

**NORTH LINCOLNSHIRE COUNCIL**

**AUDIT COMMITTEE**

**RISK MANAGEMENT PROGRESS REPORT**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To inform Members of key issues arising from risk management work.
- 1.2 Regular reporting on risk management issues is an important source of assurance for Members to fulfil their role and provides supporting evidence for the annual approval of the Governance Statement.

**2. BACKGROUND INFORMATION**

- 2.1 The revised Strategic Risk Register was reported to Members in January. Lead responsibility for each risk has been designated and updated to reflect changes as a result of the senior management review. The revised register is attached in appendix A. An evaluation of controls is currently underway and the outcome of this work will be reported in the Risk Management Progress Report in September.
- 2.2 An Internal Audit review of risk management arrangements has been concluded. Audit work undertaken provided evidence of adequate assurance on the adequacy of internal control arrangements. The issues identified are being addressed and have been reported to the Risk Management Group. The report will be followed up to ensure compliance. The main findings of the review are summarised below:
  - Risk management implications are not consistently evidenced across all council service areas, in Cabinet and Cabinet Member decision making reports.
  - Further work is required to develop arrangements for managing partnership risks.
  - Some progress has been made to develop SMART Performance Indicators for risk management, but these have not been formally agreed.
  - Work is on-going to finalise the Risk Management eLearning package which will form part of the induction programme for new managers. It will also be adapted and issued to all staff as a

councilwide reminder of everyone's roles and responsibilities in managing risk.

- Some operational risk register information has not been populated in the 4Risk system and some risks have not been allocated an owner.

2.3 Risk management work is progressing in a number of areas including the development of an eLearning package and an examination of risk management arrangements in schools. The Risk Management team is also working with the Strategy Development team concerning the ongoing review of Integrated Impact Assessment. The aim of this review is to ensure that risk and other areas are properly considered in Cabinet and Cabinet Member reports. This review will also address audit's findings.

2.4 An important aspect of the risk management action plan is to continue to raise awareness across the council. This is achieved through comprehensive training programmes and communication networks. In addition to information available on the web page and intralinc the 10<sup>th</sup> edition of the Risk Roundup newsletter was also issued in April (appendix B).

2.5 The CIPFA/ALARM risk management benchmarking questionnaire has been completed. The benchmarking club will provide comparative measures, help develop SMART indicators and highlight areas for improvement in current arrangements. The results are due in July/August and benchmarking club outcomes will be reported to the Committee in September.

### **3 OPTIONS FOR CONSIDERATION**

3.1 The Committee should consider whether or not this update provides sufficient assurance on the adequacy of risk management arrangements detailed in this report. The Committee should ask questions about the contents of the report and seek clarification as necessary.

### **4. ANALYSIS OF OPTIONS**

4.1 The progress reports on key internal control issues and complies with professional guidance available and designed to provide this Committee with the assurance required to fulfil its role effectively. Members should ask sufficient questions to ensure adequate assurance is provided.

### **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY.IT)**

5.1 Resources are met from Internal Audit and Risk Management budget.

5.2 Regular reviews of risk management arrangements should safeguard the council's assets and ensure that value for money is achieved in the use of resources. There are no staffing, property or IT implications.

**6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)**

6.1 The Chief Financial Officer has a statutory duty under the provisions of the Local Government Act 1972 to ensure the proper administration of the council's financial affairs. The council also has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

6.2 The evaluation of the council's arrangements will help to promote good corporate governance. Risk management work, as a component of the council's internal control framework is a key source of assurance to support the Annual Governance Statement. The risk management framework addresses all key risks the council may face. It promotes appropriate action to manage risks to an appropriate level.

**7. OUTCOMES OF CONSULTATION**

7.1 The Risk Management Group is made up of representatives from all services and therefore risk management outcomes are the result of a comprehensive consultation process.

**8. RECOMMENDATION**

8.1 The Audit Committee should consider the assurance provided by the Risk Management progress report on the adequacy of risk management arrangements detailed.

