

**Manchester City Council  
Report for Information**

**Report To:** Resources and Governance Overview and Scrutiny Committee –  
21 October 2010

**Subject:** Insurance Cover and Claims Handling

**Report of:** City Treasurer and City Solicitor

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**Summary**

The Committee requested a report on the Council's insurance arrangements and potential for collaboration on an AGMA level. To look at the Council's claims handling processes – both for claiming on its insurance and defending claims against the Council.

**Recommendations**

Members are requested to note this report.

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**Wards Affected:** All

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**Background documents (available for public inspection):**

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

- Annual Statement of Accounts 2009/10 (available on Council website)

## **1. Introduction**

- 1.1. In an organisation of the size and complexity of the Council, the financial sums and diversity of risks involved are considerable. The Council has property valued at over £3,000m and is engaged in a broad range of activities that involve risk. Whilst it is not cost effective to insure against all of these, effective and appropriate insurance cover is required to enable Members and officers to deliver on projects, programmes and priorities in the knowledge that the financial impact of significant risks is covered as far as is reasonably possible.
- 1.2. The Council's insurance arrangements are extensive and complex. Officers across a number of directorates and services undertake insurance-related functions and work together in ensuring that financial, reputational and other risks to the Council are effectively managed.
- 1.3. The purpose of this report is to provide an overview and briefing regarding the City Council's insurance arrangements, in particular:
  - (i) how the roles and responsibilities for insurance are discharged;
  - (ii) how the Council obtains and maintains its insurance cover;
  - (iii) the Council's claims handling processes for claiming on its insurance and defending claims against the Council; and
  - (v) the potential for AGMA collaboration and other efficiency and improvement opportunities.

## **2. Discharge of Roles and Responsibilities**

- 2.1 In respect of insurance and claims, the Council defends and protects itself by ensuring:
  - that the costs of losses incurred by departments are managed and funded through departments, the internal insurance fund or through claims submitted to external insurers as appropriate; and
  - that the amounts paid out in claims submitted against the Council are defended so that claims without substance are rejected and, where justified, appropriate financial settlements are agreed with claimants.
- 2.2 These are different objectives with separate processes but both are linked to good risk management and involve many of the same teams across the Council. The key responsibilities for work in these areas are set out below.
- 2.3 The City Treasurer has overall responsibility for advising the Executive on proper insurance cover and for ensuring that proper insurance exists where appropriate. These responsibilities link with the broader responsibility for risk management and are discharged through the role of the Head of Audit and Risk Management.

### **Corporate Insurance Team**

- 2.4 Corporate Insurance is a team of five staff whose overall responsibility is to ensure there are adequate arrangements to protect the Council's financial and other interests against a range of risks. These risks are damage or loss of own assets (buildings, contents, vehicles) and liabilities incurred as a result of claims against the Council for personal injury, damage, loss of property and financial loss.
- 2.5 The team leads on the formulation and management of the Council's strategy for funding these risks including management of the Council's in-house Insurance Fund and procurement of external insurance cover. This strategy is informed by intelligence gathering and interpretation of claims including an overview of arrangements for the submission of claims submitted against insurers or the Insurance Fund. This helps ensure that the funds allocated to insurance are proportionate and are being used appropriately but also helps identify trends that assist in the formulation of measures aimed at preventing further, future losses.
- 2.6 Corporate Insurance also provide advice and guidance, to Council officers as well as schools and academies. This is particularly important given the highly specialist knowledge held within the team and the need for services to receive accurate and timely advice, for example, this advice and guidance can range from major insurable risks around environmental liabilities to the arrangement of insurance cover for school trips. The team utilises external insurance brokers who assist in dealing with complex or specialist cases, support procurement exercises and assist in the assessment of the Council's insurance requirements.
- 2.7 Over 93% of schools, including academies, voluntarily sign-up to insurance cover provided by the Council. This includes the provision of cover as well as ongoing advice and support.

### **Risk Management, Internal Audit, Health and Safety**

- 2.8 The Head of Audit and Risk Management is also responsible for the risk management, internal audit and health and safety teams. Part of their role includes support to the investigation of claims and the investigation of losses arising out of actual or suspected fraudulent acts.

### **Corporate Services Technical Services Team**

- 2.9 Property loss or damage claims require expert involvement of property specialists. The Council uses a quantity surveyor to undertake its own internal assessment of the extent of losses relating to Council buildings, contents as well as the cost of business interruption caused by loss or damage to buildings. The Technical Services Team also support the compilation of the Council's claims for losses, negotiate with loss adjusters regarding the

settlement of claims and make arrangements for the reinstatement or replacement of property.

