

**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 Strategic Risk Position Statements have been updated and a summary is provided in appendix A. The summary shows an evaluation of the residual risk after controls have been applied to all strategic risks based on likelihood and impact scoring (high = 3; low = 1). This provides an overall score for each risk that is illustrated using 'traffic light' indicators (red = high risk; green = low risk). The adequacy of controls identified to manage risks has also been evaluated using the same 'traffic light' indicators. Generally all risks are adequately managed to an appropriate level and controls are assessed as satisfactory or good. This represents an overall improvement against the evaluation of strategic risk controls reported to the Audit Committee in January 2009. Specifically strategic risk 'Serious breach of information integrity, confidentiality & availability' which was evaluated as amber/red (satisfactory/ inadequate) is now evaluated as amber (satisfactory). Controls have been strengthened through the implementation of Government Connect requirements and improved physical controls such as resiting and refurbishment of the new IT suite.

2.2 Other changes to strategic risks are:

Strategic Risk	Residual Risk Evaluation Jan 2009	Residual Risk Evaluation Jan 2010	Reasons for change
Abrupt policy changes resulting from changed political leadership nationally and locally	Medium risk	Medium/High risk	Increased likelihood score due to general election
Recession resulting from national or local problems, including closure of a major local employer	Low Risk	Medium /High risk	Increased likelihood score due to prevailing economic conditions
Failure to meet the needs of disaffected communities	Medium risk	Medium /High risk	Likelihood score revised due to increased activity of BNP
Serious breach of information integrity, confidentiality & availability	Medium risk	Low risk	Reduced likelihood score as a result of work carried out and implementation of Government Connect. (as detailed in paragraph 2.1)
Major events severe weather, flooding, flu pandemic etc	Control mechanism - Good/satisfactory	Control mechanism - Good	Recognition of significant work carried out on flood defence and prevention and emergency planning
Failure of a major partner, supplier, contractor or other public sector body	Low risk	Medium risk	Increased likelihood score due to prevailing economic conditions
Data Quality	Control mechanism - Good/satisfactory	Control mechanism - Good	Improved checking arrangements introduced

2.3 Jardine Lloyd Thompson (JLT) successfully retained the contract as the council's brokers recently. The contract includes risk management consultancy expertise and delivery of training. JLT has already started to review current arrangements to contribute to the development of the risk management strategy and action plan for 2010/2011. The draft strategy and action plan will be presented to the Audit Committee to consider at the next meeting

2.4 Following the Use of Resources evaluation of risk management the offer was taken up with the Audit Commission to receive feedback on the current arrangements and examples of good practice elsewhere. Chris Reeve, the Commission's risk management lead presented his findings to SRMG on 6<sup>th</sup> November. Opportunities for improvement will be considered along with JLT's work (detailed in paragraph 2.3) in the strategy and action plan for 2010/2011.

2.5 The third edition of the risk management newsletter 'Risk Roundup' has been published (a copy is attached in Appendix B). 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.

- 2.6 Members were made aware at the last meeting of ALARM's '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 due to be launched in 2010. The Model provides an assessment framework to evaluate risk management activity and maturity. The council's arrangements have been evaluated using this model and the results are shown in appendix C. The evaluation indicates that risk management arrangements are generally good and areas for targeted improvements through better documentation of partnership risks and outcomes achieved through risk management work were already identified and will be incorporated in the risk management strategy and action plan for 2010/11..

### **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

The Alarm National Performance Model for Risk Management in the Public Sector – The Public Risk Management in the Public Sector

Appendix A

Risk	Controls	Likelihood	Impact	Risk Assessment	Risk Assessment (after application of controls)	Evaluation of controls	Comments
1. Adoption of priorities that do not meet national or local needs	Strategy Development Unit & Team, Strategic Policy Analysis, Community leadership role through Local Strategic Partnership (LSP), Strategic Engagement Plan, Regular Leadership Team meetings Cabinet / CMT workshops, Strengthened 3 year planning and budget process, Service quarterly performance reviews (QPRs)	1	2	2	Low risk	Amber	Control mechanism - satisfactory
2. Failure of decision making process	Member development and training, Quality advice, Constitution, Scheme of Delegation, Comprehensive Area Assessment (CAA) Improvement Planning, Public relations function, Audit reviews, Option appraisal in decision making reports. Role of Monitoring Officer	2	2	4	Medium risk	Green	Control mechanism - good
3. Inappropriate pace of innovation and modernisation	Leadership Team sessions, Local Government Association/IDEA and other national events, Best practice benchmarking, Quarterly performance reviews (QPRs), Dedicated project teams as required, Effective strategic planning, CAA improvement planning, Structured staff and member development, Strategy development team and Performance Improvement Panel (PIP) work.	1	2	2	Low risk	Green/ Amber	Control mechanism - Good/ satisfactory

