

By: Cabinet Member for Finance  
Corporate Director of Finance & Procurement

To: Governance and Audit Committee –

Subject: **KCC INSURANCE OVERVIEW**

Classification: Unrestricted

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Summary: To report a summary of Insurance Activity  
up to March 2013

**FOR ASSURANCE**

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**INTRODUCTION**

1. The Council's insurance programme is extensive and designed to provide increased financial control of the risks flowing from the diverse nature of activities undertaken to meet statutory duties, support general business functions as well as income generating operations.
2. This report provides a review of activity within the programme and points of interest up to March 2013.

**INSURANCE PROGRAMME**

3. The insurance programme, which covers all directorate operations and schools, is made up of a number of policies of which Employers Liability, Public Liability, Property and Motor are the four main covers and make up 84% of the overall annual premium cost which, for 2012, amounted to £3.08m.
4. The cost of individual premiums is controlled by working with self insured excesses which are typically between £50k and £250k per event dependant upon the policy under which a claim is recorded. Working with high excess levels is not unusual for a county council and these are kept under review to ensure that the right balance is achieved between self insured and premium expenditure.
5. Premiums and excess payments are met through the corporate Kent Insurance Fund to which all directorates and schools contribute in accordance with their risk profile and claims experience. The level of contribution made by directorates and schools is calculated each year at a level estimated to be sufficient to meet the costs incurred during the period. For 2012/13 this was set at £9.25m.
6. The Fund is supported by the Insurance Reserve. This has been considerably reduced in recent years and as at February 2013 was £3.6m in credit. The Reserve exists to meet future insurance liabilities

such as those relating to uninsured claims where the insurer no longer exists or contribute to the insolvent run-off of the Municipal Mutual Insurance company.

7. The bulk of the insurance programme is insured with Zurich Municipal Insurance. This has been the case since 2002. In 2009 the Council entered into a new five year contract with the insurer with a two year option to extend to December 2015. Revised terms to extend the contract have been offered by the insurer and these are currently being considered to assess whether they represent best value. It is hoped that a decision will be taken by the end of May 2013. If the contract is not extended it will be put out for tender.

### **COLLABORATION WITH OTHER COUNTY COUNCILS**

- 8 Discussions have taken place with other county councils to explore potential cost efficiencies by purchasing insurance through collaborative or framework arrangements. Due to the complex nature of insurance neither option has demonstrated any clear financial advantage and to date no tested vehicle exists which the Council might use. Developments in this area will continue to be monitored in order to maximise any opportunities that might be available through a viable alternative vehicle when the insurance programme is next put out for tender.

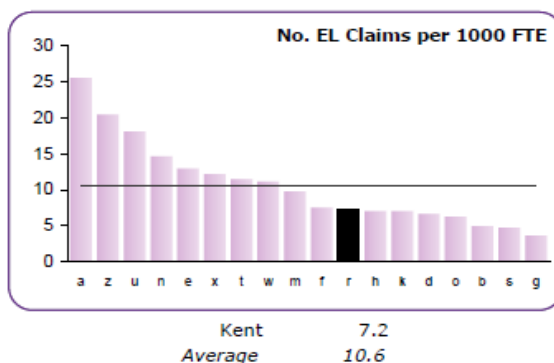
### **CLAIMS**

9. Claims fall into two categories; claims for compensation made against the Council and those made by the Council generally relating to the repair or reinstatement of lost or damaged assets.

Below is a summary of activity relating to the four main policies.

#### **Employers Liability Claims**

10. The number of claims received continues to hold steady at an average of 40 per annum.
11. When compared with 17 other county councils, which form part of the CIPFA Insurance Benchmarking Club, the Council's claims experience is shown to be below the recorded average.



12. Claims made under this policy can be quite difficult to defend because of the strict liability upon the employer. Due to improved record keeping, health and safety management and case investigation the number of claims being successfully defended since 2007 has increased from under 30% to over 50%.
13. For accidents occurring from 2009 onwards £473k (KCC £456k : Insurer £17k) has been paid out with £1.5m (KCC £1.1m : Insurer £0.4m) reserved for claims that have yet to be resolved.
14. A high percentage of the claims made by employees have resulted in litigation. This is either because the Council believed that it was not responsible for the accident but the claimant would not accept this or because the amount to be paid in damages could not be agreed. Due to the high cost of litigation over the past year the Insurance Section and Zurich Municipal have worked much closer particularly in the initial stages of new claims in order to determine liability more quickly and decide upon future tactics. Whilst some cases will always become litigated early results show that the number reaching this stage has significantly reduced producing a saving on third party legal costs without any compromise in rejection rates.