DIRECTOR OF POLICY AND RESOURCES

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**Background Papers used in the preparation of this report**  
Risk Management Strategy and Action Plan 2012-2013

## Strategic Risk Register 2011/2012

Risk	Risk Description / Features
<b>Internal Risks</b>	
<p><b>1. Failure to achieve council priorities that meet the needs of North Lincolnshire residents</b></p> <p><b>Lead : Chief Executive</b></p>	<p><b>Adoption of priorities that do not meet national or local needs</b>  <b>Abrupt policy change resulting from changed political leadership nationally or locally</b>  <b>Inadequate change programmes</b>  <b>Poor change management arrangements</b>  <b>Negative culture to change and risk adverse to innovation in service delivery</b></p> <ul style="list-style-type: none"> <li>• <b>Failure of decision making process</b></li> <li>• <b>Poor data quality on which decisions have been made</b></li> <li>• <b>Poor stakeholder engagement</b></li> <li>• <b>Invest to save programmes do not provide efficiencies expected</b></li> <li>• <b>MTFP pressures</b></li> <li>• <b>Changes to service delivery presented by the Localism Act</b></li> </ul>
<p><b>2. Significant service failure</b></p> <p><b>Lead: Chief Executive</b></p>	<p><b>Failure to adequately implement significant service changes e.g. social care personalisation, failure to safeguard adequately, raising educational standards</b></p> <ul style="list-style-type: none"> <li>• <b>Serious impact on human welfare</b></li> <li>• <b>Environmental issues and significant costs</b></li> <li>• <b>Adverse and/or increased inspection</b></li> <li>• <b>Legal action</b></li> <li>• <b>Costs</b></li> <li>• <b>Loss of confidence</b></li> <li>• <b>Unprofessional conduct by officers</b></li> </ul>

<p><b>3. Inadequate workforce planning and management to meet current and future needs</b></p> <p><b>Lead: Assistant Director Human Resources</b></p>	<p><b>Failure to recruit and retain an appropriately skilled workforce to meet service needs</b></p> <ul style="list-style-type: none"> <li>• Present and future skills mix</li> <li>• Financial implications – HR policies</li> <li>• Loss of experience and expertise</li> <li>• Managing workforce contraction</li> <li>• Increased risk of fraud</li> </ul>
<p><b>4. Serious breach of information integrity, confidentiality and availability and inaccurate data.</b></p> <p><b>Lead: Assistant Director Business Support</b></p>	<p><b>Significant failure or loss of ICT systems</b>  <b>Loss or mishandling confidential and sensitive information</b>  <b>Poor data quality</b>  <b>Failure to safeguard the information assets of the council</b></p> <ul style="list-style-type: none"> <li>• Significant fines by the Information Commissioner/ inspection</li> <li>• Withdrawal of Government Connect accreditation</li> <li>• Loss of confidence by stakeholders</li> <li>• Cost and waste of resources</li> <li>• Unprofessional conduct by officers</li> <li>• Failure to follow council procedures</li> <li>• Service delivery disruption</li> <li>• Increased risk of fraud</li> </ul>
<p><b>5. Failure to maintain high standards of governance</b></p> <p><b>Lead: Director of Policy &amp; Resources</b></p>	<p><b>Failure to conform with legislation, regulation or government policy and meet statutory duties</b>  <b>Failure to conform with the council’s Constitution, Financial Regulations, CPRs, policies, codes and procedures</b>  <b>Failure to demonstrate high standards of conduct and integrity expected of officers and members of the council.</b>  <b>Inadequate governance and financial probity arrangements and monitoring</b>  <b>Legislative and regulatory changes in a context of growing expectation for transparency etc.</b>  <b>Failure to have robust contractual arrangements or partnership governance</b></p>

	<p>at a time of increased supply chain and partnership arrangements  <b>Failure to maintain robust and corporate financial management arrangements in order to achieve the MTFP</b>  <b>Breakdown of prudent financial management including treasury risks resulting in failure to achieve the medium term financial plan</b></p> <ul style="list-style-type: none"> <li>• Financial loss (litigation costs and fines)</li> <li>• Service disruption (contract failure or significant supply chain failure or failure of major partnership)</li> <li>• Fraudulent activity</li> <li>• Adverse inspection, reporting and potential intervention (Public Interest Reports)</li> <li>• Lack of transparency and scrutiny of actions and results</li> <li>• Unprofessional conduct by officers</li> <li>• Loss of confidence</li> <li>• Unprofessional conduct by officers or members</li> </ul>
<p><b>6. Failure to deliver major projects and capital schemes</b></p> <p><b>Lead: Director - Places</b></p>	<p><b>Inadequate management, resourcing or scrutiny of the delivery of major projects</b>  <b>High priority projects do not deliver the required or expected outcomes and/or are delayed or not within budget</b>  <b>Failure to adequately maintain council assets</b></p> <ul style="list-style-type: none"> <li>• Financial loss</li> <li>• Unacceptable delays</li> <li>• Adverse inspection and reporting (Public Interest Reports)</li> <li>• Adverse impact on service delivery</li> <li>• Fraudulent activity</li> </ul>