4. Abrupt policy changes resulting from changed political leadership nationally and locally	Integrated 3 year budget and strategic planning, Impact assessments, Leadership/ cabinet member briefings / agenda meetings, Senior Management Team conferences and briefings, Public relations function, Staff / public engagement frameworks.	3	2	6	Medium/ High risk	Amber	Control mechanism - satisfactory
5. Recession resulting from national or local problems, including closure of a major local employer	<i>Regeneration and community investment initiatives, Regular monitoring and review of Local Development to maintain adequate housing Land supply, Monitoring policies and settlement assess health of environment towns and villages, Maintenance of a strong economy, Adequate housing land supply, Enhancement / Improvement of Services and Environment</i>	3	2	6	Medium/ High risk	Green/ Amber	Control mechanism - Good/ satisfactory
6. Inability to recruit and retain key staff, effects of industrial action	Use of new and emerging recruitment methods, Quarterly monitoring reports, Mandatory training, Workforce Strategy and planning, Salary supplements, Employee benefits, Liaison with schools and colleges, Leavers reviews and Points of View (POV) surveys, Investors in People (IIP) accreditation across the council. Good industrial relations, Mediation service, Consultation protocol, Joint Consultative Committees, Culture and communications group, Business continuity planning. Effective recruitment and selection process. Corporate contract for provision of agency workers	1	2	2	Low Risk	Green	Control mechanism - good

7. Available resources inadequate to meet identified needs, e.g. from inability to access external funding	Effective external funding arrangements including knowledge of workings of government grant system and information requirements, External funding group and strategy, Access to database of funding sources and conditions, Grant claim protocol, Budget and Treasury strategy and monitoring, Risk Management process, Robustness of estimates including adequacy of reserves, Established procedures for recording emergency spending for recovery under Government's Bellwin scheme	1	2	2	Low risk	Green	Control mechanism - good
8. Failure to meet the needs of disaffected communities	Strategic Planning framework, Public engagement framework, Good consultation/dialogue, Press office, Diversity policy, Diversity officer and steering group, Partnership agreement SHREC, Multi faith partnership, Strategic partnership.	3	2	6	Medium /High Risk	Green/ Amber	Control mechanism - Good/satisfactory

9. Low levels of education attainment	High performing LA and LSC, Monitoring and training, Learning Plan priorities, International & IIE Initiatives, 11-19 Strategy, Education Welfare service, Effective schools ,Engaging curriculum, BSF overview by Project Board, chaired by Chief Executive, Adopting recommendations from National Strategies and Ofsted, Combined Children & Young People Service, Effective consultation with schools and their communities, Development of current strategies, Collaborative working via Children’s Trust Board, Children’s and Young People’s Plan, Early LA intervention.	2	2	4	Medium risk	Green	Control mechanism - Good
10. Civil disorder	Business continuity planning, Emergency planning, Lobbying national government, Police/ Safer Neighbourhoods Partnership, Public engagement processes, Licensing powers/ Nitesafe, Multi-faith Partnership/ SHREC, Regeneration Strategy, Community cohesion networks, Marketing by key public bodies.	2	1	2	Low risk	Amber	Control mechanism - satisfactory
11. Serious breach of information integrity, confidentiality & availability	Asset registers (physical and intellectual), IT security policy, Security risk assessment, Training, New computer suite, Environmental monitoring, Network monitoring, Security Forum, Firewall, Virus checker, Intruder detection, Escrow agreements, Back ups, Internal checks and controls, Audit reviews, Business continuity plans & disaster recovery Uninterrupted power supply, Lightning conductors, Generators, Equipment replacement policy, Insurance cover, Encryption, Two factor authentication, Security Strategy	1	2	2	Low risk	Amber	Control mechanism - Satisfactory