### **City Solicitor Litigation Team**

- 2.10 The City Solicitor is responsible for the defence of legal liability claims submitted against the Council by employees or third parties in respect of personal injury, damage to, or loss of, property or financial loss arising out of a negligent act or omission on the part of the Council. This responsibility is discharged primarily through the Neighbourhood Services Legal Team although complex cases may involve expert support, advice and guidance from across the Legal Services division.
- 2.11 Where appropriate, the team negotiates settlement of claims in consultation with other officers, including the City Treasurer, where necessary. The Litigation Team actively defend the Council's legal and financial position but in cases where the Council is liable costs are met by departments, the Insurance Fund or insurers, as appropriate. The team works collaboratively with claims handlers or solicitors appointed by insurers regarding the conduct of (potentially) high value claims over £125,000.
- 2.12 Legal Services handle a wide variety of claims and are organised into three teams of 18 full time equivalent staff, namely:
- housing claims (i.e. housing disrepair, associated personal injury, other public and employee personal injury, contract disputes etc and work for external RSL's);
  - highways (i.e. trip claims, motor vehicle damage, tree root damage, employee injuries etc and traffic light claims on behalf of all AGMA Authorities); and
  - miscellaneous (i.e. contract disputes, public and employee claims arising from all other Council departments, accidents to children in schools, historic abuse etc).

A chart outlining the organisation of the teams and breadth of claims handled is presented at Appendix 1.

- 2.13 In addition to the work undertaken by the three teams, Neighbourhood Services Legal also deal with:
- all claims in which legal proceedings are issued or contemplated by or against the Council;
  - motor vehicle claims by or against the Council, when Council's insurers deny liability and litigation ensues;
  - liaison with Council's Insurers and solicitors in all claims with potential to exceed the policy excess. (to ensure that any liability sharing arrangements, sensitive or reputational issues are dealt with properly and to ensure that commercial settlements proposed by insurers are also in the Council's best interests);
  - all uninsured claims (where liability is historic, or excluded by specific policy exclusion, where annual multiple excesses are applied, liabilities of

defunct Council organisations and novel situations which could not reasonably have been anticipated);

- risk management advice and training for client departments; and
- emerging risks that are recorded on risk registers and discussed regularly with senior officers in departments.

2.14 Legal Services has, for the third successive year, been awarded accreditation of the Law Society Quality Mark “LEXCEL” by external assessors following examination of practices and procedures in July 2010. The Council’s external Insurance auditors have also confirmed that the Legal Services claims department was “a professionally run organisation which protects both the Council’s and Insurer’s interests”.

### **Other Services**

2.15 All Council services have a role and responsibility for the management of insurable risks through controls such as the inspection of equipment, assessment of workplace safety and maintenance of sound systems of financial control. There are two other areas, however, where there is a strong focus on insurance-related activity. These are the fleet management and highway services divisions within the Neighbourhoods Directorate. These teams are responsible for active management of claim-related risks and the fleet management team is also responsible for the administration and processing of claims.

## **3. Risk Funding Strategy**

3.1. Risk funding is the process of agreeing how to finance losses arising out of damage, loss and legal liabilities.

3.2. It is widely accepted that it is not cost effective to buy insurance cover to protect against all the insurable risks to which a large organisation is potentially exposed. Generally, it is economically advantageous to self-fund those losses that are, by their nature, predictable, high volume but low value, as this avoids expenditure that would otherwise be incurred on insurers’ legal, administration and profit costs and on insurance premium tax. The procurement of insurance cover is then limited to those losses that are less predictable, low volume but potentially serious. This mixed approach to risk funding is one adopted by most large public and private sector organisations.

3.3. The Council’s risk funding strategy seeks to attain best value by achieving an optimum balance between self-funding and the procurement of insurance cover. With this in mind, the Council self-funds the following:

- (i) Certain low value risks in their entirety. This approach is taken to risks such as escape of water, vandalism by malicious persons and accidental damage where the total cost of repairing or replacing items or property is unlikely to exceed a sum in the region of £20,000.
- (ii) Large excesses under the policies of insurance. The Council maintains high levels of excess on many of its policies, in some cases the excess is

as high as £250,000. All losses above the excess are met by external insurers. This approach is taken in respect of the potentially catastrophic risks such as fire, lightning, explosion, impact by aircraft, storm or flood, employers' liability, public liability, professional indemnity and motor vehicle. This protects the Council from the risk of a serious or catastrophic event.

- 3.4. Self-funded losses are met in part from departments and in part from the Council's Insurance Fund. Excluding costs charged directly to departments the insurance fund paid out £2m in 2009/10.

#### **4. Risk Funding Arrangements**

- 4.1. The Council's mixed approach to insurance funding involves the procurement of a range of policies and the maintenance of an internal insurance fund.

