Report of the
Service Director Finance

Agenda Item No:
Meeting: 29 June 2011

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 In April the Audit Committee approved the Risk Management Strategy and Action Plan for 2011/12 and copies are available on request or on Intralinc. Members receive regular reports throughout the year to update them on key risk management issues. This 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 Governance Statement. Regular updates are also recognised as good practice by professional bodies CIPFA (The Chartered Institute of Public Finance & Accountancy) and ALARM (Association of Local Authority Risk Managers).

2.2 Following the Corporate Management Team's (CMT) review of groups across the council the Strategic Risk Management Group (SRMG) has been reformed and renamed as the Risk Management Group (RMG). Whilst membership has been rationalised there is sufficient representation from all Directorates and at an appropriately senior level.

2.3 A new risk management system has been procured. The system will allow for better management of the council's risk and is capable of analysing strategic and operational risks and providing comprehensive and timely management information. The first set up meeting has been held with the successful supplier and we are currently working with them to populate the system to our needs. Training on the system has been scheduled for July with the system going live soon after.

2.4 RMG has approved the new format of the Operational Risk Register. This will provide a more improved analysis of risk which will in turn help the prioritisation of risk. Guidance is currently being out together with training scheduled for later on in the year.

2.5 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. Regular risk management training is available and in February training was provided as part of the induction for new managers' programme. In addition to information available on the web page and Intralinc the 7th edition of the Risk Roundup newsletter was also issued in February (Appendix A).

2.6 Internal Audit's independent review of risk management arrangements has been completed. The review showed that arrangements were generally good and adequate assurance could be provided by Internal Audit.

2.7 The annual council wide review of operational risk registers is complete. All registers have been received and analysed.

2.8 The CIPFA/ALARM risk management benchmarking questionnaire has been completed. This is the second year of the benchmarking club which 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 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 This progress report updates Members on key internal control issues and complies with professional guidance available and is 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 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. 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.

SERVICE DIRECTOR FINANCE

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Background Papers used in the preparation of this report
Risk Management Strategy and Action Plan 2011-2012

RISK roundup

Issue 7
February 2011

A quarterly digest of risk management issues

School gym accident page 7

BT fails in claim against council

NEW ROADS AND STREET WORKS ACT – COSTS OF REMEDIAL WORKS
British Telecommunications plc v Carmarthenshire County Council 21.04.10, Swansea County Court

This dispute concerned the claimant's (BT's) right to maintain its apparatus laid in the public highway, and the defendant council's duty to maintain the highway. The underlying issue was, if the council carried out road works which made it necessary to move BT's boxes, which of the parties had to pay for the repositioning work?

At three locations in Wales, the council carried out resurfacing – "street works" under the New Roads and Street Works Act 1991 (NRSWA). This involved laying tarmac which covered BT's inspection covers. BT sued the council for damages, alleging breach of statutory duty, negligence, conversion and trespass to goods.

BT told the council they could not re-level BT apparatus without signing an agreement with BT. The council did not accept the proposed terms. The court held that BT threatened to hold the council liable in trespass if the council interfered with the apparatus without signing the agreement.

Under s.81 of the NRSWA, an "undertaker having apparatus in the street" must ensure it is maintained to the satisfaction of the relevant authority. If re-surfacing raised the level of the highway, re-levelling of BT's apparatus had to be at their own expense.

Under s.83, the authority carrying out works must take reasonably practical steps to give the apparatus owner reasonable facilities to monitor the works. The authority must comply with any requirement by the owner reasonably necessary to protect the apparatus and BT said requiring the council to enter into the agreement was such a requirement.

The court held that s.83 was concerned with physical steps to protect apparatus, not contractual terms. BT could not require the council to agree to any particular terms.

The judge held there was no breach of the NRSWA and that s.83 does not impose civil liability – BT could not sue for damages; there is a criminal sanction for a breach (a fine).

With regard to negligence, the judge held that the tarmac damaged the covers which needed to be cleaned or replaced. However, the council had a duty to maintain the highway and was not obliged to pay BT's costs of re-levelling BT's frames and covers.