12. Inadequate response to legislation	Professional advice, Subscription to legal information providers and attendance at approved seminars, Training, Networking, Access to expert advice through partnership agreement, role of Monitoring Officer, Complaints procedures	2	2	4	Medium risk	Green	Control mechanism - good
13. Contamination and pollution	Contaminated Land Strategy & Air Quality Review & Assessment, Monitoring regime & Updating & Screening Assessment established, Humber Emergency Planning. Routine inspection and testing, Routine inspection and testing. Government. Guidance, Strategic Risk Management Group, Strong partnership arrangements, Robust risk assessment methodology, Good communication strategy, Competent staff and ability to draw on additional resources	2	1	2	Low risk	Green/Amber	Control mechanism - Good/satisfactory
14. Major events severe weather, flooding, flu pandemic etc	Statutory and multi agency emergency plans & exercises, Business continuity plans & tests, Insurance, Partnerships including Police Fire Ambulance, Road Safety Partnership, Public Events Group, Safety Advisory Group, Flood forum & sub groups, Corporate flooding plan, Tactical Emergency Planning Group, Strategic Risk Management Group, Local Resilience fora, Corporate Safety procedures, Statutory regulations including planning regulations, Regional aid, Bellwin Scheme	2	3	6	Medium/ High risk	Green	Control mechanism - Good

15. Failure of a major partner, supplier, contractor or other public sector body	Procurement framework (Corporate Procurement Manual, Contract Procedure Rules), Procurement coordination and advice, Financial appraisals. Robust procurement process and contract management, Comprehensive contracts register, Whistleblowing policy, Training, Financial appraisals, Business continuity, Contingency planning, Contract terms and conditions including remedies, Alcatel Standstill period, Partnership governance arrangements including toolkit, Internal Audit, Legal advice. Use of partnering models	2	2	4	Medium risk	Amber	Control mechanism - satisfactory
16. Adverse reports from inspectorates on corporate capability or whole services & bad media relations	Executive Management Team & Council Management Team meetings, Strategic performance team, Performance monitoring and action planner, Quarterly Performance Reviews, Performance Improvement Panels, Internal/external audit, Benchmarking, Inspection guide & protocol, Local Strategic Partnership (LSP) performance group, LSP performance meetings	1	2	2	Low risk	Amber	Control mechanism - satisfactory
17. Breakdown of prudent financial management including Treasury risks	Defined procedures, Internal controls, Internal and external audit, Risk Management, Adequate reserves Treasury guidelines, Training, Quality staff, Clearly defined budget processes, Strong budget monitoring, Authorisation levels, Insurance cover.	1	2	2	Low risk	Green	Control mechanism - good

18. Inappropriate officer and member relationships/ conduct	Training, Codes of conduct for both Members and officers, Member/ officer protocol, Corporate Governance Code, Role of the Monitoring Officer, Access to expert legal advice through partnership arrangement, Well developed partnership network offering mutual support, Expert advice available from Standards for England.	2	2	4	Medium risk	Green	Control mechanism - good
19. Breach of Health & Safety Legislation, good Practice and Duty of Care	Qualified and trained staff, Risk assessment system, External recognition of competence & achievements through ROSPA awards, Development of policy and guidance in response to legislative changes, Effective joint procurement of occupational health provider and bi monthly meetings, Mandatory training for new managers, Internal communication network and newsletters, Effective working relationship with the Health and Safety Executive (HSE), Legal advice and representation, Insurance cover, Business continuity planning (BCP), Professional advice and standards.	1	2	2	Low risk	Green	Control mechanism - good
20. Data Quality	Data quality protocol, Performance management framework and system, Internal audits and compliance checks, Performance working group, Partnership information sharing protocol, Data quality action plan, Data quality champions, Quarterly performance reviews / Scrutiny /Audit Committee, Data benchmarking.	1	2	2	Low risk	Green	Control mechanism good

# RISK

## roundup

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A quarterly digest of risk management issues



Motor repairs - who pays hire car costs?  
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### TREES – TRAILING BRANCHES – LIABILITY – EVIDENCE

ZURICH CASE *Hinder (a minor, by her mother J Hinder) v (1) Swindon Borough Council and (2) Countryside Grounds Maintenance Ltd, 10.07.09, Swindon County Court*

## No liability for playground accident

**The claimant** now aged eight, was a pupil at a school in Swindon where the second defendant, D2, was responsible for the maintenance and pruning of trees. While playing in the playground another pupil had allegedly stood on a bench, pulling on a branch of a tree. Suddenly, it was alleged, he let go of the branch which struck the claimant in her left eye. As a consequence, or due to some type of accident in the playground, the claimant lost the sight of that eye.