<p><b>7. Failure to maintain the council's reputation</b></p> <p><b>Lead: Director of Policy &amp; Resources</b></p>	<p><b>Failure to meet stakeholders expectations of the council's performance and behaviour</b></p> <ul style="list-style-type: none"> <li>• <b>Conflicting expectations</b></li> <li>• <b>Poor perception held by the public</b></li> <li>• <b>Inadequate or ineffective communication</b></li> <li>• <b>Erosion of trust and confidence in the council</b></li> <li>• <b>Negative publicity</b></li> <li>• <b>Exit of key employees</b></li> <li>• <b>Difficulty recruiting</b></li> <li>• <b>Loss of partners</b></li> </ul>
<p><b>External Risks</b></p>	
<p><b>8. Recession resulting from national or local problems including closure of a major employer</b></p> <p><b>Lead: Assistant Director Planning &amp; Regeneration</b></p>	<p><b>Failure to attract external investment</b></p> <ul style="list-style-type: none"> <li>• <b>Council tax implications, and under proposals for the future, implications for NNDR receipts and localised council tax benefit payments</b></li> <li>• <b>Major work force issues – re training/ new skills required</b></li> <li>• <b>Impact on subsidiary or supplier companies</b></li> <li>• <b>Increase risk of benefit fraud</b></li> </ul>
<p><b>9. Reduced financial settlement resulting in inadequate resources to meet identified needs</b></p> <p><b>Lead: Director of Policy &amp; Resources</b></p>	<p><b>Failure to have prudent and robust financial planning</b></p> <p><b>Impact of the economic climate and changes in government policy are not assessed sufficiently early</b></p> <ul style="list-style-type: none"> <li>• <b>Clear prioritisation of resources</b></li> <li>• <b>Managing expectations/ service demands</b></li> <li>• <b>Re modelling service delivery</b></li> <li>• <b>Efficiency maximisation</b></li> <li>• <b>Reduced service delivery and /or cessation of service in some areas</b></li> <li>• <b>Failure to attract external funding or other sources of income</b></li> <li>• <b>Failure to adequately maintain council assets</b></li> </ul>

	<ul style="list-style-type: none"> <li>• Increased resource variability due to changes in the funding regime for LAs</li> </ul>
<p><b>10. Failure to meet the changing needs of the community and individuals</b></p> <p>Lead: Director - Places</p>	<p>The impact of demographic changes e.g. ageing population or immigrant workforce profile</p> <p>Failure to understand the needs of the community</p> <p>Failure to deliver commitments or raising expectations that may not be fulfilled</p> <p>Failure to communicate effectively and not fulfil 'duty to involve'</p> <ul style="list-style-type: none"> <li>• Failure to meet the needs of vulnerable residents</li> <li>• Lack of community cohesion</li> <li>• Anti social behaviour</li> <li>• Strike action</li> </ul>
<p><b>11. Contamination and pollution</b></p> <p>Lead: Assistant Director Technical &amp; Environment Services</p>	<p>Failure to identify and control potential risks from current and former industrial activity in the area</p> <p>Failure to adequately monitor for pollutants</p> <p>Major accident or incident (including criminal or malicious) leading to uncontrolled emissions or releases to land, air or water</p> <ul style="list-style-type: none"> <li>• Resources and response costs</li> <li>• Litigation costs</li> <li>• Adverse impact on services and businesses</li> <li>• Health issues</li> <li>• Loss of public confidence</li> </ul>
<p><b>12. Inadequate emergency planning and business continuity arrangements to manage the impact of major events.</b></p> <p>Lead: Director - Places</p>	<p>Failure to plan for and respond to emergencies e.g. severe adverse weather conditions; major and widespread health issue (such as Pandemic Flu outbreak)</p> <ul style="list-style-type: none"> <li>• Disruption to service delivery</li> <li>• Impact on stakeholders and local industry</li> <li>• Unanticipated costs/ waste of resources</li> </ul>



