

By: Richard Long - Chairman of Governance and Audit Committee
Lynda McMullan - Director of Finance

To: Governance & Audit Committee - 16 September 2009

Subject: **REPORT ON INSURANCE ACTIVITY AND NEW
PERFORMANCE INDICATORS**

Classification: Unrestricted

Summary This report provides an overview of funding of the Council's insurance programme, claims and performance

FOR INFORMATION

INTRODUCTION

1. This first annual report summarising insurance activity provides an overview of funding, claims and performance. Comparisons have been made with previous years where this provides a more comprehensive analysis.
2. This report also introduces new performance indicators for KCC, the Insurance function and external insurers.

INSURANCE FUNDING AND POLICIES

3. Where possible the financial risk associated with operational or commercial activities and schools has been transferred, protected and paid for through a combination of self insurance and a variety of policies arranged through external insurers. This has proven to be the most cost effective model.
4. Through external insurance policies a cap is placed on the amount that KCC will incur for any single claim received or claims as a whole within any year thereby providing improved financial stability. For example, any claim submitted by a third party will be financed from internal funds to a value of £50k under the Public Liability insurance policy thereafter all further costs will be met by the insurer which can, on occasion, be in excess of £1m.
5. Expenditure on insurance is managed through the Kent Insurance Fund. The Fund meets the annual cost of insurance (premiums, claims payments and administrative costs) and maintains reserves for outstanding claims known about and future liabilities that have not yet been incurred or reported to KCC.

6. The Kent Insurance Fund is financed by contributions from corporate funding, commercial activity centres, schools and investment income. A snapshot of the Fund in June 2009 (including forecasted income/expenditure in italics) is shown below:

Expenditure		Income	
Premiums paid to insurers	3,000,000	<i>Opening balance</i>	10,785,240
Adjusting fees	192,000	Contributions received from schools, Commercial Services etc	4,910,000
<i>Claims paid 09/10</i>	5,500,000	Corporate funding (directorates)	2,979,000
<i>Reserve for known claims</i>	9,890,000	<i>Recoveries from third parties</i>	330,500
Reserve for claims incurred but not reported	500,000	<i>Investment income</i>	450,000
Section costs*	650,000	<i>Other</i>	10,000
<i>Misc</i>	75,000		
Total	19,807,000		19,464,740

* includes staffing costs supporting shared services and Corporate Risk Management

7. The Fund currently appears in deficit by £342k.
8. The annual cost of the insurance programme is charged out across the Council and schools. PwC is currently looking at the methodology behind this process. This exercise will also address the level of funding required to avoid any future deficit.
9. The programme of insurance policies is periodically tendered. This exercise took place in late 2008. The main policies within the programme are Public Liability, Employers Liability, Property and Motor.
10. The main insurance programme was awarded to Zurich Municipal under a new five year Long Term Agreement entered into with effect from January 2009. Zurich Municipal is a well established insurer and is thought to underwrite around 60% of the local authority insurance market and has been the main insurer for KCC since 2002.
11. Minor policies were awarded to other insurers where increased value for money was demonstrated or the main insurer could not write the business. The tender process was handled through the Heath Lambert Group which is KCC's appointed insurance broker.
12. The tender process resulted in slightly improved cover and an overall premium saving of £481k in the first year alone.

13. Premium costs for 2009 are detailed below:

Policy	Premium cost	Excess levels per event
Public Liability	£858,341	£50k
Employers Liability	£243,750	£50k
Property	£1,083,430	£100k - £250k
Motor	£111,987	£100k
All other policies	£702,492	Various
Total	£3,000,000	-

The premium payable for any insurance policy is based upon KCC's risk profile, claims history and level of retained financial liability (excess).

14. As part of the recent tender exercise prospective insurers were asked to provide various cost models based upon increased excess levels for each of the above policies. Subsequent analysis indicated that the above levels of excess presented the most cost efficient model for KCC based upon its risk profile. Benchmarking through CIPFA (see below) suggests that the excess levels shown above are in line with many other county councils. It is not possible to provide any meaningful benchmarking assessment in relation to the cost of policies due the aforementioned variables.
15. KCC is a member of the CIPFA Insurance Benchmarking Club. Even though KCC is a member it is still difficult to find authorities with the same risk profile to benchmark performance against. It also has to be borne in mind that every authority has a slightly different approach to how it manages its insurance programme. For example, there will be variances in the type of cover, portfolio of risks, levels of excess, claims history, method of handling claims etc. CIPFA averages data across a five year period. Figures quoted within this report relate to the financial years 2003/04 – 2007/08 and are based upon a benchmarking group consisting of the 16 largest participating authorities.