The claimant, by her mother, brought a claim against the defendants for damages, alleging negligence and breach of duty under the Occupiers' Liability Act 1957 (the Act). She alleged, amongst other things, failure to supervise the children adequately, failure to stop the child pulling on the branch and failure to ensure the trees were properly pruned. Both defendants denied liability. D1 disputed how the accident occurred after the school's first aider, a teaching assistant, gave evidence that the claimant said someone had poked her in her

eye with a stick. Further, there was no bench near the tree in question on which the other child could have allegedly been standing.

The judge considered photographic and other evidence including that a member of staff from the school had arranged for a low branch from the tree to be removed. However, due to lack of satisfactory evidence as to the mechanism of the accident, the judge could not conclude how it occurred.

The judge held that the accident, if it occurred as alleged, was not reasonably foreseeable, no similar incidents had occurred and the branch had never been considered by the school as within the children's reach. Children were being adequately supervised and those near the tree in question were not doing anything to cause concern to the supervisor nearby.

Whilst sympathetic with the claimant, the judge dismissed the claim against both defendants.

This claim arose through a very unfortunate accident to a small child but it emphasises the importance of a claimant being able to support its claim with clear and unambiguous evidence as to how it occurred. If the evidence as to the mechanism of an injury is unclear, as can sometimes be the case particularly in accidents involving young children, difficulty will arise in a defendant and a court knowing what actually happened. Further, if the accident is so unusual with no history of similar incidents that it could not be considered reasonably foreseeable, and it is not a case of strict liability, the claim is unlikely to succeed. An occupier is obliged to take only such care for the safety of its visitors as is in all the circumstances reasonable.

**HIGHWAYS – PAVEMENT TRIP – NON-HAZARDOUS DEFECT – S.58 DEFENCE**  
**Abbas v Kirklees Council, 13.07.09, Bradford County Court**

## Pavement defect not a hazard

**The claimant** alleged that as he was walking in Dewsbury he tripped and fell due to a defect in the pavement, injuring his cervical spine and left leg. He claimed damages from the defendant highway authority, alleging negligence and breach of duty to maintain the highway under s.41 Highways Act 1980 (the Act).

The defendant denied the area in question was

dangerous at the time of the alleged accident and denied negligence or breach of statutory duty. The defendant argued, under s.58 of the Act, that if the pavement was dangerous at the time, which they denied, they operated an adequate inspection and maintenance system and were not liable.

The defendant also argued that the accident, if it occurred

at all, was caused wholly or in part due to the claimant's own negligence including his failing to look where he was going and failing to avoid the alleged defect.

The judge held that the accident did occur as alleged but that the defect did not present a reasonably foreseeable hazard. Further, the judge accepted the s.58 defence. The claim failed.



**“No defects were identified at the last inspection before the alleged incident.”**

**HIGHWAYS – PAVEMENT TRIP – EVIDENCE**  
**Farooq v Kirklees Council, 16.07.09, Birkenhead County Court**

## Manhole cover claim dismissed

**The claimant** alleged that as he was walking in Dewsbury, on a pavement very near to the site of the alleged incident in *Abbas*, above, he tripped, fell and injured himself due to a raised manhole cover in a depressed area of the pavement.

He claimed damages from the defendant, alleging negligence and breach of duty to maintain the highway under s.41 Highways Act 1980 (the Act). His allegations included that the area should have been cordoned off, notices should have warned of the hazard and failure to repair the area.

The defendant denied liability, submitting that the area was not dangerous, that no defects were identified at the last inspection before the

alleged incident, that it operated a reasonable inspection system under s.58 of the Act and that the claimant was responsible for his fall, if any, by his own negligence.

At trial, the claimant could not identify the location of his alleged accident. He said he only identified a possible cause for it the next day when he attended the site with a representative from an accident management company. Further, the claimant's witness seemed unable to give coherent evidence at trial.

After the claimant's evidence the defendant submitted that there was no case to answer. The judge agreed and, before evidence was given on behalf of the defendant, the claim was dismissed.

The *Abbas* claim (above) illustrates that, however persuasive a defendant's counsel might be and however much the evidence illustrates that an accident would be highly unlikely to have occurred as alleged, a court might still accept that it did occur. However, where there is the possibility that a court might accept that an accident occurred as alleged due to a defect in the highway, consideration should then be given as to whether the defect presented a reasonably foreseeable hazard, as well as to whether the defendant can demonstrate that it operated an adequate inspection and maintenance system to support a s.58 defence.

The *Farooq* case alerts claims handlers to the need for caution as to the legitimacy of claims where a claimant was assisted in identifying the location of the site of his alleged accident by a third party, here an accident management company.

