are

playing catch up and often who do not check identities. Then there is the public who are increasingly becoming payment providers as they buy and sell more on-line. Whereas one used to know who one was dealing with for financial transactions it can now potentially be almost anyone in the world.

As a consequence, identity, identity validation and data certainly will move up the risk hierarchy and as a result so will the level of importance placed on these areas by businesses in 2014. These risks will be amplified greatly or those organisations that do not understand the issues or address them properly.

Big-data Losses

With such problems increasingly arising where our personal data is held and managed by more and more people, often across the web, a new generation of customers are open about their data and therein are disclosing almost everything about their finances. They are keen to

Top Business Risks 2014 continued from page 1

become users of the new mobile breed of financial products, which will present greater opportunities for identity theft and data compromises. With numerous high profile data breaches losing millions of customer data records in 2013, one can see that more of these types of losses will be incurred over the coming year.

Protection for Multiple Channels

The proliferation of new wallets, payment instruments, mobile devices and payment applications being developed means that, for businesses to keep up, they need to evolve new protections, controls and security that are consistent across multiple channels simultaneously – what one might call ‘unified protection’. As ever, the security and controls side of things will often lag behind; so businesses must ensure that these developments are carried out fully and that they are free from short-cuts as these will lead to problems later.

One of the major areas of attack expected is a fresh onslaught of new viruses. With such new threats as Cryptolocker, and other such plagues landing on businesses of all sizes, there is a risk that this kind of attack could reach epidemic levels in 2014. Even the smallest firms must ensure that they update the virus and anti-malware software regularly, maintain strong back-up regimes and avoid clicking on suspicious

links. If these dangers move closer to mobile payments, it could threaten the momentum of the mobile sector evolution especially where authentication is less effective than it could be.

Silo Mentality Causing Corporate Ineffectiveness in Combating Risk

Borne out of the desire to conduct business correctly, increasingly complicated silo structures have grown up in the corporate world, with many differing and sometimes potentially conflicting interests. Often large businesses, in particular, introduce several highly ineffective theoretical layers of risk management protection that often keep the business too busy and slow to do the real work required to tackle the challenges that organisations face.

Instead businesses should be fighting to define clear risk management direction, together with business goals that incorporate risk thinking and risk/loss targets. Collaboration is the key here. It facilitates speed of decision-making, clear and assertive action-taking and an understanding of the business drivers. It also enables the ability to act, invest and change businesses as required which are key to controlling risks.



All councils can learn from Highland power project failure

A scheme to provide heat and power to homes in Wick has landed The Highland Council with a final bill of £11.5 million.

Caithness Heat & Power was set up as an arm’s length company by the council in 2004 but ran into major problems and had to be taken back into council ownership four years later. A highly critical report for the Accounts Commission in June 2010 revealed fundamental failings in the way the project was structured and managed. A second report in February 2011 identified serious weaknesses in governance and accountability. At the time, the council estimated that the total cost of its involvement in the project would be £15.4 million.

In its findings recently released by the Commission says all councils can learn from the project. It is essential that any arm’s length

external organisation has robust governance and accountability arrangements from the outset with clear lines of responsibility for councillors.

The project originally started off in 2002 as a community venture to provide wood-fired heat and water to homes in Wick. However it hit early problems. Risks were not identified, warnings went unheeded and checks or controls on spending were inadequate.

The council has now reviewed its approach to arm’s length organisations.

Information Governance

“Under the FOI Act, a public authority must respond to an FOI request within 20 working days”

ICO fines council £80k in latest loss of unencrypted memory stick

North East Lincolnshire Council has been hit with a fine of £80k by the Information Commissioner after an unencrypted memory stick with sensitive data was lost. The memory stick, containing information on 286 children with special educational needs, has been missing since 1 July 2011.

The device had been left in a laptop at the council offices by a SEN teacher. When the teacher returned, the

memory stick was gone. It has not been recovered.

The information on the memory stick included the children’s mental and physical health problems, teaching requirements, dates of birth and in some cases home addresses and information about their home life.

Cabinet Office monitored over FOI response times

ICO has announced that the Cabinet office and two other public authorities are being monitored over the timeliness of their response to freedom of information (FOI) requests.

Under the FOI Act, a public authority must respond to an FOI request within 20 working days. The ICO is monitoring the Cabinet Office, the Crown Prosecution Service and Hackney Council for a three month period after a significant number of complaints were made to the ICO about the timeliness of the authorities’ responses.

North Lincolnshire Council has developed a FOI Policy which sets out the council’s arrangements for handling and responding to FOI requests within statutory time scales.

“Covert video surveillance evidence was obtained which demonstrated the Claimant's true capacity”

Homes For Haringey v Fari & Fari

In recent years the Court has wrestled with applications from defendants to seek a strike out and other appropriate sanctions on cases where there has been evidence of gross exaggeration. Recent cases suggest that the Court may be more willing to apply those sanctions than previously.

