

Report of the: Director of Policy and  
Resources

Agenda  
Item No: 7  
Meeting: 27 September 2016

## **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 Since April 2016 the co-ordination of risk management has been part of the Audit and Assurance shared service with North East Lincolnshire. During 2016/17 a number of initiatives have instigated to develop the approach to risk management across the two councils. These include:
  - A review of each council's risk and opportunities framework to identify areas of commonality and also taking account of developments in risk management in general. Although each council will continue to have its own distinct operating models we are looking to have a common risk scoring methodology.
  - The development of shared risk management software across both councils, due for implementation in April 2017.
  - The development of common risk registers were services are shared.
  - As part of the shared Audit and assurance team work with the Insurance team to identify areas where risk management can effectively be used to reduce claims against the council.

- As part of the Audit and Assurance team, use risk management approaches to identify those areas of greater risk of fraud and therefore prioritise areas for anti-fraud activity.
- 2.2 An important aspect of the risk management action plan is to continue to raise awareness across the council. This is achieved through training programmes and communication networks. In addition to information available on the web page and Intralinc the 25<sup>th</sup> edition of the Risk Roundup newsletter has also been published (appendix A). The newsletter includes important articles on significant risk topics such as health and safety, cyber-crime and information governance.
- 2.3 As part of a schedule of reviews of key risks and major projects, contained within the risk management action plan, a presentation on the council's Highways Inspection Regime was delivered to the Risk Management Group. The presentation included an overview of the council's statutory duties in relation to the Highways Act 1980, processes in place for dealing with third party claims and the procedures adopted when an accident has occurred. Assurance was provided that there are adequate procedures in place to mitigate the risks in this area.

### **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.

### **DIRECTOR OF POLICY AND RESOURCES**

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Date: 31 August 2016

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

## A digest of risk management issues



### London borough council fined for safety failings

**A London borough has been fined after a road worker suffered serious injury whilst cutting trees.**

Southwark Crown Court heard an employee of London Borough of Havering sustained a serious cut injury above his left knee after a cut-off saw he was using was fitted with an inappropriate blade and used to cut tree roots and branches with. The blade became stuck and pulling it free the blade ran across the top of his knee. He suffered a deep cut damaging ligaments and cartilage requiring 60 stitches.

An investigation by the Health and Safety Executive (HSE) into the incident found that the wrong equipment was being used for the task. No risk assessment was conducted for the use of the saw and blade. A safe system of work should have been in place that identified suitable and compatible machinery for certain tasks.

London Borough of Havering pleaded guilty to breaching Regulations 4(2) and 4(3) of the Provision and Use of Work Equipment Regulations 1998, and was fined £500,000 and ordered to pay costs of £8,240.

In February 2016, the new sentencing guidelines for health and safety offences came into force. They direct the courts to consider the sentencing of offending organisations by way of a step-by-step approach, primarily examining culpability, the seriousness of harm risked and the likelihood of harm, which are divided into a number of different levels to reflect the scale within each category. For organisations, the court will focus on the annual turnover or equivalent to determine the appropriate starting point for a fine.

Not only are the new guidelines likely to see an increase in fines they are also likely to result in an increase in custodial sentences for individuals who have committed a health and safety offence.

Whilst the above case is associated with tree cutting activities, the principles and outcomes would be the same for any employees who are seriously injured or harmed whilst carrying out activities.



## School in court over science experiment injury

**A chemistry laboratory technician lost parts of three fingers and sustained a serious internal injury while preparing a highly sensitive explosive for use in a 'fireworks' demonstration to a class of children.**

**The school was fined a total of £26,000 (£8,000 for the section 2 offence and £18,000 for the section 3 offence) and ordered to pay £12,176 costs.**

Bristol Magistrates Court heard the now retired staff member lost the top joints of his left hand index, middle and ring fingers and ruptured his bowl while preparing the explosive at Bristol Cathedral Choir School.

The HSE prosecuting told the court the laboratory technician spent 12 days in hospital after the incident. It was revealed that the preparation of explosive substances had been carried out in the school several times a year since 2009. The mixture in question and other substances had been used in 'fireworks' demonstrations. The court also heard that other explosive substances, namely flash powder and gunpowder, were stored in the school's chemistry storeroom.