**Establishing, in the early stages of a claim how, or with what assistance, a claimant is able to identify the site or cause of an alleged accident on the highway can be a material indicator in the often difficult task of forming an accurate view as to a claim's legitimacy.**

**CREDIT HIRE – OFFER OF REPLACEMENT CAR – CLAIMANT’S DUTY TO MITIGATE**  
**Copley v Lawn; Maden v Haller, 17.06.09, Court of Appeal**

## Case clarifies car hire costs liability

**These two** cases concerned motorists, the claimants, who were injured in road accidents and whom were both contacted by the defendants’ insurers and offered free replacement vehicles while theirs were being repaired.

Both claimants had rejected their respective offer and hired replacement cars themselves. The cost of this was partly disallowed by the district judge at trial on the grounds that the claimants had unreasonably refused the defendants’ offers. They appealed.

The key question was whether the claimants had unreasonably failed to mitigate their losses in these common circumstances: after a road accident, the negligent defendant’s insurers offer the claimant a replacement vehicle while theirs is being repaired but the offer is rejected, either because the claimant’s own insurers have arranged a vehicle or due to some other reason.

The Court of Appeal held that in those circumstances a claimant could only recover the reasonable market rate of hiring a replacement vehicle.

Further, if a defendant’s insurers did make an offer of a replacement vehicle, the offer should include all relevant information to enable a claimant to decide whether to accept, including the cost to the defendant’s insurers of hiring the vehicle. It would not be unreasonable for a claimant to reject an offer that did not indicate the hire cost.

A claimant only had to take reasonable steps to mitigate his losses; if he was unaware that

the defendant’s insurers could hire a vehicle more cheaply than he could, it would not be unreasonable to reject a defendant’s insurer’s offer.

If a claimant did unreasonably reject such an offer, he would only be entitled to recover at least the cost that the defendant would have incurred in hiring a vehicle for the claimant. The appeals were allowed.

This ruling indicates that a claimant motorist not at fault in a road traffic accident will be able to make a recovery of the cost of hiring a replacement vehicle while their own is being repaired, to the extent of the cost the defendant would have incurred in hiring a vehicle for the claimant.

Where a negligent defendant’s insurers offer a replacement vehicle to the claimant, the offer should state the cost of hire and give all relevant information to enable the claimant to make an informed decision as to whether to accept the offer. The claimant is not obliged to request this information and if it is not provided, this ruling indicates that a claimant would not be held to have unreasonably failed to mitigate his losses by hiring a vehicle of his own. In that situation, the claimant would be entitled to recovery of at least the cost the defendant would have incurred had he provided a temporary replacement vehicle to the claimant.

**“The Court of Appeal held that a claimant could only recover the reasonable market rate of hiring a replacement vehicle”**

**CREDIT HIRE – FRAUD – COSTS AGAINST NON-PARTY**  
**(1) Farrell and (2) Short v (1) Birmingham City Council and (2) Direct Accident**  
**Management Services Ltd, 17.06.09, Court of Appeal**

## Car hire costs appeal fails

**The claimants** alleged that in January 2005 a refuse collection vehicle driven by an employee of the defendant collided with the rear of the first claimant’s car, while it was stationary and parked. They alleged they suffered minor whiplash injuries and that the car was damaged beyond economical repair. On the same day, the first claimant, C1, hired a car under a credit hire agreement with Direct Accident Management Services Ltd (DAMS). DAMS arranged for their own solicitors to recover the cost of hire to C1, the pre-accident value of C1’s car and damages for minor personal injury to both claimants. The defendant promptly paid the pre-accident value of C1’s vehicle. The claimants issued

proceedings against the defendant through DAMS’ appointed solicitors, for recovery of hire charges and damages for personal injury. The defendant was later given permission to amend its defence to allege fraud by the claimants, having amassed information that suggested the claim was false. On the first day of the trial the claimants discontinued their claims. A costs order was made against them to pay the Council’s costs but they failed to comply with it. The Council then applied, under s.51 of the Supreme Court Act 1981, for an order that its costs that the claimants were ordered to, but

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failed to, pay be paid by DAMS, a nonparty to the original proceedings. The Council submitted that DAMS were the real beneficiary of the claims and had instigated them. DAMS were joined as the second defendant. The court accepted that a non-party would be ordered to pay the costs in litigation only in exceptional circumstances. Although DAMS were not part of the fraud, they stood to gain from it, had instigated it and were essentially in control of it. They were ordered to pay 80% of the Council's costs and DAMS appealed. The Court of Appeal accepted that DAMS had instigated the claims and controlled them. They had hired the car to the claimants and that was the key starting point of the claims, the bulk of which comprised the hire charges. The judge was entitled to have ordered DAMS to pay the whole of the Council's

costs and to order them to pay 80% was entirely acceptable. The appeal was dismissed.