With regard to conversion and trespass to goods, the judge held that the council had the statutory authority to interfere with BT's apparatus. BT's rights did not take precedence over the council's duty to maintain the highway. If utility companies had the power to veto road works, this would conflict with an authority's duty to maintain the highway. The claim failed.

Though only a county court decision, this judgment provides a useful and detailed examination of the rights of both a highway authority and a utility company under the New Roads and Street Works Act 1991. BT failed to convince the court that, on carrying out resurfacing works, the council had breached its statutory duty, was negligent in damaging the company's apparatus, or had committed acts of trespass or conversion.

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No council duty to remove gravel

TRANSIENT MATERIAL – "SHELL GRIP" – HAZARDS TO MOTORCYCLISTS
Broom v Shropshire County Council 16.06.10, Central London County Court

On a fine, bright day in June 2007, the claimant was riding his Honda motorbike at no more than 35mph along an A road in Shropshire. A friend was riding behind on another motorcycle, carrying a pillion passenger. As the claimant went round a right-hand bend he lost control of his motorbike and collided with a brick wall. He was thrown from his motorbike and sustained injury. The claimant was in his mid-forties at the time and gained his motorcycle licence in 2001.

The claimant claimed damages from the highway authority, alleging failure to maintain the highway in breach of s.41 of the Highways Act 1980 (the Act). He also alleged nuisance, claiming the use of a high-adhesion surface ("shell grip") made the highway dangerous to users. He said that loose gravel from this surfacing material caused the front wheel of his motorbike to lose its grip.

The defendant denied liability, denying that the surface of the road created a foreseeable risk of danger. It also argued it had a defence under s.58 of the Act through a reasonable inspection system. Monthly driven inspections were operated, one having been done two days before the accident, noting no defects.

Further, under the defendant's skid resistance strategy a satisfactory skid survey or "SCRIM" test* was carried out about 11 months before the accident. The defendant had no knowledge of previous accidents at this location.

In a split trial, the judge noted that shell grip and loose gravel are major concerns to motorcyclists and that the Highway Code refers to motorcyclists as 'vulnerable'.

The judge held that the defendant is not a "guarantor" against all highway accidents. The law must not set unreasonably high standards, otherwise an unreasonable burden would be placed on highway authorities and scarce resources would be diverted from more urgent repair needs.

The judge held that the presence of grit on the highway does not indicate failure to maintain. The monthly driven inspections were reasonable, given the absence of footpaths.

Further, on the allegation of nuisance and following Sandhar v Department of Transport (2004, Court of Appeal), there is no common duty of care to maintain the highway. The defendant had not failed to maintain the highway and the claim was dismissed.

**The test is carried out by a sideway-force co-efficient routine investigating machine.*

"The law must not set unreasonably high standards, otherwise an unreasonable burden would be placed on highway authorities."

Although only a county court judgment, this is a clear and comprehensive reassertion of the principle that a highway authority is not under a statutory duty to remove from the highway transient materials such as grit Readers will be aware that the duty to remove snow and ice has been separately dealt with by s41A of the Act The presence of grit will not by itself be evidence that the highway was dangerous to users The duty is to maintain the fabric of the highway, not to remove material on it, but detached from the surface, such as grit.

No liability for trespasser's injury

TRESPASSERS – CHILDREN – TREE STUMPS – RISK OF DANGER
Price (a child) v E Dorset District Council 18.06.10, Poole County Court

In 2006 the claimant, then aged eight and a half, was playing with other children on a verge between a road and playing fields near his home, in Verwood. The defendant accepted they occupied the area at that time.

Two mature oak trees on the verge had been felled by the defendant but their stumps remained. One stump was approximately three feet high with a cavity surrounded by sharp woody edges. While playing on this stump the claimant's left leg became impaled on part of the edge.

The claimant, through his father, claimed damages from the defendant for personal injury, alleging negligence and/or breach of statutory duty under either the 1957 or 1984 Occupiers' Liability Acts. His allegations included permitting the stump to remain a danger, failure to render it safe and failure to warn the claimant of its dangerous condition.