##### **External Insurance**

- 4.2. The main risks that are covered by insurance arranged through the commercial insurance market are as follows:
- Employers' liability for personal injury or disease suffered by employees.
  - Public/Products liability damage or injury suffered by a third party resulting from the actions of the Council.
  - Officials Indemnity to cover for any losses suffered by a third party arising from a wrongful act by the Council in performance of its official duties,
  - Professional Indemnity to cover for any losses suffered by a third party arising from a wrongful act by the Council in performance of its professional or non-statutory duties,
  - Damage or loss of property for buildings and contents with a reinstatement valuation over £300,000
  - Property - Schools "Balance of Risks". This provides optional, additional protection for schools against certain risks that are not insured under the corporate insurance arrangements such as theft, vandalism and accidental damage.
  - Loss or damage to works of art.
  - Motor Vehicle theft and damage and liability for injury.
- 4.3. The total cost of insurance premiums paid for these and other policies for 2009/10 was £4m but this cost will reduce from 2010/11 following savings on the property insurance. Further details regarding each of the main Council insurance policies and the risks they cover are provided at appendix 2.
- 4.4. The commercial insurance market is cyclical in nature and rates are influenced by regional or global factors. They reflect past losses incurred on major events such as catastrophic weather events and perceived future risks such as terrorist threats. They are also driven by commercial factors including competition from insurers for market share.

- 4.5. There are a limited number of prospective insurance providers for Councils, particularly for one the size and risk profile of Manchester. For many years, the number of bids received for the main risks has been low, typically two or three. Several brokers have indicated that they have been seeking to encourage more insurers to participate in the local authority insurance market, with little or no success. For example, two large insurers that responded to the Council's 2010 property insurance tender withdrew at an early survey stage, indicating that the profile of the property portfolio exceeded their own risk and value criteria. Similarly the high limit of indemnity (£100m) required by the Council in respect of its employers' liability and public/products liability means that no single insurer is prepared to underwrite the risk in full. Consequently, the insurance has to be purchased in layers underwritten by a number of different insurers.
- 4.6 The Council procures the majority of its insurance requirements in accordance with OJEU procedures. The process is co-ordinated by the Corporate Insurance Team with support from Corporate Procurement, Legal Services (Commercial) and the Council's insurance broker. The Council aims to achieve the optimum cover at the best price. The prices are determined not only by the general underwriting and commercial considerations referred to above, but also by the profile and previous loss experience of the specific risk for which the Council is seeking cover. It goes without saying that a risk that is well managed is likely to attract advantageous terms in the market.
- 4.7 Against the background of a market where insurers are comfortable to provide insurance cover at relatively lower cost, reduced property valuations and favourable claims experience, the Council secured annual net savings in the region of £700,000 in respect of a new 5-year contract for property insurance commencing 1 April 2010. There is also a provision in the contract for the Council to receive the benefit of an annual performance adjustment in the event that claims costs do not exceed a pre-determined level. This performance adjustment has been received in the majority of the last ten annual policy periods.
- 4.8 The contracts for employers' liability, public/products liability, officials indemnity and professional indemnity risks as well as motor, personal accident and travel policies are currently being retendered for new contracts commencing on 1 April 2011. This will be part of the key decision process.
- 4.9 In summary, the price of insurance fluctuates based on both internal and external factors. For example, the Council achieved savings in its last property insurance procurement as a result of good claims history as well as external factors such as reductions in the general rebuilding costs of property. Annual schedules of insurance allow for changes to the content of policies on an ongoing basis and this will be particularly important over the next three years as the Council reduces its premises and employee numbers, both of which could impact on the levels of premium payable.

### **Insurance Fund**

- 4.10 Whereas insurance policies are used to protect against catastrophic, high value risks the Council's In-house Insurance Fund is used to fund losses in the following areas:

The insurance fund covers all of the loss for the following areas:

- Property with a combined building and contents value up to £300,000
- Performance bonds for contracts valued between £50,000 and £3,300,000

The insurance fund covers a large proportion of the policy excess for the following areas:

- Employers' Liability
- Public Products Liability
- Officials Indemnity
- Professional Indemnity
- Motor

The insurance fund covers a proportion of the policy excess for the following areas:

- Engineering
- Fidelity Guarantee

- 4.11 The Insurance Fund receives annual contributions from Council departments and schools and in 2009/10 these amounted to £1.3m. These are intended to cover the costs of claims. Whilst contributions are designed to fund the cost of claims incurred in the short to medium term, the timing and nature of these claims vary so they do not always equal payments from the fund each year. In 2009/10 for example, the insurance fund incurred expenditure amounting to £2m with 75% of this relating to fire in properties valued under £300,000, employers liability and public/products liability. The difference between contributions and costs incurred in the year related to an extraordinary series of fire claims in Council properties.
- 4.12 Contributions are charged to departments based on a mix of insurance policy costs and employees costs. Schools make additional contributions to the Fund to reflect the much lower level of excess that they are required to pay in the event of a claim.
- 4.13 The Insurance Fund receives investment income on the reserves and provisions that are set aside to meet the cost of outstanding claims (including "claims incurred but not yet reported"). As at 31 March 2010 the value of the fund was £20m, comprising £17m in the insurance reserve and £3m in insurance provision. In addition, compensation provisions are set aside to meet liabilities or losses which are likely or certain to be incurred, but where the amounts or timings of settlements are uncertain.
- 4.14 The Fund is subject to ongoing review by the Corporate Insurance Team as well as formal periodic valuation. This is to ensure that there are appropriate financial resources available to meet expected liabilities. This is a difficult and

time consuming process as it is based on a range of assumptions including claims history as well as forecasts of potential future claims.

## 5. Claims Management

- 5.1. The work of the Corporate Insurance Team in managing the risk funding strategy is only part of the Council's insurance-related systems and processes. A significant proportion of time and resource across the Council is required to be invested in claims management.
- 5.2. In referring to claims management it is helpful to draw a distinction between (i) claims administration, (ii) claims investigation, (iii) claims handling and (iv) claims litigation.
- 5.3. *Claims administration* typically involves the collection of information that is required to support the submission of a claim to insurers such as quotations or invoices with regard to the repair or replacement of property. Claims administration is mostly undertaken by the school or department that has suffered the loss.
- 5.4. *Claims investigation* may involve undertaking a site visit to establish circumstances and potential causes relating to an alleged incident that has given rise to the submission of a claim against the Council. A common example of an investigation could involve a highways trip, slip or fall where officers would visit the site, photograph relevant evidence and other relevant documentation. This investigation can be undertaken by the department with responsibility for the service area relevant to the specific claim or by Corporate Services Health and Safety Team or Legal Services. Other experts can be involved in investigations.
- 5.5. *Claims handling* is about ensuring that the Council obtains the best settlement from insurers in cases where the Council is the victim of loss or achieves the best settlement in terms of damages and legal costs with regard to claims arising from alleged negligence or omissions by the Council. This is a critical element of the process and whilst informed by claims investigation, the actual handling of the claims by specialist staff helps ensure the Council appropriately defends its legal, financial and reputational risks.
- 5.6. *Claims litigation* involves a combination of claims handling and investigation of legal liabilities and the conduct of legal claims and proceedings brought by third parties against the Council. Claims are either defended to trial or settled on the most favourable terms as appropriate.
- 5.7. The responsibility for claims handling is largely decentralised to several services that employ personnel with particular skills and expertise that are relevant to the specific risks. For example:
  - The Neighbourhood Services Legal Team employs solicitors and legal executives who are especially proficient at handling liability and indemnity claims

- The Corporate Technical Services team employs quantity surveyors, building surveyors and structural engineers whose specialist expertise is essential in handling certain property claims.

5.8. The detailed approach to claims handling across the Council varies depending on the nature of the claims. This is necessary given the diversity of claims received in such a large and diverse organisation. For illustration, some of the main processes for claims handling are set below.

### **Employers' Liability, Public Products Liability, Officials Indemnity, Professional Indemnity**

5.9. The majority of claims brought against the Council arise from public or employer's liability. These and other claims are handled by Neighbourhood Services Legal and either settled by negotiation or defended to trial in the civil courts as appropriate. Whilst Neighbourhood Services Legal do occasionally deal with claimants in person, the vast majority of claims against the Council (approximately 97%) are brought by solicitors supported by Legal Aid or "no win no fee" arrangements. The traditional legal landscape for civil liabilities of Local Authorities has changed over recent years with the emphasis shifting from workforce injuries and housing disrepair to social care liabilities, such as historic child abuse in care, failure to remove vulnerable children from abusive home situations and failure to supervise vulnerable adults. Highway trip claims have remained fairly constant but housing disrepair claims have declined due to a combination of a rapid action policy and the gradual transfer of housing stock to Registered Social Landlords (RSL's).

5.10 Legal claims handling is essentially a two stage process:

- (i) Establishing liability - The facts of each claim must be investigated to obtain evidence with which to determine whether the Council is in breach of a statutory or common law duty (or contract) as appropriate.
- (ii) Assessing quantum – The value of each claim must be established by obtaining medical and other evidence and then assessing the value in financial terms using legal precedents and guidelines.