This ruling will be of particular interest to those involved in motor claims. Non-party costs orders are not common but the Court of Appeal has, in this judgment, given an example of circumstances in motor claims, instigated by accident management or credit hire companies, when such orders might be appropriate. These companies might have control of ensuing litigation and a material interest in the outcome of the claim, even if they too are victim of a fraudulent claim. They should be notified as soon as is appropriate, in all the circumstances of the particular case, if such an application is intended to be made.

**UNSUPERVISED CLASSROOM – DANGEROUS FLUIDS – POISONING**  
**Alexis v Newham London Borough Council, 15.06.09, High Court**

## Teacher poisoning not foreseeable

**The claimant** taught English at a school for which the defendant authority was responsible and was regarded as an excellent teacher. Many of the pupils had learning and behavioural difficulties.

The claimant and one female pupil, P, developed a strained relationship after the claimant criticised P for putting on lipstick in class. When the claimant was away from school one day, P obtained the keys to the classroom from another teacher, T, to collect her study folder. While in the classroom, P poured whiteboard cleaning fluid into the claimant's bottle of drinking water. While teaching, the claimant took a drink from her water bottle and immediately suffered the effects of poisoning. Another member of staff took her to the local hospital.

The claimant claimed damages from the defendant for the subsequent physical and psychological injuries, alleging T had negligently allowed P unsupervised access to the classroom. She alleged that it was foreseeable that children left unsupervised could behave mischievously. The defendant admitted there was a policy that empty classrooms should remain locked but there was no specific ban on pupils being given the keys to classrooms.

The judge accepted that, rather than a formalised policy, it was "a common sense understanding that it would be unwise to leave classrooms unlocked". The judge held that it was not foreseeable to the school's staff that P would poison the claimant; P had only failed to anticipate the very serious consequences of her "foolish prank". He held that P's action was of the general type of behaviour that was

foreseeable if children get up to mischief, even though the precise act of poisoning was not reasonably foreseeable. But the defendant would only be liable if they had breached their duty of care to the claimant by failing to take reasonable precautions to prevent or minimise the risk of injury to her through the malicious or mischievous behaviour of pupils.

The court held that none of the teachers, with the possible exception of the claimant, had reason to suspect that P would do what she did; T was not negligent in allowing P the keys, believing P only wished to retrieve her class work. The defendant had not breached its duty to the claimant and the claim was dismissed.

Customers storing dangerous substances on their premises will be aware of the risk assessment and storage requirements under the COSHH Regulations.

This ruling concerned an unusual incident but emphasises the need to prove, on the balance of probabilities, all elements of negligence, where this forms the basis of the claim. Although the court held that the claimant had sustained her injury in the way alleged and that the defendant owed her a duty to take reasonable care for her safety, it rejected the argument that the defendant had breached that duty because the act causing the injury was not reasonably foreseeable to the teacher concerned.

**"The judge held that it was not foreseeable to the school's staff that P would poison the claimant"**

**MANUAL HANDLING – LIFTING – STREET SCENES OPERATIVES**  
**ZURICH CASE Ryman v Oxford City Council, 28.05.09, Oxford County Court**

## Claimant caused back injury

**“He failed, contrary to his training, to ask for help.”**

**The claimant** worked for the defendant as a Street Scenes Operative, collecting and disposing of litter in Oxford. During autumn he would also collect plastic bags of leaves filled by other operatives, lift them on to a refuse lorry and take them to the defendant's depot. The bags typically weighed more than 20kg.

In November 2006 the claimant was loading bags of leaves when he felt a sharp pain in his back. He was diagnosed with a musculo-ligamentous strain to his lumbar spine and was expected to recover within two years. He was aged 36 at the time.

He claimed damages from the defendant, alleging negligence and breach of statutory duty. He alleged breaches of several regulations governing health and safety at work.

His allegations included that the defendant had failed to maintain the workplace and its systems appropriately, failed to train the workers who swept the leaves to fill them only to a safe weight, failed to train him adequately and failed to assess the task of manual handling sufficiently.

