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To: Governance and Audit Committee – 1 November 2017

Subject: **KCC INSURANCE OVERVIEW**

Classification: Unrestricted

Summary: This paper provides a summary of insurance activity for the 2016/17 financial year and other points of interest.

FOR ASSURANCE

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 the activities undertaken to meet statutory duties, support general business functions, as well as income generating operations.
2. This report provides a review of activity for the 2016/17 financial year and other points of interest.

INSURANCE PROGRAMME

3. The insurance programme, which covers all directorate operations and local authority schools, is made up of a number of policies. The main four policies purchased are Employers Liability, Public Liability, Property, and Motor.
4. Following a tender of the full insurance programme effective from 1 January 2016, Zurich Municipal was awarded the contract for the majority of covers on a 5 year Long Term Agreement – expiring 31st December 2020. The hardening insurance market and the Council's claims experience (particularly in relation to liability claims) at the time resulted in a substantial increase in overall premium. These increases were exacerbated by the rise in insurance premium tax by HMRC from 6% to 9.5% in November 2015 and then to 10% in October 2016. The rate rose again to 12% on 1 June 2017. For the 2017 policy year, the Council has budgeted an approximate total of £9.75m in respect of premiums and self-funded claims spend, with any surplus to be added to reserves at the end of the year.

FUNDING OF INSURANCE PREMIUMS AND CLAIMS

5. Premiums and excess payments are met through the corporately managed Kent Insurance Fund (KIF), to which directorates and LEA schools contribute in accordance with their risk profile and claims experience. As at 2 October 2017, the KIF had a fully funded committed balance of £13.89m to meet the values for outstanding liabilities.

6. The KIF is supported by the Insurance Reserve. As at 2 October 2017 this stood at £13.45m and is held to protect the Council against future unexpected insurance costs. These will include those associated with the unexpected increase in the cost or volume of claims, particularly where previous insurers have ceased trading or invoked a scheme of arrangement requiring contribution to the cost of claims (see sections under Municipal Mutual Insurance and Independent Insurance Ltd).

THE DISCOUNT RATE

7. The discount rate is a tool designed to ensure claimants are not under or over-compensated when awarded compensation for personal injury claims. It adjusts awards to take into account the investment return expected when a compensation lump sum is agreed. The previous discount rate was set in 2001 at +2.5% but the Lord Chancellor announced on 27 February 2017 that this was to be reduced to -0.75%. This means that rather than deducting expected returns for lump sum investments from injury awards, these must now be increased for an expected negative level of return, representing significant financial implications for local authorities.

In the circumstances significant premium increases have been seen this year in the market and Long Term Agreements are being broken – often by 20-30%. Notwithstanding its long standing relationship with Zurich Municipal, Kent County Council is not immune to these changes. However, as a result of an improved claims experience over the past two years, initial discussions regarding the 2018 premium have indicated that the Council will see an increase of no more than 5%. This is welcome news but the Council must still prepare for the possibility of a different outcome in 2019 and 2020.

The change in the rate was met with widespread condemnation by the insurance market and in a reaction to the same, the Ministry of Justice announced on 7 September 2017 that draft legislation is being put before Parliament, which if enacted will change the way in which the discount rate is set.

Based on the evidence currently available, the Government would expect that if a single rate was set under the new approach, the real rate might fall within the range of 0% to 1%.

This would be a positive move but the new framework will only apply if the proposed law is enacted and will not operate retrospectively. It would also still mean that claim costs will have increased and therefore premium increases would remain a possibility.

The Council will therefore need to continue to monitor its position in respect of annual insurance premiums and may in the future need to give consideration to increased deductibles in order to reduce premium spend – particularly with Insurance Premium Tax likely to rise further.

INSURANCE CLAIMS

8. Below is a summary of activity relating to the four main insurance policies during 2016/17.

Employers Liability

9. The number of claims being received remains very low with only 11 new claims currently recorded for the 2016/17 financial year. The continued decrease is likely to be due to the number of schools converting to academy status, the creation of a number of separately insured LATCO's and the enactment of the Enterprise & Regulatory Reform Act 2013. This Act provides greater protection for those employers who take their health and safety responsibilities seriously by tightening up on the legal threshold that has to be met in order to bring a claim. Kent County Council has a strong system of measures in place and has benefitted as a result.
10. There have however been two significant claims more recently reported to the Council relating to incidents in 2014. These claims carry a combined reserve in excess of £500,000 and liability has been denied for both. The files do though remain open and further investigations are likely to be necessary.
11. The overall outstanding balance on all open Employers Liability claims is currently reserved at £2.28m (£880k KCC / £1.4m ZM), which is an increase on 2015/16, mainly due to the two above mentioned claims.