The defendant denied liability, contending that the claimant had no permission to play in the area and that he was a trespasser. They said they neither knew, nor had reason to know, that children played on or around the stump. The

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No liability for trespasser's injury

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trees had been felled about four months before the accident and they had not received any other complaints. They also argued contributory negligence.

The judge accepted the accident occurred as alleged but was puzzled that the claimant's mother, who lifted the claimant from the stump, did not give evidence. He accepted the evidence of the defendant's witness and held the claimant to be a trespasser under the Occupiers' Liability Act 1984 (the Act).

Under the Act, an occupier owes a duty to persons other than visitors in respect of any risk of injury to them, from any danger due to the state of the premises, if the occupier is aware of the danger or has reasonable grounds to believe it exists.

The judge held that the risk posed by the stump was not one against which the defendant should have taken more care to protect the claimant. The defendant had not breached its duty under the Act nor was it negligent.The judge also considered the defendant's tree budget and the cost of reducing felled trees to ground level. He held the costs involved would be disproportionate.

This ruling provides a reminder of the factors a court will examine when deciding liability to trespassers under the Occupiers' Liability Act 1984 The judge focussed on the danger posed by the state of "the premises", whether there were reasonable grounds for the occupier to believe a danger existed, and the seriousness of the injury that could result The social value of the activity – children playing on a tree stump – was also considered, as well as the cost of the defendant taking preventative measures.

Chemistry teacher not negligent

SCHOOLS – HAZARDOUS MATERIALS – INJURY DURING CHEMISTRY LESSON
Travers v Bristol City Council 15.06.10, Bristol County Court

The claimant was a pupil at a school in Bristol. In November 2003, during a chemistry lesson where the pupils would need to use a Bunsen burner, the claimant sustained burns to her right hand. She alleged this injury was caused by the negligence of the teacher, who was employed by the defendant.

The claimant, aged 20 at the date of trial, claimed damages up to £5,000. She alleged, among other things, res ipsa loquitur, ie that the facts spoke for themselves – she sustained burns, she said, due to inadequate supervision and because the experiment was not carried out with appropriate care.

The defendant denied liability and disputed certain facts about the experiments taking place on the day of the accident. The claimant said that the class were carrying out three tests but the teacher said there were two. The claimant also alleged that the pupils were left to distribute the chemicals required but the teacher was adamant this was not the case and that he gave them out himself. The court accepted that it was "much more likely" that the teacher would control the distribution of chemicals to the class.

The court noted that no one, including the claimant, was able to say how the claimant's hand came into contact with the materials that burned it.

The court held that the experiment was not an unusual one and there could be no criticism of the organisation or supervision. The judge accepted the teacher's explanation as to why gloves were unnecessary. He also accepted that there was no need for a safety screen.

The judge rejected the argument that the facts speak for themselves – there is no evidence that the accident would not have happened had the teacher not been negligent. It could have occurred without any negligence. Further, the danger was not under the sole management of the defendant – the pupils were essentially controlling the experiments. The claim was dismissed.

The judge rejected the allegation that this chemistry lesson accident was caused by the defendant's negligence; even the claimant was unable to say how it happened The judge said that the pupils, about 28 in number, had been properly instructed and supervised and the teacher could not "work with all pupils all of the time" He accepted that pupils are expected to learn what happens when experiments work and that science "would be a very dull affair otherwise".

Landowners not liable for flood risk

NUISANCE – DRAINAGE – PROPERTY DAMAGE
Lambert and others v (1) Barratt Homes Ltd, (2) Rochdale MBC 16.06.10, Court of Appeal

The claimants were three householders in Rochdale, their homes being situated next to land formerly used as playing fields and owned by the second defendant, D2. Part of this land was sold to the first defendant, D1, who built housing. D2 kept the rest.

During construction, D1 filled in part of a ditch which drained to a culvert. The culvert was also filled in by D1. This meant water from the land kept by D2 sometimes flooded claimants' properties, causing damage.

The claimants claimed damages from the defendants. D1 denied liability but the trial judge found against them. He also held D2 liable for breach of a "measured duty" to take reasonable steps to abate the nuisance caused by water from their land flooding on to, and damaging, the claimants' land. The trial judge held that D2 should have co-operated in solving the flooding problem and should have constructed the necessary drainage ditches to avoid future flooding. D2 appealed.