The defendant denied liability, arguing that the claimant was part of a two man crew, both lifting each bag on to the lorry. The defendant gave evidence of the claimant having been trained properly and of risk assessments that included the manual handling task. They alleged that the injury was caused or at least contributed to by the claimant's own negligence in failing to take reasonable care for his own

safety, disregarding training and failing to ask his workmate to help him.

At trial the claimant admitted having training in lifting methods and relevant manual handling. The court held that none of the pleaded regulations were particularly relevant and that the case should proceed on whether the defendant was negligent in failing to take reasonable care for the safety of its employees.

The judge held that it was not realistic to tell the claimant what to lift but he should have tested the weight of each bag; if he could not lift it he should have asked for help. When he lifted the bag and then sustained an injury to his back this was because he failed, contrary to his training, to ask for help. He knew what he was doing and the defendant was not at fault. The injury was caused by the claimant's own failures and the claim was dismissed.

This is another example of the importance of an employer ensuring that staff are properly trained, that appropriate risk assessments are carried out and that records are kept of these processes. The defendant was able to produce strong evidence that the employee had been properly trained in the task in question, that sufficient risk assessments had been carried out and that the claimant, contrary to his training, had acted in a way that caused his injury.

**ASBESTOS – STATE OF KNOWLEDGE**

**Abraham v (1) G Ireson & Son (Properties) Ltd (2) Reynolds (T/A Reynolds & Spademan (A Firm), 31.07.09, High Court**

## Asbestos claim fails

**The claimant** worked for the first defendant during the late 1950s and until 1961. He then worked for the second defendant until 1965 when he then began work as a lorry driver, remaining as such until his retirement in 2005. He was well until chest pain led, in July 2008, to his being diagnosed with mesothelioma. He claimed damages from the defendants, alleging their negligence had exposed him to asbestos dust during his employment.

The court accepted that, though light, the exposure caused his illness. However,

bearing in mind the risks known at that time of the dangers of exposure to asbestos dust and fibres, the defendants could not be regarded as negligent or in breach of statutory duty. Referring to Baker v Quantum Clothing, the court held that knowledge of a risk must be relevant to "reasonable practicability". Neither defendant could reasonably have known of the risk of injury to the claimant and it could not, therefore, have been reasonably practicable for them to have taken steps to

avoid it. Whilst the court was sympathetic to the claimant, the claim failed.

This is an example of a court accepting that, although the claimant was exposed to asbestos fibres to an extent that materially contributed to his contracting mesothelioma, that exposure was not negligent, given what was known about the risks of exposure to asbestos dust and fibres at the material time.

**TREES – INSPECTIONS – EXTENT OF DUTY****Freeman v South Somerset District Council, 05.06.09, Yeovil County Court**

# Council not liable for tree fall

**“Local authorities should not be held liable for failing to identify disease in a tree, not evident on visual inspection”**

In July 2007 the claimant parked his car in a car park, for which the defendant was responsible. When he returned a bird cherry tree had fallen on his car causing damage that rendered it a write-off. The claimant claimed compensation from the defendant, alleging it had failed to operate a proper inspection regime in respect of the tree.

The defendant denied liability, arguing that it operated an adequate inspection and maintenance system based on guidelines from the Arboricultural Association and the British Standards Institute. These recommended, for a high-use area such as this car park, a basic annual visual inspection and an expert inspection every five years.

Their inspector carried out the last inspection before the incident, on 30 October 2006. She had not found any problems with the tree or with any others in that area.

The defendant’s arboricultural

officer, O, inspected the tree the day following the incident and reported that it had been suffering from a honey fungus infection that caused it to decay internally; the decay would not have been evident on its outside and not evident on visual inspection.

The claimant attempted to rely on a report by someone he submitted was an expert, E, but it did not comply with the Civil Procedure Rules and the court had not given permission for the claimant to rely on it. It later emerged that E was a relative of the claimant. The court refused permission for the claimant to rely on it.

The court held that care should be exercised before “imposing too high a burden” on a defendant in this situation. The defendant was not obliged to dig around at the base of every tree during visual inspections. The court accepted that the tree’s infection would not have

been visible during the annual inspection. The defendant had not breached its duty of care and the claim was dismissed.

Although only a small claims case, this is a useful indication of a county court’s view of the extent of a local authority’s duty to identify problems with trees on reasonable inspection. The court accepted that, where inspection and maintenance of trees is carried out in accordance with the guidelines from the Arboricultural Association and the British Standards Institute, local authorities should not be held liable for failing to identify disease in a tree, not evident on visual inspection, that caused the tree to fall.