The HSE said that the incident could have been avoided if the school had implemented clear management arrangements to control

and review the risks posed by the chemicals used in its teaching activities.

Bristol Cathedral Choir School admitted that it failed to ensure, so far as reasonable practicable, the health and safety of its employees, in breach of its duty under Section 2 of the Health and Safety at Work etc Act 1974. It also admitted failing to conduct its undertaking in such a way as to ensure, so far as is reasonable practicable, that persons not in its employment, in this case the pupils, were not exposed to risks to their health and safety, in breach of its duty under Section 3 of the same act.

**The school was fined a total of £26,000 (£8,000 for the section 2 offence and £18,000 for the section 3 offence) and ordered to pay £12,176 costs.**

After the hearing the HSE inspector said "Schools need to have clear health and safety arrangements in place for their staff and students. They should set up adequate control systems and ensure that these arrangements are clearly understood and adhered to. They should also follow recognised guidance provided by CLEAPSS (formerly known as the Consortium of Local Education Authorities for the Provision of Science Services) and similar organisations regarding the control of risks to health and safety in practical science work."

## Thousands of sex offences against children 'cyber-flagged' by police

More than 3,000 sex crimes involving the Internet were committed against children last year, the NSPCC reveals.

were 13 years old, 272 were under 10 and the youngest was a one year old baby.

**The offences reported included sexual assaults, grooming victims before meeting them, inciting children to take part in a sex act and over 100 rapes.**

# NSPCC

The children's charity acquired the figures through a Freedom of Information request made to 38 police forces in England and Wales for the period 2015/16.

The offences reported included sexual assaults, grooming victims before meeting them, inciting children to take part in a sex act and over 100 rapes. The charity also said 535 of the victims

In April 2015 the Home Office made it mandatory for the police to record 'cyber-flag' sexual offences committed against children over the Internet. These are the first figures to be released.

Responding to the charity's findings the chairman of the LGA's Children and Young People Board said "Online abuse has been an area of growing concern for a number of years, and councils across the country have taken steps to make sure that teachers, social workers, children and parents are aware of the risks and know how to respond appropriately."

## Social Worker struck off for data protection breach

**Having agreed that the social worker's actions breached several sections of the code, the Committee found misconduct proven.**

**A Vale of Glamorgan council social worker who left confidential information about vulnerable children and their families at the home of a service user has been struck off.**

The social worker, who was employed in the care management team of the Vale council's Children and Young Persons service at the time of the incident, was found guilty of misconduct during a two day Care Council for Wales hearing.

The social worker was accused of leaving behind his bag containing his work diary, other work related documents and £40 cash belonging to the local authority during a joint visit with a health visitor. He was also accused of failing to take any action to retrieve the bag, or inform a manager of a possible data protection breach, once he was made aware of his error.

In his witness statements presented to the Care Council, the social worker, who was dismissed from his role following an internal investigation, accepted that he had left the bag following the visit, but claimed he was unsure if

the diary, which contained sensitive information about 16 separate families and money, was in it. He also disputed that he did little to retrieve the bag once made aware of his mistake, insisting that he had made arrangements for the service user to return it to him during a meeting being held two days after the incident. He further argued that no policy or guidance about what to do in the event of a data protection breach had been made available to him by his employers.

The Committee, however, found the facts of both charges proven in their entirety, drawing attention to the fact that the social worker had admitted on four separate occasions during the local authority's own investigation that the diary had been in the bag. The Committee also found that, despite the claims, the social worker would have been made aware of his responsibilities by the job description and Data Protection Guidance provided to him on employment.

Having agreed that the social worker's actions breached several sections of the code, the Committee found misconduct proven.



## FOI Freedom of information

**A North West council is to be monitored by the Information Commissioner's Office (ICO) over the timeliness of its responses to freedom of information (FOI) requests.**

Trafford Council is the latest local authority to have been put on the watchdog's monitoring list, after the ICO identified a significant number of cases not being responded to within the statutory time limit of 20 working days.