INSURANCE SECTION

16. The insurance programme and claims are managed through a central insurance section based in CED Finance. The section works closely with external insurers and their solicitors, loss adjusters and KCC's appointed insurance broker. The section comprises of 15 staff. As well as managing all aspects of insurance for KCC the section also provides an insurance service to Kent & Medway Fire Authority and Thanet District Council as part of shared service arrangements.

17. Whilst the section sets its own processing standards it also incorporates external standards where appropriate. For example, when dealing with liability claims processing standards set within the Ministry of Justice Civil Procedure Rules are applied. At a basic level CPR requires all new claims involving a personal injury to be acknowledged within 21 days from receipt and then a decision on liability to be communicated to a claimant at the end of 111 days unless an extension to time has specifically been sought. Failure to adhere to these time frames could result in the courts imposing financial penalties upon defendants. Since personal injury claims are handled by external insurers their performance is monitored to ensure compliance.

New Performance indicator	<p>Target: acknowledgement of injury claims within 21 days of receipt = 95%</p> <p>Target: communication of decision on liability within 111 days where no extension to time sought = 95%</p>
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KCC CLAIMS EXPERIENCE

18. Activity within each of the four main policies is summarised below.

Public Liability – third party claims

19. Claims can result from any activity undertaken by KCC. They can range from damage to a tyre going down a pothole through to death / major personal injury or financial loss. The majority of claims received relate to incidents on footways and carriageways. This is a typical profile for a county council with highway responsibilities.
20. The value of minor claims made against KCC is not untypical. Claims made for damage to vehicles due to potholes are typically around £300 each whilst claims for injury are around £8k. Like many authorities KCC has to deal with a number of high value claims i.e. in excess of £250k. Whilst accidents on the highways may generate a number of these, incidents relating to children can also generate exceedingly high value claims which may have the potential to exceed £1m.
21. Claims can take a long time to materialise. For example, asbestos related claims can take up to 40 years before they might be received. Generally the number of asbestos related claims is expected to rise over the next 20 years. Unfortunately the insurance market no longer provides cover for asbestos injury to third parties so any claims made in future years against KCC may potentially have to be met from KCC funds.

22. The number of claims made by third parties (public, visitors, pupils etc) continues to rise:

Year	No of claims	Paid	Rejected	Decision awaited
2004/05	1397	257	1101	39
2005/06	1255	231	946	78
2006/07	1796	471	1163	135
2007/08	1751	460	1026	265
2008/09	2198	347	1024	827
Totals	8397	1766	5260	1344
		£3,273,613		Estimated value of open claims £11,076,307

23. Generally in excess of 90% of claims received relate to KCC's duty to maintain the highway network however this percentage will be exceeded in 2009 due to the detrimental effects of a wet winter upon carriageway surfaces. This experience is similar to that of other south eastern county councils. Claims relating to other causes are not considered to be exceptional, increasing or highlighting any new trend.
24. To date 1460 claims have been received for highway related incidents occurring in 2009. The bulk of these are vehicles damaged by potholes. It is estimated that in excess of 2300 highway related claims could be received during 2009.
25. Claims are decided upon the basis of legal liability. If it is felt that a court would hold KCC to blame for an incident then a claim will be settled as quickly as possible to control costs. If a court might decide that the event was a genuine accident for which KCC could not be held to blame then a claim will be rejected. This approach applies to both Public and Employers Liability type claims and is in line with the practice adopted nationally by local authorities.

New Performance indicator	Target settlement rate for Public Liability claims = Under 25%
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26. During 2008 a total of £2,241,306 was paid out in compensation (damages + all legal costs) for Public Liability claims. This sum includes claims that occurred in 2008 as well as many previous years. The amount paid out during any one year provides the best assessment of the true annual cost of Public Liability type claims made against KCC.
27. The potential value of rejected claims is not available however it is thought that this easily exceeds the amount paid out.

28. It is not always possible to reach agreement with claimants on the decision taken in relation to their claims and legal proceedings are sometimes issued against KCC. The number of claims which have resulted in litigation since 2006 is set out below.

Year of incident	No of claims litigated
2006/07	53
2007/08	27
2008/09	13
Total	93

29. Since 2006 proceedings have been brought against KCC in relation to 93 claims. Of these an average of 64% have been successfully defended either pre trial or at court. Claims are only run to trial where there is assessed to be a good chance of success or where fraud is suspected. Taking cases to trial can be a lottery and cases are carefully vetted before this course of action is agreed.