The Court considered the notion of a "measured duty of care" thought to have originated in a Privy Council appeal from an Australian High Court case, Goldman v Hargrave (1967). In that case, fire from a gum tree spread and damaged the claimant's property. One of the law lords held that the standard of effort to abate the nuisance and the expenditure expected should be viewed, in law, in the light of what is reasonable, given the occupier's particular circumstances. Further, if a duty to act arises, it arises from when the occupier knew or could reasonably have known of the existence of the hazard.To resolve the flooding risk D1 would need to construct suitable drainage on D2's retained land. However, it was not fair, just or reasonable to impose on D2 a duty to carry out and pay for any of the works necessary as D2 were not responsible for the cause of the flooding. In this case, D2's duty extended only to co-operating with D1 in solving the flooding problem. The appeal was allowed.

This is an important reminder of the extent of duty owed by an occupier to others whose property is damaged by hazards created on the original occupier's land. The court revisited the concept of a "measured duty of care", reaffirming the factors that will be considered when deciding the extent of the duty owed by the occupier from whose land the hazard arises.

The nature of the right to education

HUMAN RIGHTS – AUTISM – RIGHT TO EDUCATION
A v Essex County Council 14.07.10, Supreme Court

"The claimant claimed that his right... to education, had been breached."

The matters concerning this case took place in 2002-2003 when the claimant was aged 12 and 13. The claimant suffers from several acutely challenging disabilities. The school he attended could not cope and, for health and safety reasons, the defendant made arrangements for him to receive educational materials at home pending finding a suitable alternative placement. A five-year placement was eventually found for him.

The claimant claimed that his right under art.2 of the First Protocol of the European Convention on Human Rights (A2P1), ie his right to education, had been breached. He claimed, under s.6(1) of the Human Rights Act 1998 (the Act), that the defendant had acted in a way incompatible with his A2P1 right. He claimed damages for "just satisfaction" of the alleged breach.

The claim had been made beyond the one year limitation period for claims under the Act and earlier Courts had refused to allow it to proceed due to the low prospects of success. The claimant was given permission to appeal to the Supreme Court.

The Court considered many cases alleging breach of the A2P1 right, most importantly Ali v Governors of Lord Grey School, (2006, House of Lords) (Court Circular, May 2006). In that case, the Lords held that the A2P1 right is a right not to be denied access to the UK education system, not a right

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The Supreme Court has reaffirmed the nature of the right to education under art 2 of the First Protocol of the European Convention on Human Rights Again it is stressed that it is a child's right not to be denied access to education rather than a right to a place at any particular institution Here, although the child was out of school for several months, the local education authority had done everything conceivably possible to arrange suitable education for the severely disabled claimant It was not a case of wanton failure to assist him, or of abandonment of him.

The nature of the right to education

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to be educated at or by a particular institution. The Court held that the defendant had not denied the claimant his A2P1 right but had done all it could to arrange a suitable placement. Lord Brown said that a denial "implies a substantially higher degree of blameworthiness…an abandonment of the… child's plight…or a complete breakdown in the handling of the… child's case".

With regard to the application to waive the limitation period, the Court held that, were permission given, the claim would be unlikely to succeed and, if it did, the amount in damages would be minimal if anything. The appeal was dismissed.

FIRE PROTECTION

Why sprinklers work

Zurich Municipal has been campaigning on school fire safety and sprinkler use for over 20 years. Luckily, there have been no school fire fatalities in the UK and, importantly, there have been no fire deaths in the UK in a building fitted with a fully maintained sprinkler system. "But we don't want to wait for a pupil or teacher to be killed or injured in a fire to prove sprinklers are worth having," says Graham Page, Practice Leader (Public Sector) Zurich Risk Engineering.