Trafford joins the Metropolitan Police Service in having its

performance reviewed between 1 May and 31 July 2016. The ICO warned that failure to show signs of improvement during this period might result in enforcement action.

The Principal Policy Adviser at the ICO, said: *"The law sets limits on how quickly public authorities must respond. Trafford Council has not been meeting that requirement, and we'll now be reviewing its performance."*



## Councils highlight danger of children eating toxic washing tablets

**A survey by the UK's National Poison Information Service found there were more than 2,000 recorded cases in five years.**

Council leaders have urged parents to store dishwasher and laundry tablets out of reach of children, after figures showed one child a day is mistaking the harmful capsules for sweets.

The local Government Association (LGA) has joined forces with the Royal Society for the Prevention of Accidents to raise awareness of how dangerous the tablets can be if swallowed.

The tablets, often small and brightly coloured like sweets, contain harmful chemicals that can cause breathing difficulties, burn related injuries and internal swelling if ingested.

A survey by the UK's National Poison Information Service found there were more than 2,000 recorded cases in five years.

A public health advisor at RoSPA said "All household chemicals should be stored either up high or in a lockable cupboard. Keep an eye out if you are doing the laundry while children are present too, as it only takes a second to get hold of one."



# Court Circular

**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



### VISITOR'S SLIP ON PONTOON

*Coates v Scarborough Borough Council*, 07.03.16, Scarborough County Court

The defendant, D, operated a marina at Whitby. The claimant, C, owned a boat which, under a contract with D, he moored at D's marina. In January 2012, C stepped on to the pontoon, but slipped, sustaining injuries.

C claimed damages from D, alleging his injuries were caused by D's breach of duty under the Occupiers' Liability Act 1957. C said the pontoon, a wooden construction, was slippery due to ice on the surface having formed through rain, a dripping tap, and water freezing within algae and moss. He alleged that the pontoon was dangerous because D had failed to operate a system to grit it, to provide him with equipment to grit it himself, to warn him of the hazard, and to fit a non-slip material to the surface.

D denied liability, contending that the harbour area included 1200 metres of pontoons, and it would be unreasonable to expect it to operate a gritting system for the whole area.

The judge held that the ice had formed on the pontoon through rainwater freezing on the surface. The judge held if D were expected to grit all the

pontoons, it may then be expected to grit the entire harbour area, which would be an unreasonable requirement. There was no unique hazard with pontoons; they carried similar risks to piers and to other walkways without railings.

The judge further held that it was not reasonable to expect D to provide one pontoon for use only by permanent residents or those frequently visiting their boats.

#### COMMENT

This county court decision illustrates that a public authority operating a large harbour area is not necessarily under a duty, as occupier, to operate a system for gritting the area in wintry conditions. The court here accepted that to impose such a duty on the defendant would place it under an unreasonable financial and logistical burden.

## OCCUPIERS' LIABILITY



### CHILD'S ALLEGED INJURY IN COMMUNITY CENTRE

*Williamson (by her mother and litigation friend, M Cottiss) v North Tyneside Council*, 21.01.16, North Tyneside County Court

In 2012, the claimant, C, then aged almost five, attended a birthday party at a hall in a community centre occupied and operated by the defendant, D.

In the hall, a number of gates cordoned off a soft play area. One of the gates allegedly swung open and its protruding metal edge struck and injured C's head.

C, through her mother, claimed damages for her injury, alleging breach of duty under the Occupiers' Liability Act 1957. Her allegations included failure to install a gate so that it would not swing open into C, failure to warn C's mother of the danger posed by the gate, and failure to operate an adequate inspection system.

D denied liability, and disputed the cause of the injury.

At trial, C's witnesses said that the gates to the soft play area had been

left open and that this was the cause of the accident. One witness said she had taken photographs on her phone but she was unable to locate these at trial.

The judge held that much of C's evidence was "conjecture", preferring the clear recollection by one of D's witnesses that the gates had been properly closed. The judge held there was no evidence of any breach of duty by D and the claim was dismissed.

