

**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 Regular reporting on key risk management issues provides an important source of assurance on the adequacy of internal control and governance arrangements and provides supporting evidence for the approval of the annual accounts and Governance Statement. Regular updates are also recognised as good practice through the Comprehensive Area Assessment (CAA) Use of Resources criteria.
- 2.2 Good progress has been made in updating operational risk registers. Registers have now been updated for all service areas.
- 2.3 The outcome of Internal Audit's review of Risk Management arrangements was reported to the Strategic Risk Management Group on 8<sup>th</sup> September. The report provided positive assurance that risks are adequately managed. Areas for improvements identified were addressing small pockets of non compliance with these arrangements (specifically in respect of reviewing operational risk registers and reviewing risks as part of service quarterly performance reviews).
- 2.4 The second edition of the risk management newsletter 'Risk Roundup' has been published (a copy is attached in Appendix A). The newsletter has been well received and includes a 'notice board' containing local risk management features such as training opportunities and updates on the council's risk management arrangements.
- 2.5 Members were made aware at the last meeting of two documents (Code of Practice for Risk Management and CIPFA Toolkit) available

via CIPFA's Better Governance Forum. Work was started to self assess current arrangements against examples of good practice. ALARM are launching a benchmarking club in 2010 which will be administered through CIPFA. The council will take the opportunity to participate and use results obtained to highlight opportunities to improvement. In the meantime ALARM have published a 'National Performance Model for Risk Management in Public Services' which can be used as a 'health check' for the council in preparation for ALARM/CIPFA benchmarking. The Model provides an assessment framework to evaluate risk management activity and maturity (Appendix B shows the scoring grid). The council's arrangements will be evaluated using this model and reported back to the Committee in December.

- 2.6 Risk management training is provided regularly and a series of specifically tailored events have been arranged:  
General induction for all new staff – as required  
Senior manager's induction – dates scheduled up to March 2010  
Workforce planning generic competencies – 27 October 2009  
Member training – 2 October 2009.

### **3 OPTIONS FOR CONSIDERATION**

- 3.1 The Committee should consider whether 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.
- 3.2 The Committee may consider that the report does not provide sufficient assurance on the adequacy of risk management arrangements detailed in this report or may seek further clarification.

### **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. Members should ask sufficient questions to ensure adequate assurance is provided.
- 4.2 The option set out in paragraph 3.2 represents an opportunity missed to receive an important source of assurance to assist the Committee to fulfil its role effectively if adequate clarification is not 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 Strategic Risk Management Group is made up of representatives from all services and is therefore risk management outcomes are the result of a comprehensive consultation process.

## **8. RECOMMENDATIONS**

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

SERVICE DIRECTOR FINANCE

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**Background Papers used in the preparation of this report**  
Risk Management Strategy and Action Plan 2009-2010

# RISK

## roundup

Issue 2  
July 2009

A quarterly digest of risk management issues



Golf ball accident  
- council liable?  
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**EXCLUSION – POSSESSING KNIVES AT SCHOOL – PROOF R (V, by his mother) v Independent Appeal Panel for Tom Hood School (Defendant) and (1) Governors of Tom Hood School, (2) Waltham Forest London Borough Council, (3) Secretary of State for the Department for Children, Schools and Families (Interested Parties), 02.03.09, High Court**

## School in the right

**This judgement** returns to the important question of the nature of the process for permanently excluding a pupil. The pupil, V, aged 16 at the date of this hearing, was allegedly involved in a fight at school. The teacher, S, who arrived at the scene after the incident, alleged that V was verbally aggressive and in possession of a knife. V denied possessing a knife: he was searched but no knife was found. V was excluded for 10 days then permanently, on the grounds that staff and pupils had seen V with a knife. The Governing Body upheld the permanent exclusion, as did the defendant Appeal Panel, which concluded that, on the balance of probabilities, V had been in possession of a knife. V applied for judicial review of the Panel's decision. He argued that as the Panel was ruling on a criminal charge, it had to be satisfied, beyond all reasonable doubt that he had been in possession of a knife, rather than on the balance of probabilities.

