Report of the: Director of Policy and Resources

Agenda Item No: 10
Meeting: 23 June 2015

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 In April the Audit Committee approved the Risk Management Strategy, Policy and Action Plan 2015/16. This sets out the council's approach to risk management and measures planned to maintain and improve arrangements. An important component of the framework is the Strategic Risk Register (SRR). These are risks identified as 'any risk which may prevent the successful achievement of corporate objectives'. The revised Strategic Risk Register was reported to Members in January, and will be reviewed again following the Council Strategy update in July. An evaluation of controls to manage the risks is underway. The outcome of this work will be reported in the Risk Management Progress report when completed.

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 20th edition of the Risk Roundup newsletter was also issued in June (appendix A).

2.3 The council continues to define its risk appetite. This is the amount of risk that an organisation is willing to take to achieve its objectives. The purpose of the risk appetite is to prioritise risks and target resources effectively. This means that a realistic view is taken to ensure risk

management arrangements are proportionate and adequate to meet the council's needs. Risk management should not become a barrier to seizing opportunities or not cost effective. Some degree of risk is inevitable and acceptable to provide cost effective/customer focussed services however associated risks are identified, considered and treated where necessary. The initial view of the risk appetite definition shows that we want to contain risks within an evaluation range of significant or satisfactory controls i.e. have a risk score below 9.

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 Child Sexual Exploitation risks are managed in Children's Social Care was delivered to the Risk Management Group. The presentation highlighted that risks are effectively managed as far as possible and there are a number of controls in place particularly in the areas of working with other agencies, sharing information, support to vulnerable children and appropriate legal action if necessary.

2.5 A recent internal audit review of partnerships highlighted improved governance arrangements. Testing showed adequate internal controls resulting in an overall audit assurance evaluation of *satisfactory*. Areas for improvement were identified which included the absence of a small number of risk registers.

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 20
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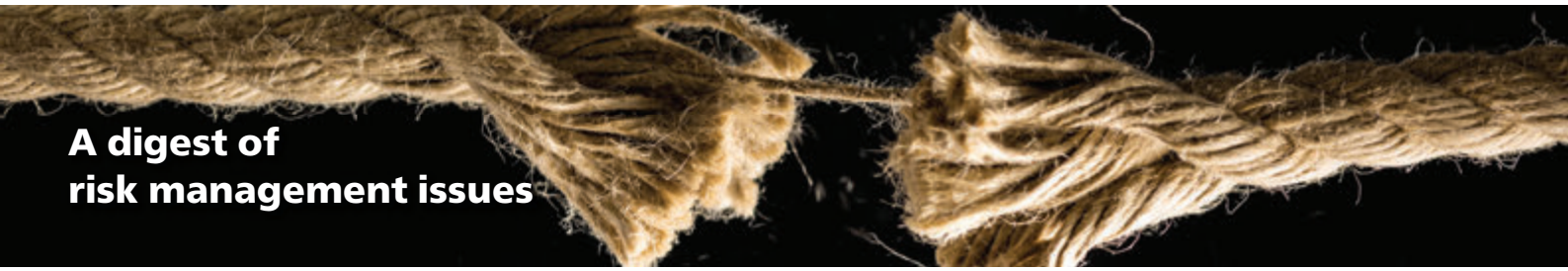

Lake District council fined following bin lorry deaths

Two killed by reversing rubbish trucks - South Lakeland District Council fined £120,000 and ordered to pay £50,000 costs.

Issue 19 of the newsletter reported that Birmingham City Council had been fined £10,000 with £1,887 costs by the Health and Safety Executive (HSE) after a refuse worker sustained leg injuries when he was trapped against a van by a reversing bin lorry. It has now been reported that South Lakeland District Council has been fined £120,000 and ordered to pay £50,000 in costs after two women were killed by reversing rubbish trucks within a year of each other.

The first incident occurred in June 2010, when a female was struck by a reversing truck and later died of her injuries. An investigation by the HSE found it was normal practice not to have a council employee walking behind the reversing truck to guide the driver.