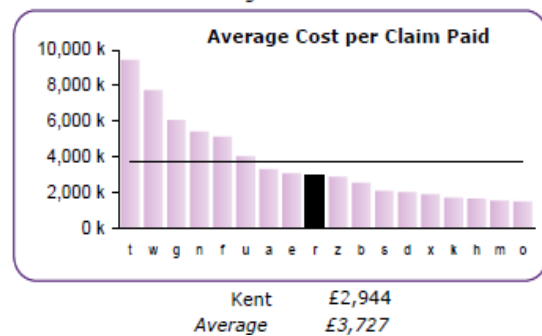
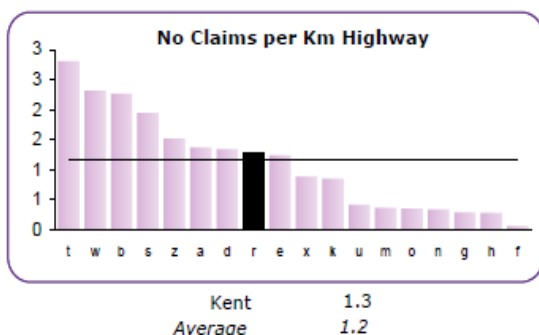
### Public Liability

15. For the period 2009 – 2012 a total of 10,133 claims have been made against the Council. The majority of these claims have been rejected. In 2010 and 2011 overall rejection rates of 87% and 80% respectively have been achieved which demonstrates an improvement upon 2009 which has a recorded rejection rate of 74%. Figures for 2012 are relatively immature but at this stage the rejection rate is running at 87%. This is likely to deteriorate slightly as the more complicated claims are concluded.
16. The vast majority of claims fall between the value range of £1 - £25k. Large loss claims are regarded as those with a reserved or settled value of £50k+. Since 2009 a total of 34 such claims have been received. Of these, 73% relate to incidents on the highway. The remainder are more generally spread across the Council.

17. Public liability claims can be broken down into two groups; highway and non highway.

### Highway

- (1) Highway incidents have traditionally made up the largest single category of claims. For the period 2009 - 2012 a total of 9,446 claims have been received. The effects of the 2009/10 and 2010/11 winters upon the condition of the highway produced unprecedented levels of claims. For the periods Nov – May 2009/10 and 2010/11, when the effects of wintry conditions had their greatest impact on the condition of the highway, a total of 3,760 and 1,785 claims respectively were received. For the same period in 2011/12 only 716 claims were received and it is thought that the outturn for the 2012/13 winter period will again be at this reduced level.
- (2) The expenditure on highway claims is significant. For incidents occurring between 2009 and 2012 a total of £2.9m has been paid out (KCC £2.83m : Insurer £0.07m) with £11.8m in reserve (KCC £8m : Insurer £3.8m). It should be noted that reserves have been set for many claims which are likely to be concluded without any payment to a third party by the Council or insurer.
- (3) When compared against other county councils within the CIPFA Insurance Benchmarking Club the total number of claims received slightly exceeds the average however the cost per claim is under the average by £783.



- (4) As previously mentioned, highway incidents tend to generate the high value claims. During 2012 all of the large loss claims (£50k+) received related to the highway. The Insurance Section continues to work with Highways to ensure that any lessons learnt from these incidents are reflected within relevant policies and procedures.
- (5) It is inevitable that a number of cases will end up litigated. These can on occasions attract local and national media attention. One such case was that of Lawrence v KCC where the initial trial judge found in favour of the claimant. This decision was challenged up to

the Court of Appeal and eventually concluded in 2012 when the original decision was overturned in favour of the Council. This was a case where the claimant tripped on a defect measuring only 15mm in height. Differences in levels between paving slabs etc below 20mm in height should not ordinarily create a liability upon a highway authority and do not require automatic repair. By successfully challenging the original trial decision the Council has reaffirmed the defence available to all highway authorities across the UK for minor defects on the footway.

### Non Highway

- (1) This group consists of all claims made by pupils and other third parties. Since 2009 a total of 687 claims have been received of which £254k has been paid out (KCC £25k: Insurer £229k) and £1.95m reserved (KCC £1.6m: Insurer £352k) for claims that have yet to be resolved. There are no claims of significant interest to mention within this report.

### PROPERTY

18. The number of claims continues to reduce and losses are generally low value. The reduction in claims is due to schools converting to academy status and leaving KCC's Insurance programme plus improved security at sites. The schools that have converted have in the main been secondary schools which traditionally present a heavy risk due to the propensity for attacks of arson and vandalism. The cost of claims for 2012 is currently listed at £880k which is a significant reduction on previous years largely due to no major fire losses having been reported.
19. The theft of lead remains one of the main causes of claims. It has proven to be very difficult to protect properties from attack however by carrying out increased repairs with lead substitutes, installing roof alarms at the most vulnerable sites and the general improved management of the scrap metal industry it is hoped that losses will start to reduce.