Further, having been accused

of a crime, he claimed entitlement to a fair trial under article 6 of the European Convention on Human Rights (ECHR). He also argued that, by article 8 of the ECHR, the expulsion infringed his rights to respect for private and family life. The court held that the Panel's role was to address a regulatory matter that involved an incident with a criminal law aspect. A process dealing with a criminal charge must involve the potential punishment of the individual. Expulsion from school was only a preventative measure, not a punishment. The court also held that article 6 concerned both a person's civil rights and those where a criminal charge had been made against him. V did not have a civil right to be educated at any particular school and it was not contrary to the ECHR to be expelled on disciplinary grounds, as long as other state education was available. The expulsion did not interfere with V's personal life and he had indicated that he did not wish to return to the school. The application was refused.

This High Court decision confirms that a hearing by an independent appeal panel upholding disciplinary proceedings against a pupil, that resulted in the pupil's permanent exclusion, does not fall within the realms of criminal law proceedings just because they concerned potentially criminal allegations. The Panel was right to require proof on the balance of probabilities that the pupil was in possession of a knife at school; proof of the allegation beyond reasonable doubt was not required. In reaching this decision the court considered relevant case law, including a recent High Court case involving police disciplinary proceedings where the court held that proof of the allegations was only required on the balance of probabilities: *R (Independent Police Complaints Commission) v Hayman* (2008).

**PUBLIC LIABILITY: HIGHWAYS – TRIPS AND SLIPS REVIEW**

Below we consider three recent cases alleging injury through councils' alleged breach of duty. Although each claim failed, the claims provide a useful number of points to bear in mind when dealing with these types of claims and we summarise these in the box on the next page.

**DESIGN FEATURES IN HIGHWAY Swansbury v Bridgend County Borough Council, 16.12.08, Cardiff County Court**

## Kerb feature did not cause slip

**The claimant** alleged that in October 2004, when he was a bus driver aged 28, he injured his ankle after falling in a gap in the kerb. He claimed damages, alleging negligence by the defendant highway authority and breach of duty to maintain the highway, under s.41 of the Highways Act 1980. The defendant argued that the gap in the kerbstones was a design feature in place since 1996. It allowed rainwater to run into drains at either side of the gap. There

had been no other similar incidents or complaints, the defendant produced evidence of a regular maintenance and inspection system in operation and argued that the gap did not constitute a defect. The trial judge noted that the gap, plainly visible, served a drainage purpose. He held that the claimant should have taken care where he was stepping as he could have slipped at any point on the kerb. The judge considered *Mills v Barnsley Metropolitan Borough Council*

(1992) where the Court of Appeal held that whether a highway is dangerous is a matter of reasonable foresight to highway users; each case will depend on its own facts. There was no breach of duty by the defendant but, had it been found primarily liable, the claimant would have been held 25% liable for contributory negligence. The claimant appealed. The appeal court held that the trial judge had not made any error in law: the appeal was dismissed.

**“The claimant should have taken care where he was stepping”**

**CLASSIFICATION OF HIGHWAY Hall v North East Lincolnshire Council, 10.03.09, Kingston-upon-Hull County Court**

## Council road inspection ‘reasonable’

**An important issue** considered in this claim is the correct classification of a highway. The claimant was injured when she tripped in a pothole when crossing a road in Grimsby. She alleged that the accident was caused by the defendant's negligence and breach of duty under the Highways Act 1980. The road was classified as 4(b), requiring inspection once each year. One of the claimant's allegations was that the road had been misclassified. The defendant argued that the classification was appropriate and, under s.58 of the Act, it operated an appropriate and reasonable inspection and

maintenance system. The defendant also demonstrated that only one defect in the last three inspections had been identified and that at the time of the last inspection, about six months before the claimant's fall, the pothole was not present.

The court accepted that the pothole was not present at the last inspection. It also held that, on all the evidence of its usage, the road had not been misclassified. The inspection and maintenance system was appropriate and properly carried out and the s.58 defence succeeded.



Pothole was not present when road was inspected

**S.58 DEFENCE – REASONABLENESS Bishop v Wrexham Borough Council, 13.03.09, Wrexham County Court**

## Claimant ‘partially responsible’

**The claimant** was delivering Christmas cards late on Christmas Eve 2004 when she allegedly tripped on a kerb, injuring her left ankle. She claimed damages of up to £50,000, claiming the accident was caused by the defendant's negligence and/or breach of duty under the Highways Act

1980. The claimant alleged that a “chunk” of kerbstone was missing, creating a foreseeable hazard in the area, that it was a trap caused by the defendant's failure to inspect or maintain the highway reasonably, and that the area should have been fenced off or illuminated. The defendant

argued that it operated a reasonable maintenance and inspection system under s.58 of the Act. Further, there had been no complaints or previous incidents in the area. It also relied on the High Court's 2003 judgment in *Galloway v*