5.11 Civil Procedure Rules govern the conduct and timing of civil claims brought in the courts and formal Pre Action Protocols govern the pre action conduct that must be observed from the date of service of a formal letter of claim if financial or evidential penalties are to be avoided. Typically, the process of defending legal claims involves:-

- Identifying and obtaining all relevant documentary evidence (this may include health and safety reports, personnel records, training records, hospital and GP records etc.
- Taking statements of evidence from appropriate witnesses of fact.
- Assessing legal liabilities and litigation risks from the evidence.
- Legal research or instructing counsel in more complex matters.
- Obtaining expert reports where necessary (I.e. this could be engineering evidence or expert medical evidence)

- Advising clients on evidence, legal liabilities, quantum of damage, potential cost risks and tactics etc.
- Negotiating settlements and bills of costs or undertaking legal proceedings, procedural court hearings and trial hearings in court as appropriate.

5.12 The above represents a simplified reflection of the work undertaken. Claims often involve additional considerations such as conflict of interest, reputational, financial or policy issues for the Council. The case study at Appendix 3 gives an example of work undertaken by the Neighbourhood Services Legal teams.

### **Property**

5.13 Upon receipt of a notification of a loss from a school or department with building and contents value over £300,000, the Corporate Insurance Team instructs a quantity surveyor within Corporate Technical Services to handle the claim. This results in a site visit, initial assessment of the extent of the loss and agreement of any emergency works. Depending on the scale and nature of the loss a building surveyor may be instructed to prepare a priced schedule of works to reinstate the property on a like for like basis or a structural engineer instructed to assess the extent of damage and make arrangements to render the building safe.

For all losses that appear likely to exceed £20,000 in respect of schools or £10,000 in respect of any other property, the quantity surveyor also notifies the Council insurer's appointed loss adjuster.

5.14 The quantity surveyor compiles the claim and negotiates the amount of the settlement with the loss adjuster. This can include costs of building reinstatement, replacement of contents and any costs of business interruption. Once agreement is reached the quantity surveyor arranges for the relevant remedial work to be undertaken.

5.15 On completion of works the quantity surveyor supplies the loss adjuster with evidence of the total cost of the claim to enable financial settlement. The Corporate Insurance Team then signs-off and arranges the appropriate transfer of funds between insurers and any releases from the internal Insurance Fund.

### **Property - Schools Balance of Risks**

5.16 Schools Balance of Risks refers to all other school-related property risks not covered under the above policy such as theft, vandalism and accidental damage. All claims in excess of the £200 policy excess that is paid by the school are notified to the Corporate Insurance Team. Claims are then forwarded to the insurer and in respect of claims likely to exceed £5,000, its appointed loss adjuster.

5.17 Following initial notification, the insurer communicates directly with schools and the Corporate Insurance Team provides support in the event of any dispute.

## **Motor Vehicle**

- 5.18 For motor vehicle claims Council drivers report accidents to Fleet Management and complete an accident report form. When a third party is involved, Fleet Management forward the accident report form to the insurer who handles the claim, up to the point of determination of liability, in negotiations with the third party's insurer.
- 5.19 If a claim involving a third party proceeds to litigation, the insurer hands conduct of the claim to Neighbourhood Services Legal Team who handle the claim up to determination of liability by the court.
- 5.20 In cases where the Council is found liable the insurer recharges Fleet Management who recover all Council and third party costs from the employing department and, where appropriate, the insurance fund
- 5.21 Where a third party is found liable a loss recovery agent is paid a nominal sum to recover the Council's own damage costs from the third party/its insurer.

## **6. Collaborative Services**

- 6.1. The Association of Greater Manchester Authorities (AGMA) work together on a range of initiatives, projects and programmes. One of the current programmes is the AGMA Collaborative Efficiency Programme within which there are a number of different workstreams. These workstreams are intended to identify and deliver efficiency and improvement opportunities to all AGMA members.
- 6.2. One of the current workstreams within the AGMA Collaborative Efficiency Programme is Collaborative Insurance. Insurance had been identified as an area of high spend and was established as an area for review in July 2009.
- 6.3. Initial meetings of the Collaborative Insurance Group identified the scope of the project as including the following:
- Insurance cover – including the procurement of cover and potential collaborative opportunities across authorities
  - Claims handling – administering and dealing with claims including any related investigations arising from them
  - Legal services – the procurement and provision of legal services in relation to handling claims where applicable
- 6.4. Whilst the group initially focused on opportunities for collaborative procurement, the economies of scale that result from combining the spending power of the ten Councils in the purchase of goods and services do not readily apply to insurance. The volume and value of the risks that the merging of insurance would pose has been one challenge. As noted above, Manchester struggles to attract more than two bidders in competitive insurance tendering. Merging the schools and other property assets of the ten Councils would require insurers to underwrite over £15,000m of assets. It was generally

accepted that this would reduce, rather than increase competition and could result in higher costs. There are no specific opportunities identified at this stage but procurement remains an area of focus. Alternative efficiency opportunities are being considered such as joint procurement on specialist policies, the use of framework contracts to reduce tendering costs and exploring potential benefits of a mutual arrangement for self-insurance.