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|  | <ul style="list-style-type: none"><li>• <b>Increased insurance claims and premiums</b></li><li>• <b>Human impact on vulnerable people</b></li><li>• <b>Adverse environmental impact</b></li></ul> |
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# RISK

## roundup

Issue 10  
April 2012

A quarterly digest of risk management issues



One of the roles of the Risk Management Group (RMG) is to ensure that significant risks are adequately managed in service areas. As reported in Issue 9 of Risk Roundup, future publications will include articles explaining how the risks are managed. This issue includes an article from the Strategic Procurement and VFM team explaining how risks arising from supplier failure are managed, and the Highways section outlining adverse weather risks.

## Supplier failure – do you know the risks?

**“Failure of a supplier can occur for a variety of reasons”**

### How we manage risks arising from supplier failure

A **supplier** can vary from a small trader, through to a large partnership with tiers of complex supply chains underneath them.

This article describes the risks of supplier failure and how we prepare for them. Understanding the different risks we face and how they would affect us can help us to become more prepared for dealing with supplier/supply chain failure.

### Risks affecting suppliers

In recent times the public sector has seen a number of cases where trading relationships have ended without any warning. The issue is that some of these trading relationships could affect vulnerable people and/or front-line services and the council needs to be prepared. Failure of a supplier can occur for a variety of reasons, such as:

- inadequate specification of requirements
- failure to carry out adequate financial and technical assessments of tenderers
- changes in the operating environment e.g. legislation, regulatory framework
- downturn in local/national economy or other economic factor
- industrial action

- breakdown of supply-chains
- contractual disputes
- relationship breakdown with key partner

The potential consequences of supplier failure are:

- interruption of key services resulting in impact on service users
- inadequate quality standards or levels and user dissatisfaction
- financial loss/unexpected exposure to risk and possible litigation
- workforce implications, particularly local suppliers i.e. job losses
- pressure on in-house resources associated with additional workload
- internal costs and timescales associated with re-tendering/resolution
- loss of reputation
- costs of litigation and dispute resolution
- potentially higher costs associated with using alternative suppliers/providers
- potentially lower inspectorate ratings for key services e.g. social services
- failure to deliver council priorities and ambitions
- failure to achieve or demonstrate VfM

## Supplier failure – do you know the risks? **continued from page 1**

### Preparation for supplier/ supply chain failure

The council's procurement policy framework explains how to build contingencies with suppliers to avoid service disruption. The Strategic Procurement Unit (SPU) provides a reminder each year to managers/officers who are responsible for managing contracts to ensure contingency plans are in place where the relationship with a supplier is essential for key services.

### What we should do and must do

As a council we have a duty to provide specific services for the citizens of North Lincolnshire. That means we must ensure any contractual relationship with a supplier is put in place through proper process and ensure that the relationship is healthy throughout its duration.

At an individual level each of manager/officer responsible for a contract should prepare a contingency plan and review key relationships annually in line with guidance provided by the SPU. In line with best practice, we must:

- Undertake annual financial health checks
- Update contracts register on a regular basis
- Carry out regular contract reviews (contract management)

On a business level we must ensure our business continuity plans are up-to-date and will work if (when?) we are faced with a supplier failure.

### Further guidance

The Procurement Manual and your procurement team is there to help. Please use it or contact us.

## Winter service policy



The **Highways** section is responsible for the winter service policy in relation to the highway network. We can all remember the extremely severe winter weather of 2010. This has resulted in a review of the policy with agreement with the Cabinet Member. From a risk management perspective, having a policy has demonstrated how we meet national guidelines and keep accurate records to defend the council in a negligence claim.

The adverse weather raised the following risks to the council. These are:

- Customer Expectations about the extent of road and footpath clearance - this resulted in a large increase in customer contact and complaints and placed a huge burden on highway officers to meet the council's standards for complaints. We need to have a clear communication channel and explain why we do what we do, for example, clearing the car park at the Civic Centre to allow officers to access the building to help keep essential services running.
- Inadequate planning by over or underestimating adverse weather in future years

because of this event – was it a one-off or will it happen more frequently?