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London Borough of Richmond upon Thames where the claimant injured her ankle after tripping over a broken kerbstone. The defendant in that case was held not liable after the judge held the defect was “unremarkable” and not “a real source of danger”. The

defendant here also argued the claimant’s partial or total responsibility by failing to look where she was walking. It also highlighted the conflicting evidence about the site of the fall, her hospital records referring to a fall both in her home and her garden. There were no witnesses. The judge held that the claimant had chosen “an unusual crossing

point by a drain”. He agreed that Galloway applied and accepted that the defendant operated a reasonable inspection system. An ordinary person would not regard the defect a danger and it would be unreasonable and not cost-effective to require highways authorities to repair all defects of this nature. The claim was dismissed.

**“Trips and slips on the highway continue to be the alleged cause of injury in many claims”**

Trips and slips on the highway continue to be the alleged cause of injury in many claims. While defendants may be reassured that a robust, common sense approach may be taken by the court, particularly where there is a strong defence, not all claims are easily defensible. The cases on this page suggest several points to bear in mind when faced with trips and slips claims alleging injury caused by failure under s.41 of the Highways Act 1980. These include:

- Availability of s.58 defence supported by evidence of operation of sufficient inspection and maintenance system;
- Layout of area/unusual design features;
- Correctness of classification of the highway;
- The reasonable pedestrian – the route an ordinary pedestrian would have taken;
- Reasonable foreseeability of danger;

- Previous complaints/incidents in the area;
- Prevailing weather conditions at the time;
- Time of day/night and lighting, if relevant;
- Conflicting evidence, eg in medical records or other evidence, as to how and/or where the alleged accident occurred;
- Independent witness evidence to the incident itself;
- Claimant’s contributory negligence – what they were doing/wearing/carrying at the time and their knowledge of area;
- Previous case law addressing similar issues.

The above is not an exhaustive list and, as the courts have emphasised, each case will depend on its own particular facts.

**ACCIDENTS IN PUBLIC PLACES – GOLF COURSES**

**Harrison (a child) v Wirral Metropolitan Borough Council, 19.03.09, Liverpool County Court**

## No liability for foreseeable injury

**The claimant**, aged six at the time, was in a park adjacent to which was a golf course. He was injured when he was struck by a golf ball that was hit over the golf course fence. He alleged that the injury was caused by the defendant’s negligence in failing to provide a higher fence, using a partly broken wire mesh fence instead of ball-stop netting, and failing to put warning signs in place and failing to carry out a risk assessment. The defendant conceded that the incident was reasonably foreseeable but argued that the wire mesh fence, at four metres high, satisfied the duty to fence the area. Also, the risk of a golf ball being struck over the fence, injuring a bystander or passer-by, was so small that it did not justify further precautions being taken. The defendant relied on the authority of *Bolton v Stone*, a 1951 Court of Appeal ruling. In that case, the Court held that for occupiers of a cricket ground to be liable for injury from a stray cricket ball hitting a person on the road outside the pitch, the claimant would have to show that the occupiers, as

reasonable persons, would foresee such an incident as a probable occurrence, not merely a possibility. The court heard how there had been very few if any misdirected shots from the golf course, no previous injuries from them and none had been reported to the defendant within the five years before this incident. The court expressed sympathy for the child’s injury but held that the defendant was not liable. The claim failed.

This is a reminder in cases of injury near public sports grounds that simply because an occurrence is foreseeable, it does not necessarily lead to liability where injury is through an extremely rare incident which a reasonable person would not expect. This was supported in this case by evidence of no similar incidents. Although these incidents are not common, a similar claim, *Morgan v Derby City Council*, failed for similar reasons.



**Golf course fencing was adequate**

**SPECIAL NEEDS PUPILS – EDUCATION PLAN****H v East Sussex County Council and others, 31.03.09, Court of Appeal**

## Mother's appeal rejected

**This is** an appeal against a High Court decision. The claimant suffers from Prader-Willi Syndrome, which creates complex learning and developmental difficulties for her. Her mother wished for the defendant local education authority to fund a waking day placement at a special boarding school but the defendant considered that the claimant's needs could be properly met by a special day school near her home. The High Court accepted that the day school was suitable and the claimant appealed. She argued that the Special Educational Needs and Disability Tribunal (SENDIST) had rejected her expert evidence without giving reasons and had not specified how the requirements for "extra therapy" and "social services support", contained in the claimant's statement of educational needs, should be met. The Court of Appeal held that SENDIST's decisions are required to be recorded in a statement giving a summary of the reasons for its decision but the summary was only to explain its decision to the parties in broad terms. In this case, it was clear that SENDIST had considered all the evidence in

detail before deciding that the claimant's needs could be met at a day school together with a programme of support through other agencies out of school hours. SENDIST did not need to specify the nature of the care to be provided by social workers, for that was not educational provision. The appeal was dismissed.