Barbara Fari brought a compensation claim against Homes for Haringey valued at £750,000. She claimed that she had suffered injury as a result of their negligence leaving her needing intensive care and assistance from her husband. The Claimant's husband supported her claim in his witness statement.

Crucially the claim was supported by three Schedules of Loss over a period of time in addition to witness statements from

both the Claimant and her husband, all endorsed with Statements of Truth. Furthermore the Claimant obtained reports from several medical experts each reiterating the Claimant's insistence that she continued to suffer problems with her mobility after the accident hence the claim for care and assistance which would be needed for the rest of her life.

Covert video surveillance evidence was obtained which demonstrated the Claimant's true capacity. The Claimant was shown walking freely without any physical assistance and in the light of this evidence, the medical experts prepared a revised report confirming their belief that the Claimant had significantly exaggerated her symptoms.

An earlier Supreme Court decision of Summers v

Fairclough Homes ruled that the Court did have power under its inherent jurisdiction to strike out a case where there was an abuse of process caused by fraudulent exaggeration. However the Court ruled that the power was only to be exercised when it was just and proportionate to do so and the Court on that case decided that the power was not exercisable on those facts.

A little over 3 months after the Summers decision, at first instance, the District Judge heard the evidence surrounding Barbara Fari's claim for £750,000 damages and found that the Claimant had significantly exaggerated her symptoms and endorsed a view that the sums claimed were "outrageous". The Judge found that the Claimant had dishonestly and deliberately given the

Homes For Haringey v Fari & Fari **continued from page 3**

medical experts a false impression that her condition was worse than it actually was. He assessed her claim as truly being worth approximately £1,500.

Due to the serious and deliberate attempt by the Claimant to claim that she was significantly more disabled than she actually was, the Judge decided that it was just and proportionate to exercise the power referred to in the Summers case above and struck out her claim in its entirety.

In addition to seeking a strike out of the claim, following this adjudication,

This is a landmark case building on the Supreme Court's case judgement in Summers v Fairclough Homes that it would be legitimate to reject an entire insurance case if elements were found to be fraudulent. It serves as a clear and decisive example to anyone considering exaggerating their insurance claim. Not only do they run the risk of losing compensation, more over the real risk of prison is a stark reality.

an application was made for the committal of both the Claimant and her husband for contempt of Court given that her claim, and his support for her claim, was so exaggerated as to be considered an abuse of process. Barbara Fari was sentenced to 3 months in prison and her husband was sentenced to

2 months imprisonment suspended for 12 months. Although the council has not experienced any fraudulent claims as yet, we have recently successfully defended a number of insurance claims in court. These show the importance of a robust document retention policy within the council.

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.

OCCUPIERS' LIABILITY



HOUSING ESTATES – TRIPPING HAZARD

Hickingbottom v Staffordshire County Council, 26.07.13, Telford County Court

The claimant, C, was injured after tripping over a raised gate stop on a housing estate. C, who was aged 71 at the time, claimed damages from the defendant occupier, D.

C alleged negligence and breach of duty under the Occupiers' Liability Act 1957. Her allegations included that D failed to risk assess the potential tripping hazards on the estate, failed to place a sign warning pedestrians of the gate stop, failed to consider the danger the gate stop posed to pedestrians, and failed to operate an adequate system of inspection and maintenance.

D denied liability. They contended the gate stop was clearly visible and the risk of injury was so low as not to warrant any remedial action. D said the gates and gate stop had been in place for over 100 years, thousands of pedestrians had safely walked through, and D had not

received any previous complaints or notice of any similar incidents. D also or alternatively argued contributory negligence of C in failing to take proper care for her own safety.

The judge held the gate stop should have been highlighted to alert distracted pedestrians to the foreseeable danger it posed. The claim succeeded, but damages were reduced by 20% for C's contributory negligence.

comment

This ruling indicates that a feature on an occupier's property may be held dangerous even where the feature has existed for over 100 years, no previous complaints had been made about it and many thousands of other people had negotiated the area without mishap.

NEGLIGENCE



LEISURE ACTIVITIES – BOULDERING – SUPERVISION

Bignall v Leicester City Council, 31.05.13, Northampton County Court

The claimant, C, enrolled on a beginners' climbing ("bouldering") course at a leisure centre operated by the defendant, D. C was one of a group attending the course. At the first session, they were instructed in a simple exercise. The course leader, L, a qualified instructor, left the group under the supervision of B, who was not similarly qualified. C climbed to a height of approximately five feet but then encountered difficulty with continuing. Despite B instructing her, she fell, injuring her foot.

C claimed damages from D for her injury, alleging negligence and breach of contract. Her allegations included allowing an unqualified person to supervise C, and vicarious liability for L failing to provide suitable instruction.