- 6.5. The Council participates in annual CIPFA benchmarking of insurance arrangements across most English Councils. Page one of the report each year makes the point that making direct comparisons between Councils is problematic on the basis that all Councils differ in their insurance and claims handling arrangements and the scope of cover provided. Given some of the complexity and range of insurance matters referred to in this report, it was not surprising that initial meetings of AGMA insurance representatives confirmed significant differences in how insurance was arranged, how claims were handled and the use of external legal advisors. The level of excess on motor claims for example, varied between £250 and £137,000 based on data collected across the ten Councils. In February 2010 it was therefore agreed to focus efforts particularly on the insurance and claims handling in respect of highways.
- 6.6. In Manchester, the Highways Service is responsible for aspects of highways risk management as well as claims administration and claims investigation. Aspects of (low value non personal injury) claims handling are also undertaken by the service. Elements of claims handling and claims litigation is undertaken by Neighbourhood Services Legal . This is a different approach to that taken across AGMA as a number of Councils rely on external legal providers for aspects of claims handling. It is understood that some Councils are reviewing these arrangements given concerns about the quality and cost of external legal providers and insurers' handlers. There would appear to be a trend across AGMA of returning to in house practice that reflects this Council's successful approach. Nonetheless, the highways project did identify areas for further exploration and these were reported to the AGMA Treasurer's Group in September. The key opportunities identified for further discussion and consideration within each Council included the following:
- Implementation of a more consistent approach to risk management including the use of agile / mobile working, the use of find and fix teams and use of hand-held technologies.
  - Implementation of a more consistent approach to claims handling and linking this to the risk management approach.
- 6.7. At a meeting on 28 September, officers representing the insurance functions of the AGMA Councils agreed that these areas warranted further investigation but acknowledged the barriers to implementation. These barriers include potential overlap with existing improvement programmes in each of the Councils, different existing structures and approaches to highways risk management and the different risk maturity of each of the ten Councils. It was also acknowledged that it may not be necessary for all ten councils to collaborate to take projects forward. Each Council will therefore consider the

merits of engagement on one or all of these areas and this will inform the next stage of the project.

- 6.8. Within the Council, the Head of Audit and Risk Management reports to a Collaborative Working Group chaired by the Directorate of Transformation that is coordinating all collaborative activity. In conclusion, there is merit in information sharing and collaboration across AGMA but the potential benefits of collaboration for Manchester have yet to be fully identified. There is learning and experience that can be shared between Councils and there is potential to standardise and improve our approaches to risk management but the current focus is on internal improvement and efficiency opportunities.

## 7. **Other Challenges and Opportunities**

- 7.1. Whilst AGMA offers some opportunities for efficiency improvement there are internal opportunities that are also being explored. These have been identified and managed as projects within the Audit and Risk Management division but are being delivered with the support of colleagues across the Council.
- 7.2. There is scope to develop the gathering and use of intelligence on claims across the Council. Given the decentralised approach to claims management there are a number of different systems and processes used in the management of claims. Some of these systems, such as the Legal Services Arista case handling system, serve multiple purposes but there may be opportunity to improve the sharing of data and use of information. This presents an opportunity to enhance focus on hotspots for claims, direct risk management and health and safety resource and use data for the prevention and detection of fraud. It could also help to confirm who is best placed to undertake claims investigation and ensure appropriate, cost effective resources are available to maximise the Council's ability to recover losses incurred and defend claims submitted by third parties. The Head of Audit and Risk Management and Head of Legal Services have initiated a project to review claims management that will explore these opportunities.
- 7.3. One of the wider opportunities this project presents is to help target risk management funding to prevent losses. A small financial resource is available to the Corporate Insurance Team to invest in proactive risk management measures that could improved security over mobile ICT equipment in schools. A school security risk assessment is shortly to be undertaken by Zurich Municipal and the Internal Audit Service is also undertaking a review of safes and security of cash in schools. The outcome of these pieces of work will also be used to target investment to reduce the risk of loss. This intelligence would also help target the resources of other services including health and safety, internal audit and legal services. Some of the benefits of this have already been realised with improved sharing of information across the Audit and Risk Management Division resulting in audit investigations arising from the intelligence held in the insurance team.