### MOTOR

- 20 The Council operates 3 types of fleet; commercial vehicles, leased cars and bus fleet.
  - (1) Claims received involving the commercial fleet reduced in 2012 by 25% to 266. The corresponding cost of claims has also reduced by 50% and is currently listed at £220k. The number of claims received should reduce further after 31 March 2013 when part of the fleet transfers to Commercial Services (Kent) Ltd and ceases to be insured by the Council.
  - (2) The number of lease cars insured by the Council has reduced following the closure of the scheme. This has been reflected in the

number of claims being received which, for 2012, reduced by 30% with a corresponding reduction in overall costs.

- (3) The bus fleet is a heavy risk to insure due to the propensity for high volume passenger injuries. It is a reducing fleet and will cease to be insured by the Council after 31 March 2013.

21. No claims of significant interest have been reported across any of the three fleets.

### **DESK TOPPING**

22. The winters of 2009/10 and 2010/11 generated an unprecedented number of pothole related vehicle damage claims against the Council. This created considerable pressures upon staff resources both within Highways and the Insurance Section.
23. Since then the system for processing claims has been thoroughly reviewed. Improvements have been made to the information held by Highways within its WAMS database and as a result has enabled the Insurance Section to introduce 'desk topping' of damage only claims.
24. As a result pothole claims are now processed by the Insurance Section in their entirety by accessing information held in WAMS. This has saved on staff resources within Highways and has drastically reduced the time taken to process claims. With increased pothole claims now being received following the 2012/13 winter the new desk topping approach is proving to be an essential element in helping to maintain processing times.

### **MUNICIPAL MUTUAL UNSURANCE**

25. The Municipal Mutual Insurance company ceased writing business in 1992 and ever since has been operating in run-off. It was hoped that a solvent run-off could be achieved however this is no longer the case due to an adverse decision by the Supreme Court in 2012 which has increased the exposure of the MMI to costly mesothelioma claims.
26. Now that an insolvent run-off has been announced what is referred to as the 'Scheme of Arrangement' has been triggered and will involve the clawing back of monies from past members of the mutual to meet the outstanding future costs of claims. It is not known when any claw back will take place or how much it might involve. KCC's broker advises that any claw back could be up to 40% of the £4m paid out by the insurer on behalf of the Council between 1989 - 1992. The first stage payment could be requested within the next 12 months but this has yet to be confirmed. No debt rescheduling was undertaken in the year.

27. This situation is not unique to KCC. Municipal Mutual Insurance insured the majority of local councils up to 1992 and all are facing exposure to claw back.

### **CHANGES TO THE PROCESSING TIMES AND COST OF CLAIMS**

28. For a number of years the Ministry of Justice has been consulting on how to speed up the time taken to process personal injury claims and reform the heavy burden of third party legal costs payable by defendants.
29. The legal costs generated by claimant solicitors can be excessive when compared to the actual amount received by the claimant in damages. Like many other local authorities, and defendants in general, the Council has experience of these high costs. Claimant legal costs of at least three times that of the level of damages awarded to a claimant are not unusual and on occasions can be very much higher.
30. Changes to the construction and payment of legal costs have been set out in what are known as the Jackson Reforms which will start to become effective from April 2013. It is hoped that these Reforms will provide some relief from excessively high third party legal costs however this will not be capable of proper assessment until all elements of the Reforms have been implemented.
31. In addition to the above, from July 2013 the time allowed by a defendant to reach a decision on liability will be reduced from the current time frame of 111 days from receipt of notification of a claim to 30 - 40 working days.
32. The Insurance Section is currently revising its procedures to ensure that these time frames are met wherever possible and that any cost advantages in achieving compliance are maximised. The impact of these changes will be reported within the next annual report.

### **ACADEMIES**

33. Local authorities do not have an insurable interest in academies and as such cannot insure these schools through their existing insurance arrangements. As a result, the Kent Insurance Fund has suffered a direct fall in income as schools have converted to academy status and left the Council's insurance scheme. Since the majority of conversions relate to secondary schools this has also had the benefit of removing a significant heavy element of risk from the insured property portfolio.
34. Although academy schools no longer contribute to the Kent Insurance Fund the Council will remain liable to meet the cost of claims from pupils or employees for injury or financial loss for many years to come where the cause or event occurred whilst the school was under the control of the Council.

## **RECOMMENDATION**

35. Members are asked to note this report for assurance.

**Darryl Mattingly**  
**Insurance Manager**  
**BSS Finance & Procurement**