New Performance indicator	Target number of public liability cases won at trial = 65%+
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30. For Public Liability the following points are of interest:

From 2004 – 2008

- For all Public Liability claims KCC received 5.8 claims per 1000 population against the CIPFA benchmarking average of 4.5
- For highway claims KCC received 5.2 claims per 1000 population against the CIPFA benchmarking average of 3.8
- For highway claims KCC had rejected 80.7 claims against the CIPFA benchmarking average of 76.6%

Employers Liability – claims made by employees

31. The number of claims made by employees has remained relatively stable for many years. This is thought to be due to improved management of Health & Safety, potential claimants opting to take their grievances through Employment Tribunals and developments in case law which has restricted the ability to bring claims particularly in relation to stress.

Year	No of claims	Paid	Rejected	Decision awaited
2004/05	29	10	9	10
2005/06	42	13	17	12
2006/07	21	2	5	14
2007/08	34	3	3	28
2008/09	35		2	33
Totals	161	28	36	97
		£316,651		

32. Claims brought by employees are quite difficult to defend due to the high duty of care and are often litigated. Activity in this area is considered to be proportionately in line with other authorities

New Performance indicator	Target settlement rate for Employer's Liability claims = 50%
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33. Public and Employers Liability claims are handled by the 'Liability' team. They can be quite complex to manage and the amount of information required in order to reach a decision on liability is considerable. In 2008 the team consisted of 5.6 FTEs and provided an annual average of 336 new claims per handler.

Property

34. Due to the size and nature of the property portfolio there will always be a high level of claims.

Year	No of claims	Value of paid claims	Estimated value of open claims
2004/05	660	4,679,998	210,709
2005/06	686	1,821,634	87,456
2006/07	778	1,085,546	4,554,704
2007/08	928	1,561,229	636,907
2008/09	692	566,946	550,947
Totals	3744	9,715,353	6,040,723

35. During 2008 there were no losses over £100k in value. This is unusual when compared with previous years as shown below:

Year	Claims over £100k	Value
2004/05	School – arson Library – arson	£132,989 £3,899,175
2005/06	School – arson	£948,310
2006/07	School – accidental fire School – flood School – accidental fire	£4,173,198 £186,750 £249,450
2007/08	Nil	
2008/09	Nil	

36. The number of low value claims made against the policy fell in 2008 but this is largely due to a reduction in the theft of lead claims. The theft of lead and other metals from buildings is a national problem and has resulted from the demand by developing Asian economies. Whilst the global economic downturn has curbed these markets criminals are now more aware of this largely unprotected source of income. To prevent repeat thefts Insurance only pays for the cost of replacing lead with an alternative product and will pump prime the painting of existing lead to help deter such activity.

37. The breadth of cover within property policies varies greatly amongst authorities making it extremely difficult to benchmark KCC's experience. Benchmarking does indicate that the number of claims from KCC insured schools caused by fire, whether accidental or arson, is in line with the average.

Motor

38. KCC operates a large commercial motor fleet of 1000 vehicles. The number of claims has remained relatively stable within the main fleet:

Year	No of claims	Paid – own damage & third parties	Estimated value of outstanding claims
2004/05	441	312,765	6,692
2005/06	423	275,152	102,516
2006/07	383	307,884	47,926
2007/08	417	334,302	33,791
2008/09	365	250,910	229,516
Totals	2029	1,481,013	420,441

CIPFA benchmarking indicates that KCC has a frequency of 0.4 claims per vehicle on its main fleet compared with the average of 0.44

39. All motor and property claims are handled by a single team consisting of 4 FTEs. These claims do not require the same level of processing as liability type claims. In 2008 a total of 1708 claims were received which provided an annual average of 427 new claims per handler.

COST OF CLAIMS HANDLING

40. CIPFA benchmarking indicates that KCC has an in house cost of £99.5 per claim (across all policies) against an average of £118.30 and an external cost of £79.80 per claim against an average of £73.00. Also KCC spends only £0.60 per claim on loss adjusters against an average of £6.20
41. Although benchmarking indicates that KCC has a higher average external cost per claim the overall average benchmarked cost per claim is £197 against KCC's average of £180.

SUMMARY

42. KCC's insurance programme is one of the largest amongst all local authorities. The annual spend on insurance is considerable but this has to be balanced against the size of KCC and the very wide and diverse range of statutory services provided and the tendency for claims to be made against public bodies. It is inevitable that claims will be received and it is essential that the insurance programme and the funds held in reserve provides the Council with a good level of assurance around its ability to finance its current and future liabilities.

Darryl Mattingly
Corporate Risk & Insurance Manager
Ext: 7000 4632