**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.

## NOTICEBOARD

### Operational Risk Registers (ORRs) Updates

Reminder: ORRs are dynamic documents. Is your ORR up to date?

The Quarterly Performance Review (QPR) exercise requires you to review your ORRs every quarter and revise the date thereon. Have you reviewed your ORRs and amended the dates?

During December each year, commencing December 2009, the Insurance & Risk Management section will issue a reminder to services to ensure that when you amend your ORRs in February 2010, you remember to send a copy to Russ Kirman.

### 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.

### Money Laundering

A draft policy is in place and ready to launch, but CIPFA has issued revised guidance. The policy is therefore being reviewed before it is issued.

### Risk Management Training courses

Council Members had the opportunity to attend an 'Introduction to Risk Management' training course, which was held in FR1, Pittwood House, 2 October 2009.

Subject to changes following the latest 'Use of Resources' assessment, it is hoped to hold a 'Risk Management Intermediate' training course to satisfy the council's intermediate competencies requirements. FR1, Pittwood House has been booked for 4 December 2009. The cost will be £30 per attendee.

### 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.

	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 with reward for well-managed risk taking.	Risk management capability in policy and strategy making helps to drive organizational excellence.	All staff are empowered to be responsible for risk management  The organization 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 in key driver in business success	Clear evidence that risks are being effectively managed throughout the organization.  Considered risk-taking part of the organizational culture	Risk management arrangements clearly acting as a driver for change and linked for 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 risks to the organization and understand their risk appetite	Risk handling is an inherent feature of policy and strategy making processes  Risk management system is benchmarked	<b>People are encouraged and supported to take managed risks through innovation</b>  <b>Regular training and clear</b>	Sound governance arrangements are established  Partners support one another's risk management capability and capacity	<b>A framework of risk management processes in place and used to support service delivery</b>  <b>Robust business continuity management system in place</b>	Evidence that risk management is being effective and useful for the organization and producing clear benefits  Evidence of innovation risk-taking	Very clear evidence of very significant improved delivery of all relevant outcomes and showing positive and sustained improvement

	Management leads risk management by example	and best practices identified and shared across the organisation	<b>communication of risk is in place</b>				
<b>Level 3 Working</b>	<p>Senior managers take the lead to apply risk management thoroughly across the organization</p> <p>They own and manage a register of key strategic risks and set the risk appetite</p>	<p><b>Risk management principles are reflected in the organisation's strategies and policies</b></p> <p><b>Risk framework is reviewed, refined and communicated</b></p>	<p>A core group of people have the skills and knowledge to manage risk effectively and implement the risk management framework</p> <p>Staff are aware of key risks and responsibilities</p>	<p>Risk with partners and suppliers is well managed across organizational boundaries</p> <p>Appropriate resources in place to manage risk</p>	<p>Risk management processes used to support key business processes</p> <p>Early warning indicators and lessons learned and reported</p> <p>Critical services supported through continuity plans</p>	<p><b>Clear evidence that risk management is being effective in all key areas</b></p> <p><b>Capability assessed within a formal assurance framework and against best practice standards</b></p>	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	<p>Risk management strategy and policies drawn up, communicated and being acted upon</p> <p>Roles and responsibilities</p>	<p>Suitable guidance available and a training programme has been implemented to develop risk capability</p>	<p><b>Approaches for addressing risk with partners are being developed and implemented</b></p> <p><b>Appropriate tools are developed and resources for risk identified</b></p>	<p>Risk management processes are being implemented and reported upon in key areas</p> <p>Service continually arrangements are being developed in key service areas</p>	<p>Some evidence that risk management is being effective</p> <p>Performance monitoring and assurance reporting being developed</p>	<b>Limited evidence that risk management is being effective in, at least, the most relevant areas</b>

		established, key stakeholders engaged					
<b>Level 1 Engaging</b>	Senior management are aware of the need to manage uncertainty and risk and have made resources available to improve	<p>The need for a risk strategy and risk-related policies has been identified and accepted</p> <p>The risk management system may be undocumented with few formal procedures present</p>	Key people are aware of the need to understand risk principles and increase capacity and competency in risk management techniques though appropriate training	Key people are aware of areas of potential risk in partnerships and the need to allocate resources to manage risk	<p>Some stand-alone risk processes have been identified and are being developed</p> <p>The need for service continuity arrangements has been identified</p>	No clear evidence that risk management is being effective	No clear evidence of improved outcomes