- 7.4. The Council currently makes use of a specialist insurance broker. The tender for this contract will be reviewed during 2011/12 and presents an opportunity to consider how to make best use of external experts. This review will be undertaken by the Council's newly appointed Corporate Insurance Manager who is due to take up post in December.
- 7.5. The risk funding strategy and balance between insured and self-insured risks is also an area that is being explored. There are opportunities to reduce aspects of the external insurance that could result in a more cost-effective in-house solution. Conclusions and recommendations in this regard will be finalised with the incoming Corporate Insurance Manager with a target date for any changes in arrangements to take effect from April 2011.
- 7.6. Colleagues across the Council are always identifying areas for improvement that could impact positively on the cost of premiums and the likelihood of losses. Whether through the design of new schools to safeguard against fire risks, the management of contractors or recording of casework activity in adult services, all Council staff have a part to play in the effective management of risk and the potential financial, reputational and operational impact that this can cause.

## **8. Recommendations**

- 8.1. Members are requested to note the report on Insurance Cover and Claims Handling

## **Appendix 1 Legal Services - Organisation of Claims Teams**

Claims are handled by three specialist teams:

### **(1) The Highways Claims Team**

- Highway slip and trip claims.
- Tree root structural damage claims to properties.
- Employees claims for accidents during the working day.
- Claims arising out of defective traffic lights (Manchester is the Lead Authority in Greater Manchester).
- Claims arising out of defective automatic bollards.
- Claims arising out of work undertaken by Manchester Contracts.

The team are particularly pro-active in the area of fraud detection. All new claims are thoroughly checked against our database of historic claims, to determine, amongst other things, whether previous claims have been submitted by the same person, other family members, or at the same location. The team contributes to periodic data matching exercises undertaken by the National Fraud Database.

Due to the well established liaison between our Highways Claims Team and Highway Services, we are able to defend approximately 85% of highway trip claims received.

### **(2) The Housing Claims Team**

- Housing disrepair claims and loss or damage to property.
- Ill-health claims associated to disrepair. (I.e. Asthma related to dampness)
- Claims for personal injuries to tenants and others, on Council premises.
- Employee injury claims.
- Counter-claims on housing possession claims.
- Injunctions and Applications for Specific Performance (Orders to carry out works of repair).

In addition to its work for Manchester Housing and Northwards ALMO, the team have successfully tendered to deliver a claims handling service for Southway, City South, Adactus and Miles Platting PFI.

### **(3) The Miscellaneous Claims Team**

A claims service for all other Strategic Directorates. Typical claims include:-

- A specialist employer's liability service for Occupational Disease Claims (Asbestos and other respiratory related illness, noise induced hearing loss, repetitive strain injuries, dermatitis, etc.).
- Employee / Public personal injury claims.
- Historic child abuse claims from children who were placed in Council run homes and assessment centres.
- Litigated road traffic accident cases involving Council owned or driven vehicles.
- Bullying claims.
- SEN / Dyslexia claims.
- Workplace stress claims.
- Breach of contract claims.
- Construction disputes

- Professional negligence claims
- Damage arising from Council land / property.
- Loss and damage arising from third party events sponsored or supported by the Council.
- Failure to take children into care claims and claims for wrongly taking children into care.
- Will now also be handling Academies claims.

Given the complex and often high value of these claims, the team regularly liaise with corporate health and Safety Officers, the Insurance and Risk Management Team and external insurer's representatives and solicitors.

Policy and Risk	Policy Details			Cost of Claim met by:		
	Coverage	Limit of Insurance	Excess Paid by Council	Department / School	Insurance Fund Excess	Insurer
Employers' Liability	Liability in respect of personal injury or disease suffered by an employee	£100m for any one occurrence  Includes defence costs	£250k for any one occurrence *	Department first £20k	£250k	All costs above £250k
Public / Products Liability	Liability in respect of personal injury, disease or damage to property suffered by a third party			School first £500		
Officials Indemnity	Liability in respect of financial loss suffered by a third party arising out of a wrongful act in the performance by the Council of its official duties	£5m for any one claim  Includes defence costs	£250k for any one occurrence*	Department first £20k  School first £500	£250k	All costs above £250k
Professional Indemnity	Liability in respect of financial loss suffered by a third party arising out of a wrongful act in the performance by the Council of professional services (excluding statutory duties)	£5m any one claim  Includes defence costs	£250k for any one occurrence*	Department first £20k  School first £500	£250k	All costs above £250k
* The Council's liability to pay excesses is limited to £9.750m in the aggregate any one period of insurance under combined Employers' Liability, Public/Products Liability, Officials Indemnity and Professional Indemnity policies.						
Property - below £300k	These properties with a combined building and contents reinstatement valuation below £300k are not insured through the commercial insurance market. The Insurance Fund acts as insurer, providing cover that reflects the scope and level of cover provided under the commercial insurance policy.					