- Failure to follow the Winter Service policy.
- Inadequate information to members of the public about snow clearance for fear of being sued.
- Town and parish councils were unclear what was happening in their area.
- The national problem of inadequate supply of rock salt and a further supply being much more expensive.
- Cost of dealing with the adverse weather.
- A need to increase the number of salted routes.
- Quality of the clearance by third parties as there is also the possibility of damage to the highway.

The review of the Winter Maintenance policy included extensive consultation. The risks have been managed by introducing the following improvements:

- Introduction of snow wardens in town and parish areas to determine local priorities, have a devolved budget and improved communications.
- Review of current routes to take into account views

made during consultation.

- New location and greater stockpiles of rock salt.
- Following national guidelines.
- Using the emergency planning principles to deal with a similar incident.
- Produce guidance to the community on what they can do.

However, this has brought new risks which will need addressing:

- Financial and other impacts of the national policy framework.
- Ensuring Town and Parish councils are clear on their remit.
- Future costs of adverse weather.
- Each council has to review its methods of salting to find greater efficiencies.
- Other critical functions will need to ensure that they have adequate business continuity arrangements in place.

The Policy supports other services to implement business continuity arrangements in adverse weather conditions by ensuring (as far as possible) the safe movement of traffic on the important parts of the highway network.

## Strategic Risk Register

**The Audit** Sub-Committee approved the council's Strategic Risk Register at the meeting 31 January 2012. Strategic risks are defined as 'those risks, which will significantly impair the achievement of the council's principal aims and objectives, core service delivery and overall probity'. The risks are as follows:

- Failure to achieve council priorities that meet the needs of North Lincolnshire residents
- Significant service failure
- Inadequate workforce planning and management to meet current and future needs
- Serious breach of information integrity, confidentiality and availability and inaccurate data
- Failure to maintain high standards of governance
- Failure to deliver major projects and capital schemes
- Failure to maintain the council's reputation
- Recession resulting from national or local problems including closure of a major employer.
- Reduced financial settlement resulting in inadequate resources to meet identified needs
- Failure to meet the changing needs of the community and individuals
- Contamination and pollution
- Inadequate emergency planning and business continuity arrangements to manage the impact of major events.

## False alarms reduce brigade response



**Fire alarm** systems with remote signalling automatically send a warning signal to a permanently manned centre called an Alarm Receiving Centre (ARC). Traditionally this has prompted the fire service to attend. However, under new guidelines (in the majority of UK regions) property keyholders will now be required to investigate the cause of the fire alarm system activation during the day, before the fire service will attend.

For premises in some regions (Humberside is not yet included), the fire service will not attend unless a member of staff, or the keyholder, has been sent to investigate the cause of the fire alarm activation during the day and at night. (These new rules won't apply, however, to certain premises such as hospitals and other high-risk categories.) Whether the fire service will attend an alarm activation now depends on:

- who occupies the building; and
  - what time of the day it is.
- The investigation of a fire alarm system is clearly made more complex when the premises are unoccupied. This would require a keyholder to attend and investigate a building for the signs of fire before being able to call the fire service.
- The background is that the fire service has been attending false alarms from premises whose automatic fire alarm systems were activated when a fire was not present. Government 2010/11 Statistics show the fire service attended 272,000 false alarms, although figures from 2010 show a 5 per cent fall in false alarms due to apparatus. In support of the fire service, the first task should be to ensure that an automatic fire alarm, including the remote signalling to the central station, is being managed to the highest level possible. This should be done in conjunction with the company that maintains the automatic fire alarm system.
- If the fire alarm system does activate, any investigation must take place within the context of the evacuation.
- Staff investigating the fire alarm should be trained to ensure their safety.
- Changes to Humberside Fire & Rescue Service arrangements will be closely monitored and appropriate action will be taken.
- where in the UK the building is located

The insurers Zurich Municipal publish important insurance articles for councils to consider important risk management messages. A sample of these claims reports are detailed on the next few pages.

## Driver error led to car park damage

### OCCUPIERS – UNDERGROUND CAR PARK – LIABILITY FOR VEHICLE DAMAGE

**Angold-Stephens v Epping Forest District Council, 10.06.11, Edmonton County Court**

**“The judge held it was a matter of common sense that C should have noticed the pipe.”**

**One evening** in February 2010 the claimant, C, was reversing his Jaguar X-Type car into a parking bay in the defendant’s car park in Epping Forest, Essex. As he reversed, his vehicle collided with a pipe hanging from the side of a wall. C claimed damages from the defendant, D, for his motor policy excess and the cost of repairs. He alleged D failed “to adhere to health & safety precautions” [sic].