Public Liability

12. A total of 1350 claims have been recorded against the 2016/17 financial year to date. This is approximately 300 less than were recorded at the same time for the 2015/16 year. Of these, approximately 90% are highway related.
13. To date £47k has been paid out for highway related damage claims occurring in 2016/17. Vehicle damage pothole claims accounted for approximately 80% of all highway related claims in this particular financial year. Liability has now been decided for the vast majority of these claims with just over 90% having been rejected.
14. 352 personal injury claims have been recorded against the 2016/17 year to date. £109k has been paid out on these claims thus far, but there is a reserve of £3.78m (£2.1m KCC / £1.68m ZM) for those that currently remain open.
15. The majority of PL claims received are less than £10k in value, however a number of what are known as 'large loss' claims with a value of £100k+ can also be expected. There are currently 38 £100k+ open claims which have a total reserved value of £21.2m, in addition to the £2.4m already paid out. £1.4m of this figure is reserved against the Kent Insurance Fund and the remaining £19.8m with the Council's insurer.
16. Since April 2016, 10 such claims have been received of which 5 are highway related. These claims have a collective reserved value of £4m of which £750k has been set against the Kent Insurance Fund and £3.25m has been reserved for by the Council's insurer.

The five highest value claims received result from:

- A vehicle losing control due to ice.
 - A cyclist fallen from a bicycle due to an alleged pothole.
 - A person in care injured using lifting equipment.
 - A person in care injured following a fall.
 - Alleged abuse due to negligent care.
17. There are 730 open claims currently being processed across all years with an overall reserved value of £28.7m. Of this figure, £8.5m is reserved against the Kent Insurance Fund and £20.2m by insurers. Whilst most claims relate to events that occurred in the past five years, there are a small number that could be described as historic.

18. Included within this figure is a significant large loss claim that arose as result of a motorcyclist accident. A decision was taken in May 2016 to concede liability on a 77.5% / 22.5% basis in the claimant's favour. Due to the complexities of the claimant's injury, compensation is likely to be paid by way of 'periodic payments', which provide an amount on an annual basis (reviewed every year). The Council's deductible for this claim is £50k, so the significant percentage will be met by the insurer.
19. Generally the number of PL claims has been falling since 2014. This is in large part due to the milder winters that have been experienced, which have allowed improvements to the highway network to take place. As a result, the number of open claims is currently the lowest it has been for several years.

Property

20. During the 2016/17 financial year, 214 claims were made against the property policy with an estimated working reserve of £750k. School claims account for 60% of the claims received under this policy with the other 40% being made up from libraries, youth centres and working premises. The Council has paid £300k on claims to date, with all claims having fallen below the insurer deductible.

Whilst the general claims experience has been positive and the number of claims has fallen in comparison to 2015/16 (224), the reserve total is higher due to a noticeable large loss - a fire at North Farm Waste Recycling Centre in October 2016 which is currently reserved at £400k.

Motor

21. Due to a reduction in the number of vehicles being insured, the number of claims made against the motor policy continues to fall. 171 claims were recorded for the 2016/17 financial year, with an estimated total cost of £250k. The Council has paid £230k on claims to date, as all claims have fallen below the insurer deductible. The vast majority of these being vehicle damage only.

Of these claims, 56 related to school vehicles and 42 to highway vehicles. The majority of the remainder were from Social Care, Youth, and Libraries.

MUNICIPAL MUTUAL INSURANCE

22. As previously reported the Municipal Mutual Insurance Company ceased writing business in 1992 and has ever since been operating in run-off.

A solvent run-off has not been possible and as a result what is known as the 'Scheme of Arrangement' has been triggered which involves the clawing back of monies from past members of the mutual to meet the outstanding future costs of claims. The Council paid £600k in 2014 following a demand by the scheme administrator.

With significant numbers of claims for mesothelioma and abuse and a recent surge in noise-induced deafness claims, the company's position has continued to deteriorate and a further amount of £380k was paid in April 2016. An additional levy cannot be ruled out and funds have been retained for this eventuality.

23. This situation is not unique to KCC. Municipal Mutual Insurance insured the majority of local councils up to 1992 and all have received demands for payment relative to the value of claims settled by the insurer on their behalf.

INDEPENDENT INSURANCE LTD

24. The Council was insured with the above insurance company from 1992 to 1995 when it went into liquidation. Since then the Council has been paying claims that should have been met by the insurer. A scheme of arrangement was agreed on 9 July 2015 to pay creditors of the Independent Insurance Co Ltd. A first and final dividend of 14.47% has finally been received, resulting in a return of £88,443.88 for the Council. This is in excess of the expected £30-45k and includes an amount for potential future claims outlay.

INSURANCE BROKER

25. Due to the uncertainty in the insurance market following the discount rate decision, the contract with Arthur J Gallagher which was due to end on 30 June 2017, has been extended for a further 12 months. This was considered a necessary extension in order to limit disruption to the service and ensure that the Council is in the best possible position to negotiate the 2018 insurance contract renewal. The extension has again been agreed on existing rates.

RECOMMENDATION

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

Lee Manser
Insurance Manager