The Court of Appeal endorses the requirement of SENDIST to give reasons for its decisions in summary form, provided it is apparent to the parties that all the evidence has been taken into account. It is not necessary for the tribunal to spell out each element of its reasoning, giving a comprehensive analysis of the case. With regard to a statement of special educational needs referring to a child requiring social services support, this does not fall within educational provision but is a matter for social services and the tribunal would not be obliged to specify the nature of the suggested support.

**CHILDREN IN CARE – ASSAULT ON CARE OFFICER****Giles v Wakefield Metropolitan District Council, 23.02.09, Wakefield County Court**

## Employee's failings led to injury

**The claimant** worked as an independent reviewing officer in the child care section of the defendant local authority. A child, R, in the defendant's care, had been placed with his mother. In September 2004 he was made the subject of a statement of special educational needs and received medication to control his aggressive behaviour. The claimant visited the home of R, aged four at the time, to undertake a review of his care arrangements. During the visit R assaulted the claimant on two occasions, injuring her. She claimed damages from the defendant, alleging it had negligently failed, as her employer, to warn her of R's continued aggressive behaviour or take steps to reduce the risk of injury and that it had failed to provide her with sufficient safety recommendations. The claimant alleged that before her review meeting, she had not received documentation informing her of R's propensity for violence and that, had she known, she would have recommended the

review be carried out in a more controlled environment such as a Family Centre. The court held that the claimant knew of R's behaviour having described him as "feral" to a colleague in a review meeting a year earlier, when R was aged three. It also held that the claimant had carried out almost no preparation for the review, which would have reminded her of R's propensity for aggression. The relevant information was available to her, it was her responsibility to obtain it but she failed to do so. The defendant could not have provided her with any more information than she could and should have obtained herself. Further, at the meeting, she saw signs of R's aggression and could have arranged for him to be removed from the room or aborted the review and arranged for it to take place when R was at nursery. The claimant had not proved negligence or breach of any duty by the defendant and the claim was dismissed.

This illustrates the importance of an employer being able to demonstrate compliance with all health and safety duties to an employee who attempts to hold the employer responsible for the consequences of the employee's failings. This employee held a senior role and had previous knowledge of the risk she would face in the task required but she failed to prepare for it. The employer was able to demonstrate with conclusive evidence that the employee had failed to comply with her own responsibilities and it had not breached any duty to her.

**"The claimant had carried out almost no preparation for the review, which would have reminded her of R's propensity for aggression."**

**NOTICEBOARD**

**Operational Risk Registers (ORRs) Updates**  
 Reminder: ORRs are dynamic documents. Is your ORR up to date?  
 Have you reviewed your ORR as part of the Quarterly Performance Review (QPR) exercise?  
 The Insurance & Risk Management section have visited Hewson House and Church Square House to offer support and guidance to services in completion of their ORRs. They are visiting other sites over the next month. If you require any assistance in the compilation of your ORR, please contact: Russ Kirman, Insurance & Risk Management Officer, either via e-mail, or phone 01724 296074, to arrange an appointment.

**Strategic Risk Registers (SRRs) Updates**  
 Reminder: Is your Strategic Risk Register up to date?  
 As with ORRs, your SRRs are dynamic documents and need to be regularly reviewed.

**Future Risk Management Training courses**  
 This section will contain details of planned training courses throughout the year, details of which are currently being finalised.

**Schools risk management training**  
 Training was given to schools on 21 May 2009 by the council's insurance defence solicitors, Berryman's Lacey, Mawer – 'Every Head Teacher's Nightmare'. The course was very well received with between 91 and 92 % agreeing or strongly agreeing that the course met their requirements and that they had a greater understanding of the subject and could apply the lessons learnt in future.

**Money Laundering**  
 The council has determined its approach on anti-money laundering regulations. Policies and training will be rolled out across the council as appropriate.