D denied liability, alleging the accident was caused wholly or at least partly by C failing to notice the pipe and relying on the vehicle’s parking sensors. D said the pipe was clearly visible.

The judge dealt with this as an occupiers’ liability matter, not a health and safety matter as C had pleaded. The judge considered

whether D had negligently failed to warn motorists of the pipe.

C said he had used the car park many times over several years and had probably used that particular bay but had not noticed the pipe. D’s witness said the pipe had been there for 22 years. D asked what it could have done to bring C’s attention to the pipe. The judge held it was a matter of common sense that C should have noticed the pipe. It was black, about six inches long, against a white wall. C is a careful driver but it is not D’s fault he erred on this occasion. The claim was dismissed.

This is another example of a court refusing to hold an occupier liable for an accident due to an obvious hazard.

## No council liability for fall

### CYCLISTS – SLIP ON ALGAE – LIABILITY FOR FABRIC OF HIGHWAY

**Valerio v Carmarthenshire County Borough Council, 28.03.11, Winchester County Court**

**The claimant** was cycling along the Millennium Coastal Path for which the defendant, as highway authority, was responsible. As he cycled across a wooden bridge his bicycle tyres skidded. He fell, sustaining injuries.

The claimant claimed damages from the defendant for his injuries, alleging breach of duty, under s.41 of the Highways Act 1980 (the Act), to maintain or repair the bridge. His allegations included failing to remove the growth of algae-type material from the bridge which caused the bridge to be slippery when wet.

The defendant took issue with the allegation that the Coastal Path was a highway and it denied owing the claimant a duty of care as alleged or at all. It said that if the Path was a highway, it had not breached s.41 of the Act as its duties to maintain the highway did not extend to dealing with the presence of algae-type material or wetness.

Further, the defendant inspected the bridge every two weeks and no defects were noted either immediately before or after the accident. No complaints had been received about the condition of the area other than from

the claimant after his accident.

The judge held algae on the bridge caused the accident but the presence of it was not a breach of the defendant’s duty under the Act. The fabric of the highway was not defective. The claim failed.

This is a reminder that a highway authority’s duty under s 41 of the Highways Act 1980 is to maintain the fabric of the highway. Slippery substances alone, such as algae or an algae-type material, do not demonstrate a highway being out of repair.

## Teacher’s injury claim upheld

### SCHOOLS – TEACHER’S INJURY – NEGLIGENCE – FORESEEABILITY

**Hadlow v Peterborough City Council, 20.10.11, Court of Appeal**

**The claimant** C, taught at a secure facility for women with dangerous behaviour. It was operated by the defendant, D. One of the policies required staff not to be alone when

teaching classes of more than two women.

C was to teach a class of three but her usual

**Continued on page 5**

## Teacher's injury claim upheld

**Continued from page 4**

teaching assistant was delayed. Two members of staff escorted the three women in but, while C's attention was on the women, the staff left and the door locked behind them. C tried to reach the door to request one of the staff to stay but tripped on a chair, injuring herself. C claimed damages from D alleging her accident was caused by D's negligence in failing to ensure she was not alone with the women.

D argued the accident was not reasonably foreseeable – she had not been injured by the women and her accident broke the chain of causation. The trial judge held C was entitled to take the action she did when realising she was alone and D's failure to provide another

member of staff was negligent. D appealed.

The Court of Appeal held that C's accident occurred due to her trying to remove the risk of violence to her. She should not have been left alone. Risk of injury was foreseeable to D and, although C's injury had not occurred in a likely way, being injured while being left alone with the three women was reasonably foreseeable.

D's breach of duty caused the accident and the appeal was dismissed.

**Where a person is injured in a way not quite envisaged, the chain of causation will not necessarily be broken if, as here, it is reasonably foreseeable that injury could occur due to the breach of duty committed.**

## Ice slip claim dismissed

**LEISURE CENTRES – SNOW AND ICE**

**Franco-Franklin v Swindon Borough Council, 22.08.11, Stoke on Trent County Court**

In early 2009 the claimant, C, visited a leisure centre owned and occupied by the defendant, D. While walking across the car park C fell off a kerb concealed by snow. She injured her back.