The court was told South Lakeland should have reviewed all its bin collection rounds following the incident to eliminate reversing whenever possible, or to make sure employees guided drivers from behind vehicles when there was no other option but to reverse. The court heard this did not happen.

In March 2011 a council employee was walking behind a rubbish truck to guide the driver when she was struck, causing fatal injuries.

The council pleaded guilty to two breaches of the Health and Safety at Work Act 1974. Both drivers pleaded guilty to causing death by careless driving.

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Child Sexual Exportation (CSE)

In all cases, those exploiting the child or young person have power over them because of their age, gender, culture, physical strength and/or resources.

What is CSE?

CSE is when children and young people receive something (such as food, accommodation, drugs, alcohol, cigarettes, affection, gifts, or money) as a result of performing, and/or others performing on them, sexual activities.

CSE can occur through the use of the internet or on mobile phones. In all cases, those exploiting the child or young person have power over them because of their age, gender, culture, physical strength and/or resources. For victims, the pain of their ordeal and fear that they will not be believed means they are too often scared to come forward.

Signs of CSE

The signs of CSE may be hard to spot, particularly if a child is being threatened. Some of the visible signs include:

- Regularly missing from home or school and staying out all night
- Change in behaviour – becoming aggressive and disruptive or quiet and withdrawn
- Unexplained gifts or new possessions
- Sexual health problems
- Using drugs and alcohol
- Increase in mobile phone use/spending excessive amount of time on line
- Showing signs of unexplained physical harm such as bruising and cigarette marks

Grooming can take place in many forms – both on line, in social media chat rooms, via mobile phones or in person.

Key facts about CSE

- Sexual exploitation often starts around the age of 10 years old. Girls are usually targeted from age 10 and boys from age 8 and can happen in all communities.
- Any person can be targeted but there are some particularly vulnerable groups: Looked after Children, Children Leaving Care and Children with Disabilities. Children are also believed to be at risk if they are homeless, have feelings of low self-esteem or have had a recent bereavement or loss.
- CSE is not just limited to Rotherham, and is not just a feature of 'northern towns and cities'. The phenomenon has been encountered in London Boroughs and Skipton. More recently CSE activity in Stoke and Sheffield has come to light and there are historic cases in Oxford.
- Grooming can take place in many forms – both on line, in social media chat rooms, via mobile phones or in person.
- The CSE gangs operate on a strict code of secrecy.
- Perpetrators of these crimes are becoming increasingly sophisticated, using the internet to protect their identity and trafficking children around the country to avoid detection.
- The Office of the Children's Commissioner (OCC) estimates that between August 2010 and October 2011, around 2,409 children were confirmed as having been sexually exploited, with a further 16,500 being identified as at risk. However, the OCC says that evidence suggests that the number is far greater.

Measures taken by NLC to reduce the risk of CSE in our area

The Local Safeguarding Children's Board (LSCB) recognises CSE as a priority and has a multi-agency strategic task group to address the issue. There is also co-ordination with the Safer Neighbourhood Partnership. There is a cross council collective approach supported by all Directors and managers and many service areas help to highlight potential concerns of CSE. The council works with other agencies such as the police to develop risk profiles and offender/perpetrator profiles.

Measures being adopted include:

- Strategy & action plan
- Individual named lead officer for CSE has been appointed and a dedicated support team has been put in place to work with young people and their families who have been identified at risk
- Significant publicity to raise awareness of the dangers
- Work has been undertaken with BME communities
- Physical presence in high risk areas (police and youth outreach workers)
- Encourage other service areas to report concerns (enforcement agencies and neighbourhood services staff)
- Zero tolerance to any offence by enforcement agencies and raise awareness of their presence
- Appropriate action taken against any offender caught
- Use of agency workers (if required) and the transfer of admin tasks to non-social work staff
- Invested heavily in training and support

Council to pay £17k damages for failures in child care case

After the birth there were substantial concerns about the mother and her care of DS. The mother told social workers that OV was aggressive and threatening towards her and that he left needles around the house.

A High Court judge has ordered a county council to pay £17,000 in damages under the Human Rights Act following a catalogue of errors, omissions, delays and serial breaches of court orders in a child case.