"A school with sprinklers could be back in action the same day; a year or more later if unsprinklered"

Sprinkler myths debunked

In a fire, ALL sprinklers come on and if fire doesn't damage property, lots of water will

- Contrary to what is shown in the movies, sprinkler heads work individually and only operate if directly over a fire. A single fire source does not activate all sprinkler heads in a building. Inside the sprinkler head is a bulb containing a liquid chemical that expands with heat; the liquid in the bulb allows the water to fall directly on to the fire.
- Fire hoses are more random, are applied when the building is well alight and are often used from outside the building. As a result fire brigade intervention will result in much more water in a building than sprinkler control.

Sprinklers aren't effective in high risk areas

- Sprinklers are designed in line with the potential fire risk that could occur in higher risk areas in schools like laboratories, libraries or theatres. In high risk areas, the system is designed to deliver more water to control what could be a larger fire.

Sprinklers cramp modern building design

- Sprinklers actually allow freedom in design as other fire management features may not be necessary if a sprinkler system is installed.
- If the brief includes sprinklers the design can include larger open spaces and more flexibility in terms of compartmentation and fire detection.

Sprinklers are expensive

- Not if they are considered from the beginning of a project. For example, if a void above a ceiling is more than 800mm, the rooms below and the space above require sprinklers. But if sprinklers are designed into new buildings or major refurbishment programmes from the start then the use of an open cell ceiling could alleviate the need for sprinkler protection in both areas, halving the cost.
- Insurers are so confident about sprinkler systems that they will give a significant reduction in premiums. Zurich gives a guaranteed discount for sprinklers.

In recent years improved security and new technology has meant that school arson attacks in the evenings and holidays are reducing. But school fires do happen and increasingly are happening in school time, putting people as well as buildings at risk. An increase in daytime arson combined with an increase in electrical fires makes sprinkler systems even more valuable in a school, academy, college or university.

"All Zurich's biggest school fires in the last six years have been electrical in origin," explains Larry Stokes, Property Underwriting Manager, Zurich Municipal. "It is a worrying trend." Fires that occur during school time are hazardous for students and teachers. "There is even greater need for immediate extinguishment and sprinklers are effectively a 24 hour fire service," says Larry.

Graham believes customers need to demand sprinklers from the start to get the most benefit from cost advantages. "Sprinklers need to be part of the design, not applied to the design." But even if they are a second thought, don't dismiss them out of hand: "One of my team will come out and advise you on the best solution," says Graham. Free advice on safety and security features is part of

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Why sprinklers work

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the Zurich insurance package. Graham wants customers to take advantage of this service: "We have specialist public sector expertise we can share and we have many years' experience with schools and public buildings."Zurich doesn't want it to take a tragedy to change perception on the real value of sprinklers. For advice on sprinklers, go to your Zurich risk and insurance consultant or underwriter, or email info@zurichmunicipal.com

School sprinkler savings

- Life safety – firefighters' lives are put at risk at a burning school, especially those with structures of lightweight, consortia building materials, where fire spread in hidden voids has a high potential for flashover and building collapse
- Life safety – an increase in daytime fires increases the risk of life safety, should children or staff become trapped in burning buildings
- Contamination – school fires often involve release of asbestos and other contaminants in water run-off, which is considerably reduced with sprinklers
- Water – a sprinkler uses just 5 per cent of the water of a single fire service hose
- Fire brigade time – it takes two to five tenders with fire crew six to twelve hours to put out an average fire where sprinklers are not fitted
- Rebuild time – a school with sprinklers could be back in action the same day; a year or more later if unsprinklered
- Build cost – a sprinkler system can reduce building costs on new-build or extension as a trade-off can be made against items such as partition walls and protection on escape routes
- Design – sprinkler protection offers the potential to explore much greater flexibility and innovation in design for new build and rebuild. (The Zurich Municipal School and Academy Design Guide offers specific advice on sprinklers and design. To find out more, go to www.zurichmunicipal.com)
- Cost – Zurich offers a substantial reduction in fire insurance premiums for the lifetime of the sprinkler system
- Cost – Zurich removes the mandatory deductible (average £100,000)
- Cost – schools can be more difficult to insure because of their historic loss record. A school with sprinklers is far more attractive to a wider insurance market.