**Swine Flu**  
 Nationally, a containment strategy is in operation. Regionally, there are regular teleconferences taking place with HEPS which represents the Humber local authorities: HEPS brief Simon Driver. Simon is also the chair of the multi-agency Humber Local Resilience Forum, a sub regional forum.

**SRMG Intralinc site**  
 Reminder, there is a wealth of risk management information on the council's intralinc site. Access the site via: councilwide issues, groups, strategic risk management group.

The council gratefully acknowledges the contribution made by its insurers, Zurich Municipal, in providing articles for this publication.

While every effort has been made to ensure the accuracy of these reports, this publication is intended as a general overview and is not intended, and should not be used, as a substitute for taking legal advice in any specific situation. Neither Zurich Municipal, nor any member of the Zurich group of companies, will accept any responsibility for any actions taken or not taken on the basis of this publication.

Any employee intending to take action arising out of these articles should, if in any doubt, contact the council's legal section for advice before doing so.

	Leadership & Management	Strategy & Policy	People	Partnership, Shared Risk & Resources Processes	Processes	Risk Handling & Assurance	Outcomes & Delivery
<b>Level 5: Driving</b>	Senior management uses consideration of risk to drive excellence through the business, with strong support and reward for well-managed risk-taking	Risk management capability in policy and strategy making helps to drive organisational excellence	All staff are empowered to be responsible for risk management The organisation has a good record of innovation and well-managed risk-taking Absence of a blame culture	Clear evidence of improved partnership delivery through risk management and that key risks to the community are being effectively managed	Management of risk and uncertainty is well-integrated with all key business processes and shown to be a key driver in business success	Clear evidence that risks are being effectively managed throughout the organisation Considered risk-taking part of the organisational culture	Risk management arrangements closely acting as a driver for change and linked to plans and planning cycles
<b>Level 4: Embedded &amp; Working</b>	Risk management is championed by the CEO The Board and senior managers challenge the risk to the organisation and understand that risk appetite Management leads risk management by example	Risk handling is an inherent feature of policy and strategy making processes Risk management system is benchmarked and best practices identified and shared across the organisation	People are encouraged and supported to take managed risks through innovation Regular training and clear communication of risks to in place	Sound governance arrangements are established Partners support one another's risk management capability and capacity	A framework of risk management processes in place and used to support service delivery Robust business continuity management system in place	Evidence that risk management is being effective and useful for the organisation and producing clear benefits Evidence of innovative risk-taking	Very clear evidence of very significantly improved delivery of all relevant outcomes and showing positive and sustained improvement
<b>Level 3: Working</b>	Senior managers take the lead to apply risk management thoroughly across the organisation They own and manage a register of key strategic risks and set the risk appetite	Risk management principles are reflected in the organisation's strategies and policies Risk framework is reviewed, developed, refined and communicated	A core group of people have the skills and knowledge to manage risk effectively and implement the risk management framework Staff are aware of key risks and responsibilities	Risk with partners and suppliers is well managed across organisational boundaries Appropriate resources in place to manage risk	Risk management processes used to support key business processes Early warning indicators and lessons learned are reported Critical services supported through continuity plans	Clear evidence that risk management is being effective in all key areas Capability assessed within a formal assurance framework and against best practice standards	Clear evidence that risk management is supporting delivery of key outcomes in all relevant areas
<b>Level 2: Happening</b>	Board, Councilors and senior managers take the lead to ensure that approaches for addressing risk are being developed and implemented	Risk management strategy and policies developed and being acted upon Roles and responsibilities established, key stakeholders engaged	Suitable guidance is available and a training programme has been implemented to develop risk capability	Approaches for addressing risk with partners are being developed and implemented Appropriate tools are developed and resources for risk identified	Risk management processes are being implemented and reported upon in key areas Service continuity arrangements are being developed in key service areas	Some evidence that risk management is being effective Performance monitoring and assurance reporting being developed	Limited evidence that risk management is being effective in all areas, the most relevant areas
<b>Level 1: Engaging</b>	Senior management are aware of the need to manage uncertainty and risk and have made resources available to improve	The need for a risk strategy and risk-related policies has been identified and accepted The risk management system may be undocumented with few formal processes present	Key people are aware of the need to understand risk principles and increase capacity and competency in risk management techniques through appropriate training	Key people are aware of areas of potential risk in partnerships and the need to allocate resources to manage risk	Some stand-alone risk processes have been identified and are being developed The need for service continuity arrangements has been identified	No clear evidence that risk management is being effective	No clear evidence of improved outcomes