C claimed damages from D, alleging the accident was caused by their breach of duty under the Occupiers' Liability Act 1957 and/or their negligence. Her allegations included failure to remove the snow, failure to grit the area, failure to place a barrier around the area concerned and failure to warn C of the presence of the snow.

D denied liability, arguing it complied with its policy for gritting during snow and icy weather. Further, the snow was plainly visible and no warning of its presence was necessary. It was not reasonably practicable to place a barrier around the area. Gritting was taking place at the time of C's accident but footpaths leading to the front door were given priority.

D also alleged the accident was caused or contributed to by C failing to take adequate care for her own safety.

The judge held it was unreasonable and disproportion-

tionate to require D to clear and grit the entire car park before people started to use it. The claim was dismissed.

**The court took account of financial and human constraints when dismissing this claim of falling on snow in a car park. The council was not required to expend human and financial resources in ensuring the car park was free from all snow and ice before the claimant arrived. To do so would impose an unreasonable and disproportionate burden on the council.**

**“The judge held it was unreasonable and disproportionate to require D to clear and grit the entire car park before people started to use it.”**

## No damages for classroom attack

**SCIENCE LESSON – INJURY TO PUPIL – LIABILITY FOR ASSAULT**

**Pospischil v Bristol City Council, 15.11.11, Bristol County Court**

**The claimant**, a student at a secondary school for which the defendant is responsible, was injured during a science lesson. The claimant and other students were working with pieces of volcanic rock when the claimant's hand was lacerated by one of the pieces, leaving a scar. The claimant claimed damages for personal injury from the defendant, alleging the class was unsupervised. The defendant denied liability. The teacher concerned was highly experienced. A plan of the lesson was displayed in the classroom so that students knew the aim

of the class. The teacher spoke with the students during the lesson, giving assistance where required and answering queries. The defendant said that, for reasons it did not know, another pupil working with the claimant struck the claimant's hand with one of the rocks. The defendant argued this was unexpected and neither reasonably foreseeable nor preventable. A suitable risk assessment had been carried out and no amount of supervision would have prevented the incident.

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## No damages for classroom attack

### Continued from page 5

The defendant also argued that a variety of equipment is used in science lessons in schools and their use should not be prohibited due to a risk they might be used maliciously. It argued it was not vicariously liable for the offending pupil's assault on the claimant. The judge held

the school had taken all reasonable care in organising and holding the lesson. The pupils were of high ability. It was not reasonably foreseeable to the school or the defendant that an injury would occur in these circumstances. The claim was dismissed.

A local education authority is unlikely to be liable for the malicious attack by a pupil against another pupil during a science lesson, where suitable planning of the lesson and risk assessments were carried out beforehand, the class was adequately supervised, and the attack could not have been reasonably foreseeable to the school.

## Bus shelter inspections advised

### BUS SHELTERS – REQUIREMENT FOR PROACTIVE INSPECTION SYSTEM Dawe v Basildon District Council, 28.06.11, Southend County Court

The claimant C, aged 26 at the time, was standing in a bus shelter outside a train station, waiting to be given a lift home by someone who had arranged to collect him. As he leaned against what he believed should have been a Perspex panel in the shelter he fell backwards due to the panel being absent. There was a panel in another part of the shelter and C assumed there would be one in the area where he stood.

C fractured his wrist in the fall and claimed damages for his injury from the defendant Council, B. His allegations included breach of duty under the Occupiers' Liability Act 1957 in B failing to take reasonable steps to ensure C was reasonably safe while in the shelter. He alleged the shelter had become a trap, that it was in a dangerous condition and that there were no signs warning of the missing panel.

B denied liability, arguing it attended to reports about the condition of areas such as bus shelters on a reactive basis. B said it had not been notified of this particular bus shelter being defective. B contended the panel was not damaged or removed by anyone acting on behalf of itself but rather by an unknown third party.

B also argued that C's

injury was wholly or at least in part responsible for his accident due to failing to note the panel was missing and failing to take care for his own safety.

Damages of £20,000 were agreed subject to liability.

The judge held it was foreseeable that someone would lean on the wall of the bus shelter. He rejected B's argument that the absence of any previous similar incident was a factor in their favour.