Wet market floor not council's fault

INDOOR MARKETS – LIABILITY FOR INJURY FROM SPILLAGE
Brown v Bolton Council, 04.10.10, Manchester County Court

In August 2007 the claimant was walking in an indoor market and, as she passed by a poultry stall she slipped and fell, injuring herself. She claimed damages from the council, who were responsible for the market, alleging breach of duty under s.2 of the Occupiers' Liability Act 1957.

The claimant said she slipped in water about half an inch deep. The entrance to the market was about 10-15 yards from where she fell. She said the water should not have pooled in the area and there were no signs warning of the wet floor.

The defendant denied liability, arguing they operated a suitable system to deal with the safety of visitors. They employed several staff to check the floors, patrol the market and mop up where necessary. Also, the management could contact them by radio. Floors were regularly gritted, signs warned of the wet floor and all reasonable steps had been taken to ensure the safety of the market.

The judge considered the cause of the fall and whether it could have been prevented. He said that as the floor had a camber and sloped towards the poultry stall, puddles would not form but water would travel down the slope. The judge held that any water on the floor had probably been trodden in by other visitors to the market. The judge noted the defendant's system of cleaning, mopping and arranging signage

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This ruling reinforces the extent of the duty of occupiers to ensure their visitors' safety under the Occupiers' Liability Act 1957 – it is to take all reasonable steps to ensure visitors' safety. The claimant complained about slipping on a wet floor just a few yards from the entrance of an indoor market, on a rainy day, arguing the floor should not have been wet. The judge held that too high a burden would be placed on the council if it had to ensure the floor was free from moisture despite thousands of people coming in on a rainy day, inevitably and unavoidably bringing with them some moisture on their footwear. Evidence of the wet floor was not evidence of a breach of the council's duty as occupier.

Wet market floor not council's fault

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warning of the wet floor. He accepted that it was the defendant's normal practice to place warning signs and that they would have been present that day. He said, with thousands of people in the market on a rainy day, there was bound to be moisture on the floor.

The judge held that the defendant operated a reasonable system for keeping the area safe. The duty under the Act is to take all reasonable steps to ensure visitors' safety and the defendant had complied with that duty. The claim was dismissed.

Court rejects school accident claim

PHYSICAL EDUCATION – VAULT – INSTRUCTION AND SUPERVISION
Williams v Bristol City Council, 06.07.10, Bristol County Court

"The defendant denied the accident was reasonably foreseeable, that they could have taken any steps to avoid it, or that they failed to take reasonable care"

The claimant now an adult, was a pupil at one of the defendant's primary schools. During a physical education lesson she said she was to try to vault over a vaulting 'horse'. As she did, she said she caught her feet on the box and fell forward beyond the crash mats, fracturing both her wrists. The claimant was aged seven at the time.

The claimant claimed damages from the defendant for her injuries. Her allegations included failure of one of the teachers being close enough to the vault to support her if necessary, there were insufficient teachers to supervise the class of up to 30, the crash mats were insufficiently placed, and she hadn't been properly instructed how to use the vault. At trial she amended her claim to say there were no mats.

Ten years had elapsed between the accident and the defendant being notifi ed of the claim.

The defendant denied liability, contending the crash mats were suitable in size, being at least 25mm deep, and suitably placed. They argued the lesson was adequately supervised. They said that children of the claimant's age would not be told or permitted to vault over the vaulting horse. The two sections of it were about 94cms in height but they would only climb on to the top section, about 40cms in height, and jump off on to the crash mat. They believed that the claimant fell forwards on to her hands while jumping down.

The hospital records recorded that the claimant jumped off a box and landed on outstretched hands – there was no mention of vaulting. The defendant denied the accident was reasonably foreseeable, that they could have taken any steps to avoid it, or that they failed to take reasonable care for the claimant's safety. They said that if the claimant did vault over the vaulting horse as she says, the accident was caused or contributed to by her negligence in failing to follow instructions.

The judge considered the evidence, noting that it was not disputed that before the lesson in question the children in this class had only ever climbed on to the horse and jumped off. The judge noted conflicts in the claimant's evidence and said she had failed to establish the defendant's liability. The claim was dismissed.