#### COMMENT

This provides another illustration of the importance of clear, credible and accurate witness evidence. It also illustrates the importance, in relevant circumstances, of photographic evidence that records the date and time of the photograph, such as those taken by a smartphone.

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.



## HIGHWAYS



### NUISANCE OR HAZARD CREATED BY WASTE BINS – S.130 HIGHWAYS ACT

*Jones v Knowsley Metropolitan Borough Council*, 15.04.16, Liverpool County Court

Late morning in April 2012, the claimant, C, was walking along a pavement on which refuse collectors had earlier emptied bins. C said that, due to parked cars, she was unable easily to walk around the pavement where emptied bins had been left and she therefore walked between some of them. As she walked between two wheelie bins, she tripped on a small food waste bin that she had not seen on the pavement behind the wheelie bins. She sustained injuries for which she claimed damages from the defendant, D, alleging negligence and/or breach of duty under s.130 of the Highways Act 1980 (the Act).

C's allegations included that D's operatives created a danger to pedestrians on the highway, obstructed the highway by leaving emptied bins across the pavement, and failed to operate an adequate system for leaving the emptied bins safely.

D denied liability but also argued contributory negligence of C by failing to take sufficient care for where she was stepping.

The judge accepted the accident occurred as alleged. The judge noted that the small food waste bins had been collected 20 minutes before the wheelie bins. While acknowledging D's limited resources, the judge criticised the operatives leaving disorganised clusters of bins on the pavement, creating a public nuisance.

The judge held D primarily liable but ruled that C was 40% responsible for her accident. C had earlier made a Part 36 offer to split liability 60/40 in her favour, therefore failing to beat the judge's apportionment. Damages, previously agreed at £23,000, were reduced to £13,800.

#### COMMENT

While recognising that public authorities operate under limited budgets which impact on resources, this ruling indicates the importance of refuse bins being left reasonably safely after being emptied, so as not to cause a nuisance or hazard on the highway.

## EDUCATION



### STUDENT'S INJURY DURING SPORTS DAY ACTIVITIES

*Yeomans (by his father and litigation friend) v The School Partnership Trust*, 24.02.16, Doncaster County Court

The claimant, C, was a student at a school for which the defendant, D, was responsible.

During the school sports day in the summer of 2014, C took part in the long jump, an athletics activity where the student runs towards a sand pit and leaps as far across it as possible, landing in the pit at a point which is measured against the landing points of other competitors.

When C jumped into the sand pit, he fractured his ankle. He claimed damages from D for his injury, alleging it was caused by D's negligence and breach of duty under the Occupiers' Liability Act 1957.

C's allegations included that, having never used the sand pit or performed the long jump before, he had not received instructions or training on how it should be done, and the technique of jumping and landing had not been demonstrated to him.

C also alleged that the sand pit contained stones or other debris rendering it unsafe, that teachers had not checked it during the day, that steps were not taken to prevent the sand becoming compacted due to several students jumping into it, and that it was of an inappropriate depth.

D denied liability, contending that the depth of the sand pit had been checked on sports day, before activities had started and the pit was regularly raked. Further, D gave evidence of C having received appropriate training and instruction, and the task had previously been demonstrated to C.

The court heard that there is no national guidance as to the suitable depth of a sand pit used for long jump. D considered 30cms a suitable depth.

The court considered D's evidence of the checks made of the sand pit beforehand, accepting that D had done all it reasonably could to make the activity safe.

Further, the court accepted that the sand was raked after each student had jumped into it. The court also held that the type of sand used was appropriate. The court rejected the allegation that it contained stones or debris.

The court held that D had taken appropriate and reasonable steps for the long jump activity and that D had not breached any duty to C. The claim was dismissed.

#### COMMENT

This ruling provides a good example of the importance of a defendant supporting its defence with sufficient evidence to satisfy the court that, having organised a specific sports event, it had taken all reasonable steps to ensure the reasonable safety of those taking part. The defendant had provided clear and credible evidence, both documentary and through the careful and accurate statements of witnesses, which the court found significantly more persuasive than the evidence on behalf of the claimant.