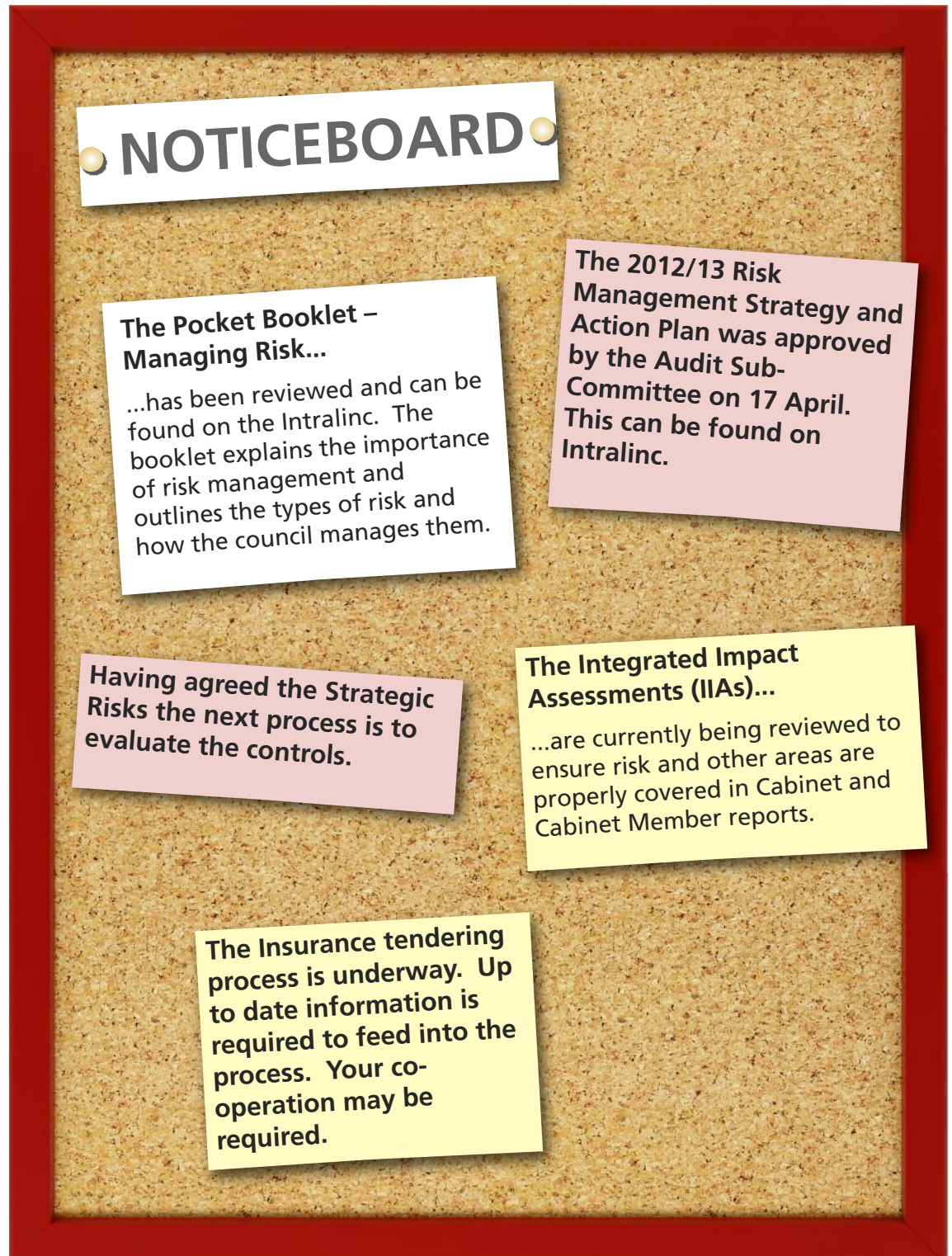
The judge held there was no inspection system and only a reactive system of repair. He noted B now operates an inspection system. He held the absence of an inspection system at the time caused C's accident and B was held primarily liable for it.

The judge then considered contributory negligence. C lent back without looking but he should have looked behind him and taken more care. C was held 35% responsible and the agreed damages were accordingly reduced to £13,000.

This ruling cautions councils responsible for bus shelters of the need to operate a reasonable, proactive inspection and maintenance system rather than a system that attends to repairs only on a reactive basis. The reasonableness of the system will depend on the bus shelter's usage, construction and location – obviously bus shelters at busy locations such as railway stations, as in this case, will require more frequent inspection than those used less often in rural locations.



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