The proceedings in Northamptonshire County Council v AS & Others (2015) EWHC 199 related to DS, a boy born in January 2013.

His parents had come to the UK from Latvia in 2012. DS's brother had arrived with them but had been returned to live with the maternal grandparents. The mother's GP had made a referral in late 2012 to the council because of concerns about the mother's lack of antenatal care and because she claimed to be homeless. Before the birth of DS the mother told the midwife that she had a new partner, OV, a heroin addict.

After the birth there were substantial concerns about the mother and her care of DS. The mother told social workers that OV was aggressive and threatening towards her and that he left needles around the house.

On 30 January 2013, at 15 days old, DS was accommodated by the local authority under s 20 of the Children Act 1989. The mother was not assisted by an interpreter, and the judge questioned the validity of her consent to this move.

It was not until 23 May 2013 that the local authority made the decision to initiate care proceedings and eventually issued on 5 November 2013. According to the judge, the case was further delayed by the "egregious failures" of the local authority:

- to undertake assessments of the mother, of the maternal grandparents, who resided in Latvia, and the paternal grandparents, who resided in Spain;
- to undertake any proper or consistent care planning for DS;
- to comply with court orders for the filing and service of assessments, reports and statements.

The problem had stemmed in part from the allocation of an inexperienced social worker who was not provided with support from a more qualified colleague until August 2013. Over the proceedings DS was allocated eight different social workers.

The local authority proposed that DS should go to Latvia on 17 October 2014 to be cared for by his maternal grandparents under a Special Guardianship Order (SGO). However, the October hearing could not be effective as a final hearing as the authority had failed to file a comprehensive SGO support plan.

The judge gave directions for further evidence to be filed and served by the local authority addressing "its further failures and inadequacies in planning for DS and in complying with court orders". A hearing was listed on 19 December 2014 and the Director of Social Services was ordered to attend to explain the delays and failure to comply with court orders. The letter from the Director made for "very depressing reading".

At the final hearing in December, DS was placed with his maternal grandparents in Latvia. In advance of the hearing the children's guardian had formally notified the local authority of her intention to issue proceedings in respect of the local authority's multiple breaches of DS's human rights contrary to Article 6 and Article 8 of the European Convention of Human Rights and Fundamental Freedoms. The mother also issued proceedings against the local authority on a similar basis. The authority agreed to pay £12,000 in damages to DS, £4,000 to the mother and £1,000 to the grandparents.

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Claimant guilty of contempt of court over pothole accident compensation bid

Despite the claimant's denial of contempt, he was convicted and sentenced to six months in prison.

Halton Borough Council established contempt of court in committal proceedings against a claimant who lied about the location of his accident on the highway.

Daniel Condron alleged he had fallen off his moped in September 2010 as a result of a pothole in the highway. He brought a personal injury claim seeking damages for £50,000. There was no dispute that he had fallen off his moped; however, police records suggested that the accident had taken place some distance away from the alleged pothole and that the claimant had simply lost control of the vehicle and hit the kerb.

Daniel Condron alleged he had fallen off his moped in September 2010 as a result of a pothole in the highway. He brought a personal injury claim seeking damages for £50,000.

An exchange of witness statements in January 2014 saw Condron withdraw his claim. The council successfully obtained permission to bring proceedings for contempt against the claimant on the basis that he had verified a statement of truth on court documents that contained facts that were untrue.

Despite the claimant's denial of contempt, he was convicted and sentenced to six months in prison.

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.

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

EMPLOYERS' LIABILITY

SAFE TRAFFIC ROUTES – SNOW AND ICE ON PATH

Reid v St Helens Metropolitan Borough Council, **15.01.15, St Helens County Court**

The claimant, C, was employed by the defendant, D, as a cook in a school.

One morning, in the course of her work, C walked to the end of a path, which was part of the school premises, to open the gates for the milkman's delivery. C said the path was covered in snow and ice. On her way back she slipped and fell, injuring herself.

C claimed damages from D for her injuries, alleging they were caused by D's negligence and/or breach of statutory duty.