Policy and Risk	Policy Details			Cost of Claim met by:		
	Coverage	Limit of Insurance	Excess Paid by Council	Department / School	Insurance Fund Excess	Insurer
Property – above £300k	Material damage and business interruption. Includes damage caused by fire, lightning, explosion, impact by aircraft, earthquake, subterranean fire, storm or flood including any of these resulting from a terrorist act.	Cost of full reinstatement / replacement value of building and contents.  Reasonable business interruption costs including rent or revenue lost.	£20k-£100k for fire, lightning, explosion, impact by aircraft.  £250k for any other insured peril	Department first £5k  School first £500	£20k-£250k	All costs above £20k or £100k for fire, lightning, explosion, impact by aircraft.  All costs above £250k for any other insured peril
Property – Schools “Balance of Risks”	Material damage or loss. Includes damage or loss as a result of riot or civil commotion (fire only), escape of water, impact by motor vehicle, theft, accidental damage	£15m any one period of insurance	£200 each and every loss	£200 each and every loss	-	All costs above £200 each and every loss
Motor Vehicle	Comprehensive cover including damage or loss, injury to employees (excluding drivers) and legal liability in respect of personal injury or damage to property suffered by a third party (including defence costs)	Up to £10m relating to any commercial vehicle or £50m relating to any motor car	£109k for own damage and third party loss (index-linked) any one event	Department first £20k	£109k	Each and every event: all costs above first £109k  All costs above annual

Policy and Risk	Policy Details			Cost of Claim met by:		
	Coverage	Limit of Insurance	Excess Paid by Council	Department / School	Insurance Fund Excess	Insurer
						aggregate stop of £600k

## Appendix 3

### Highway Tripper (Defended claim) W -V- Manchester City Council

#### Scenario

March 2009 claim received from Claimant's solicitors. Claimant alleged to have fallen into a pothole in the carriageway in Cheetham Hill in November 2008. There is a subsequent attendance at the hospital where a fractured ankle is diagnosed.

#### Factual Investigation

- Legal Services (LS) request site investigation by Highway Services (HS) and inspection and maintenance records for scrutiny.
- The claim is acknowledged and a request is made for the personal details of the claimant in order that this matter can be reported to the Department of works and pensions. (*The DWP must be notified of all accident claims as, the compensator, if liable has to repay any benefits that are attributable to the accident*).
- HS indicates that they are unable to identify site of accident. Further details requested from the claimant's solicitor who provides details of the nearest house number to the accident site.
- LS undertake checks on the LS Arista computer system to ascertain if, any previous claims have been made by the claimant, from the address given or the location of the fall. Searches prove negative.

#### Determining legal liability

- LS examine the site inspection report, pre accident inspections and maintenance records. LS note that defect was not noted on the last highway inspection 5 months before the date of the alleged accident.
- LS deny liability to claimant solicitor but queries the report with HS as it is also noted that the defect was not identified on the inspection immediately after the alleged accident date. In addition, a subsequent report from a resident has generated a repair.
- Claimant's solicitor provides statements by local residents suggesting that the defect has been in situ for a number of years. LS assess the risks in the case and consult with HS. Inspections before date of alleged accident appear sound and a reference to possible intoxication in medical report is also noted – below). It is decided to continue to defend the claim to trial.

#### Legal Proceedings

- Claim Form (summons) is received with supporting medical evidence.
- LS serve a formal Acknowledgment and Allocation Questionnaire at court. (*a court document filed by both the claimant and the defendant outlining what has happened in the claim so, far and giving the Court sufficient information to enable the District Judge to decide what directions and orders to make to progress the claim to trial*).

- Judge gives directions ordering both parties to file formal details of the claim and defence, exchange documentary evidence and provide factual witness statements and expert reports within defined timescales.
- During this process, LS file a formal defence to the claim but also request the accident and emergency records. LS had noted that the medical report served with the Claim Form indicated that the claimant twisted his ankle whilst intoxicated but, no other details or circumstances of fall were given.
- Upon receipt of the A and E records, LS express surprise that claimant's solicitor made no comment about an entry stating that the claimant was at a party and *"thinks that he went over on ankle"*.
- LS prepare a formal witness statement from the relevant Highways inspector.
- A number of statements are received from claimant's family stating that accident occurred on the way to the family gathering.
- Court set trial date.
- 10 days before trial the case is discontinued by claimant's solicitor.

### **Summary**

Scrutiny of the medical records revealed that the accident could have occurred in a different way than alleged. LS and HS liaised with each other to assess the litigation risks in the case and the potential weaknesses in the claimant's evidence. By discontinuing the claim after the issue of legal proceedings, the claimant is liable to pay the Council's costs and disbursements incurred in defending the claim. LS are presently pursuing the claimant's solicitor for these costs.