D denied liability, contending that B was an experienced and suitably trained climber. D said the room used was suitable for the exercises

involved and that if C had climbed to five feet, this was higher than instructed and she was responsible for her accident.

At trial, the recorder held C's evidence conflicted with her claim as she could climb as B had demonstrated, others in the group completed the climb without injury and the exercise was not dangerous. There was no evidence to indicate the exercise was unsafe. The claim was dismissed.

comment

This illustrates a claimant failing in a negligence claim, concerning injury from taking part in a leisure activity, through failing to prove the defendant was at fault. The claimant had contravened the supervisor's instructions, she admitted she could have climbed to the top of the wall, and no others in the group had encountered difficulties.

PUBLIC LIABILITY



REFUSE COLLECTION – POSITIONING OF RESIDENTIAL 'WHEELIE BIN'

Dawson v Rushcliffe Borough Council, 29.05.13, Nottingham County Court

The claimant, C, alleged his car sustained damage after it collided with a green 'wheelie bin' provided by some councils for residential garden waste. C alleged that, having emptied the bins, the bin collectors employed by the defendant, D, positioned C's neighbour's bin in such a way that it was not adequately visible from C's driveway. As a consequence, C said that when his daughter reversed the car down the driveway, the car struck the wheelie bin, causing almost £1000 worth of damage. C said the incident was witnessed by D's employees who allegedly said the bin had been left incorrectly.

D denied liability. They disputed that C's daughter was driving and denied their employees had said the bin had been left incorrectly. Alternatively, if the car was damaged as alleged, D contended it was wholly or partly a result of C's or his daughter's negligence by, among other things, driving into the bin and driving with the car's mirrors obstructed.

The judge held D owed C a duty to ensure the bins were not left in a dangerous position which could foreseeably risk damage or injury. The judge held C's daughter was driving and she was largely responsible for the accident. She had not checked her mirrors and/or if she had, items on the car's parcel shelf obstructed her view through the rear view mirror. For that reason the judge apportioned liability at 75% against C for his daughter's negligence, and 25% against D.

comment

Although this is a small claim brought by a litigant in person, it illustrates the importance of examining the circumstances of an accident. It also highlights the need to ensure employees carrying out duties connected with residential services carry out those duties, mindful of the need to exercise reasonable care and in accordance with adequate training.

OCCUPIERS' LIABILITY

SCHOOL PREMISES – WATER FOUNTAIN

Pierce (a minor, by his litigation friend Pierce) v West Sussex County Council, 16.10.13, Court of Appeal

The claimant, C, was a pupil at a school run by the defendant, D. One day in June 2010, D arranged for a water fountain to be fitted to an external wall on the school premises. Later that day, C, his mother and his younger brother, B, attended the after-school gardening club. B and C played near the fountain and, having been sprayed with water by B, C tried to punch B. B avoided the punch with the result that C instead punched the water fountain. C consequently sustained a laceration to his thumb which left a short scar.

C claimed damages for his injury from D, alleging negligence and breach of duty under the Occupiers' Liability Act 1957 (the Act). His allegations included that the water fountain had a sharp edge underneath on which it was reasonably foreseeable children could injure themselves, that D would not have installed the fountain had they properly assessed the potential risk it posed, and that the sharp underside should have been smoothed down or somehow covered.

D denied liability, contending the injury was caused by C's spontaneous and unpredictable act. Further, the fountain was not unduly sharp and did not pose a hazard during normal, expected or reasonable use.

At the initial trial the court heard that, between 2001 and 2010, over 8,000 similar fountains had been installed in public places, mostly schools, and that no similar incidents or complaints had been received by the manufacturer during that time.

However, the judge held D had failed properly to assess the risk that children might play near the fountain and cut their heads on the underside of it. C succeeded at trial and was awarded just over £3,200.

D appealed. They contended that, among other things, the trial judge wrongly based his decision on finding the underside of the fountain was sharp and that D had failed to carry out a risk assessment as to the injury it might cause. He did not mention the duty under the Act.

The Court of Appeal held the key question was whether visitors to the school were reasonably safe, including using facilities such as the fountain, bearing in mind that children do play around, sometimes mischievously. The Court held there was no evidence that the fountain was not reasonably safe. The judges themselves felt the underside of the fountain, regarding it as not sharp and that one could not cut a finger on it.

The Court held the fountain did not pose a risk of danger to children. The appeal was allowed.

comment

In a robust judgment, the Court of Appeal confirmed a defendant is not under a duty to safeguard children from harm in all circumstances. Although each case will be fact sensitive, the defendant here was not obliged to take any particular steps regarding the water fountain that it would not take with any other edges, corners or surfaces on which children might accidentally injure themselves – otherwise, the Court said, "the law would part company with common sense". The Court accepted that unfortunate accidents do occur, but that does not always indicate someone else is legally liable. [Please click here for full judgment.](#)



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.