C's allegations included breach of regulation 12(3) of the Workplace (Health, Safety and Welfare) Regulations 1992, by D's failure to keep the workplace traffic route clear of obstructions likely to cause a person to slip, trip or fall.

C also alleged D failed to operate a safe system of work, provide a safe means of access to the gate, keep the premises in an efficient state of repair and grit the path.

D denied liability.

The court considered evidence that C was told kitchen deliveries would be made to the front entrance in inclement weather. During such weather, D carried out daily risk assessments concerning deliveries for the school.

C knew deliveries were to be made to the front entrance in bad weather and knew the path was slippery, admitting she walked along it carefully on the day of her fall.

The court accepted that C was told by the head teacher that kitchen deliveries were to be made to the front entrance in bad weather and that C had disregarded this instruction.

The claim was dismissed.

COMMENT

This ruling demonstrates the importance of an employer being able to satisfy a court that it has suitable systems in place to address variable potential hazards to employees in known changing circumstances.

The judgment also highlights the need for persuasive witnesses at trial, particularly where the only evidence of a key factor is verbal evidence.

HIGHWAYS

HIGHWAYS – POTHOLES – ALLEGED TRIP – CHALLENGING CLAIMANT'S EVIDENCE

Kumar v Birmingham City Council, **11.12.14, Birmingham County Court**

The claimant, C, said that in December 2009, he was walking on a pavement when he tripped and fell in a pothole, fracturing his wrist. He claimed damages for his injury from the defendant highway authority, D, alleging negligence and/or breach of statutory duty, under s.41 of the Highways Act 1980 (the Act), to maintain and repair the highway.

C said he did not photograph the alleged defect at or near the time of his fall, but allegedly photographed it in July 2011 and February 2012, when he said the defect was still present.

D denied liability. D inspected the area 18 days before the alleged accident, finding no actionable defects, nor were any defects found during the following two inspections. D noted and promptly repaired a defect in September 2011. The site was again inspected in early December and then in April 2012. Contrasting with C's alleged photographic evidence, D found no defects at the site between the repair in September 2011 and the inspection in April 2012.

D further relied on its statutory defence under s.58 of the Act, providing evidence that it operated a reasonable inspection and maintenance system through six-monthly walked inspections.

D disputed C's evidence and argued his injuries were caused wholly or at least in part by his own negligence.

D further contended that C had failed to mitigate his loss. His plaster cast remained in place for nearly eight months, causing stiffness in the limb, due to his failing to attend hospital appointments for the removal of the cast. C's medical records also indicated he failed to attend physiotherapy appointments.

The judge held that C's photographs were not taken on the dates C claimed. The judge said C's accident had been caused by slipping on ice.

The judge then noted the conflict in C's evidence about reporting the incident – he said he reported it to D promptly but evidence showed he did not report it until approximately one year later.

The judge also found no reasonable explanation for C keeping the plaster cast on for several months. The hospital notes of C's admission on the date in question stated that C slipped on ice, got up, then slipped on ice again. The judge also analysed C's claim that he had taken his route to avoid stray dogs, but this was not mentioned in earlier evidence and the judge found it implausible.

The claim was dismissed.

COMMENT

This judgment highlights the importance of scrutinising all aspects of a claimant's claim to identify discrepancies and conflicting allegations. It also features the question of mitigation, an issue that would have been significant had the defendant been held liable – the claimant delayed his recovery by keeping his plaster cast on for several months instead of attending hospital appointments for its removal after a few weeks. The claim also again emphasises the importance of defendants being able, as here, to produce robust, credible evidence to demonstrate compliance with the legal duty in question.

ORNAMENTAL BRIDGES – CYCLIST'S FALL OVER LOW PARAPET

Edwards v Sutton London Borough Council, **08.12.14, High Court**

The claimant, C, and his wife were cycling through a park when they reached a narrow ornamental bridge over a stream. The bridge was approximately 1.2 metres above the water which was approximately half a metre deep. The bridge, over 100 years old, had a parapet about 30cms high. C said that, as he pushed his cycle across the bridge, ahead of his wife, he fell into the stream, sustaining injuries.