The judge accepted the claimant forming a view of her accident but said she was wrong and this was understandable as it happened 13 years ago. The claimant only notified the defendant of a claim 10 years after it occurred but the defendant was still able to provide credible witness evidence of the events. The claimant's own evidence did not satisfactorily support her case – the unexplained conflicts and improbability of key areas of it resulted in the court rejecting it, preferring the defendant's persuasive and credible evidence.

Injury not caused by delay

CARE WORKERS – SAFE SYSTEM OF WORK – FORESEEABILITY – MANUAL HANDLING – PUWER
Roberts v Bristol City Council, 21.05.10, Bristol County Court

The claimant worked for the defendant as a home care assistant. She claimed damages for personal injury in relation to two matters, an alleged assault and a method of carrying out a particular task.

With regard to the alleged assault, the claimant said a resident at the care home where she worked, X, a lady in her 80s, assaulted her. She alleged the defendant was responsible through its negligence. There had been no previous similar incidents.

The judge held that,

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Injury not caused by delay

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"The judge said it was commonsense there would be a time gap between carrying out the assessment and delivering the new equipment."

although X was capable of assaulting a healthcare assistant, there was no evidence that she had ever done so. The defendant could not have reasonably foreseen that X would assault the claimant and held that she had not assaulted her as such.

With regard to the second allegation, the claimant alleged she developed a back injury from the equipment with which she and an assistant were required to help another resident, Y. The claimant alleged that the defendant's failure, for nearly two weeks, to provide a better type of slide sheet (a 'Ross Turner') amounted to a breach of both reg.4 of the Manual Handling Operations Regulations 1992 (the MHO) and reg.4 of the Provision and Use of Work Equipment Regulations 1998 (PUWER).

The claimant accepted that a suitable risk assessment had been carried out but the question was whether sufficient steps were taken to reduce the risk of injury to the lowest level reasonably practicable.

The judge said it was commonsense there would be a time gap between carrying out the assessment and delivering the new equipment. He held the defendant had taken reasonable steps under the MHO to reduce the risk of injury.The court heard of the claimant's extensive experience of lifting and moving objects in the course of her work, and considered liability under PUWER. Essentially, the claimant alleged the defendant had not provided her with suitable work equipment while awaiting delivery of the new slide sheet.

The judge disagreed, saying that a Rolls Royce might be a better car than others but those others are not unsuitable for their purpose. The judge considered the causal link between the claimant's injury and the time before the new slide sheet arrived. He held that, although this type of slide sheet would have made the task easier, its absence did not cause the claimant's injury. The job might have led to her back problems but these were not caused by any breach of duty by the defendant. The judge held the claimant was not a malingerer and she was telling the truth, but dismissed the claim.

Where a risk assessment has been properly carried out and suitable equipment provided, an employer will not necessarily be liable for an employee's injury. This will particularly be so where the employee had a wealth of experience in the task, had not identified any particular training that should allegedly have been given, nor shown that any training would have avoided the injury alleged. Further, where delivery of a type of equipment is awaited, other available equipment that had been regularly used without complaint was not to be regarded as unsuitable simply because the awaited equipment was more sophisticated.

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

NOTICEBOARD

Operational Risk Registers

A number of updated ORRs are being received for the financial year 2010/11 which contain actions for control improvements which should have been completed in 2009/10.

For example ORR dated 1 October 2010 but on examination of the register it states that control improvements will be implemented by 31 March 2010.

Where identified, control improvements are important to ensure that those risks are being managed to an acceptable level.

Owners of registers should ensure that any actions are carried out on or before the due date. In addition, the QPR champions in each service should be monitoring ORRs to ensure that this happens.

Please note that Rob Walters is retiring in March 2011, so if you have any amendments, please send these to him by Friday 4 March.

Any amendments to ORRs after that date should be sent to Caroline Wilson, Group Auditor, who will be taking over responsibility for checking and summarising these documents and reporting progress to SRMG.

Strategic Risk Register

Reminder: Position Statements should all have been returned by 31 December 2010.

Together these form the Council's Strategic Risk Register.

If you have not already done so, please complete them and send them to Carol Andrews as soon as possible.

SRMG Intralinc site

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

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