C claimed damages for his injuries from the defendant occupier of the park, D, alleging negligence and breach of duty under the Occupiers' Liability Act 1957.

D denied liability, relying on evidence from its gardener, ambulance crew and hospital staff indicating that C had cycled across the bridge. D said the bridge was reasonably safe and D had not received reports of previous similar accidents. D also argued it would be inappropriate to fit guardrails to an ornamental bridge.

The court noted that there were no witness statements supporting the suggestion that C had cycled across the bridge, nor were the witnesses present at trial. The court therefore regarded this evidence as hearsay. The court accepted that C and his wife had been pushing their cycles across the bridge.

The court held the bridge presented an obvious risk of injury, being narrow with a low parapet and having a different surface to the park ground. Rocks in the stream created a risk of serious injury. D had not conducted a formal risk assessment of the bridge but the judge noted there had been no known similar accidents. There were also no formal safety standards for such a bridge.

The key questions were whether visitors would be reasonably safe crossing the bridge, and the cost and feasibility of D taking measures to ensure visitors' safety, bearing in mind the risk of serious injury if they fell into the stream.

Although C did not suggest the bridge should have been built to modern standards, the court held there was a risk of serious injury which D had not identified. D should have taken some steps, such as warning visitors of the low parapet and suggesting alternative routes. These steps would neither be costly nor reduce the amenity value of the bridge.

Nonetheless, the court held there was no evidence showing C had fallen through no fault of his own and the court concluded he had not taken sufficient care for his own safety.

D was held primarily liable but C was held 40% liable for his contributory negligence.

COMMENT

This ruling focuses on occupiers of public amenities needing to ensure the safety of unusual features on their premises. Here the ornamental bridge had been in situ for over 100 years but, with no known previous accidents, had not been identified as a potential hazard to visitors, despite the low parapet and the rocks in the stream a short distance below. The key factor is that premises, including unusual features, must be reasonably safe. Occupiers should be able to show they have balanced the risk of serious injury against the cost and feasibility of taking steps to ensure visitors' reasonable safety.

OCCUPIERS' LIABILITY ZURICH claim

PUBLIC PLAY AREAS – GLASS IN SANDPIT – INJURY TO CHILD

Greenwood (a minor, by his friend J Kearns) v Maldon District Council, **17.6.14, Central London County Court**

In 2010, the claimant, C, then aged four, was playing in a sandpit in a public park when a piece of glass pierced his heel. C was treated in hospital where the glass was surgically removed.

The defendant, D, was responsible for the park. C claimed damages from D for his injury, alleging negligence and breach of duty, under the Occupiers' Liability Act 1957, to keep the sandpit reasonably safe for children playing.

D denied liability, arguing that the mere fact of an accident does not demonstrate that D has breached any duty to C. D said it took all reasonable care to ensure the sandpit was reasonably safe for users.

D said the sandpit is in an open, unfenced area. Its top layer is raked over three times each week with industry-standard equipment. Park supervisors carry out additional raking. A risk assessment was carried out but there was no documentary evidence of this. D's records showed there had not been any similar incidents. The judge said D had taken suitable steps to ensure the safety of the sandpit.

The judge rejected C's contention that D should have raked the sandpit on Saturday mornings and held there was no evidence as to the source of the glass.

The judge also considered s.1 of the Compensation Act 2006, which addresses negligence and amenities providing "desirable" activities. The judge said the only way entirely to eliminate the risk of injury in the sandpit would be to remove it but the law does not intend to eliminate every risk. D's duty was to take reasonable care in the circumstances which it had done.

The claim was dismissed.

COMMENT

This successful defence of an occupiers' liability claim reiterates that not all accidents demonstrate an occupier has been negligent or has breached its duty to keep an area reasonably safe. The defendant here satisfied the court, with documentary and oral evidence, that the sandpit was regularly raked and there had been no similar incidents reported to D. The sandpit was a "desirable" amenity and the law does not require an occupier to eliminate every risk of injury.