

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 At the January 2019 Audit Committee members were advised that, as part of the 2018/19 Internal Audit Programme, Lincolnshire County Council would conduct an audit of the council's risk management arrangements. As reported in the Head of Internal Audit Annual Report and Opinion, substantial assurance was provided. The two recommendations have now been implemented:
 - The standard decision making report template has been updated to include a section on Risk.
 - The Strategic Risk Register has been reviewed and reframed under strategic risk areas.
 - Financial Resilience
 - Safeguarding Vulnerable Persons
 - Organisational Leadership and Governance
 - Workforce Planning
 - Stakeholder Engagement
 - Service Delivery and achievement of intended outcomes
- 2.2 The latest edition of Risk Roundup has been published. The newsletter includes important articles on significant risk topics such as health and safety, information governance, fraud and insurance.
- 2.3 A training tool to help staff use the risk management system has been produced in a presentation format. This has been published on Top Desk.

3. OPTIONS FOR CONSIDERATION

3.1 The Committee should consider whether this update provides sufficient assurance on the adequacy of risk management arrangements. The Committee invited to ask questions about the contents of the report and seek clarification as necessary.

4. ANALYSIS OF OPTIONS

4.1 The progress report is designed to provide this Committee with the assurance required to fulfil its role effectively

5. FINANCIAL AND OTHER RESOURCE IMPLICATIONS (e.g. LEGAL, HR, PROPERTY, IT, COMMUNICATIONS etc.)

5.1 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.

6. OTHER RELEVANT IMPLICATIONS (e.g. CRIME AND DISORDER, EQUALITIES, COUNCIL PLAN, ENVIRONMENTAL, RISK etc.)

6.1 Financial, service, personal safety and reputational issues are considered when evaluating both strategic and operational risks.

7. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

7.1 An Integrated Impact Assessment is not required.

8. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

8.1 There are no conflicts of interests to declare.

9. RECOMMENDATIONS

9.1 That the Audit Committee considers the assurance provided by the Risk Management progress report on the adequacy of risk management arrangements.

DIRECTOR OF GOVERNANCE AND PARTNERSHIPS

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Background Papers used in the preparation of this report – None

RISK ROUND UP

A digest of risk management issues

Issue 30 July 2019

Health & Safety Risks



1 Council prosecuted after wall collapses on child

The Council pleaded guilty to breaching Section 3 (1) of the Health and Safety at Work Act 1974 and was fined £133,333 and ordered to pay costs of £21,419.55.

Basildon Borough Council has been fined after failing to maintain a brick boundary wall that collapsed and seriously injured a six-year-old girl.

An investigation by the Health and Safety Executive (HSE) found Basildon Borough Council failed to take any action after receiving concerns about the wall's condition from private tenants, two years prior to the incident. Wider concerns about the poor condition of brick walls in the vicinity, including council-owned walls, were not passed to building control or the Council's inspections teams.

The Council pleaded guilty to breaching Section 3 (1) of the Health and Safety at Work Act 1974

and was fined £133,333 and ordered to pay costs of £21,419.55.

HSE inspector Tania van Rixtel said: "This was a wholly avoidable incident which could easily have been fatal. If Basildon Borough Council had properly recorded residents' concerns about the state of the walls, then a suitably qualified individual could have been engaged to identify the level of risk and instigated the required remedial action. Despite the low frequency of wall collapses, they are high consequence events requiring those with the responsibility for structural safety to take proactive measures to ensure that boundary walls and other structures are safely maintained."

2 Bristol City Council prosecuted after worker thrown from tractor

The Council was fined a total of £20,000 and ordered to pay £4,700 in costs.

Bristol City Council has been ordered to pay almost £25,000 for safety failings after a park keeper suffered serious injuries when she was thrown from a tractor as it overturned.

Bristol City Council has been ordered to pay almost £25,000 for safety failings after a park keeper suffered serious injuries when she was thrown from a tractor as it overturned.

The court heard the park keeper, who was carrying out maintenance work, was driving the tractor with a trailer attached and had braked as the tractor descended a slope. The vehicle skidded and she turned to avoid a fence

but it overturned, throwing her from the seat.

HSE found the tractor was not fitted with a seat belt or any type of restraint and the Council failed to ensure their employee had received adequate training on the use of the tractor.

The investigation also identified the nearly new tractor and trailer had been acquired by Bristol City Council shortly before the incident but outside the normal procurement procedure and, as a result, no supplier training was provided.

The Council was fined a total of £20,000 and ordered to pay £4,700 in costs after admitting two breaches of the Provision and Use of Work Equipment Regulations 1998.

Information Governance Risks

3 Council hit by cyber attack reveals £2m cost

The authority said it had brought in experts to better protect the authority from any future attack.

Copeland Borough Council has revealed that an attack on its systems in August 2017 has cost it about £2m.

The hack locked staff out of a number of council services, including payroll, planning and environmental health.

The authority said it had brought in experts to better protect the authority from any future attack.

Copeland, Islington and Salisbury councils were all targeted in the Bank Holiday cyber attack, in which hackers demanded a bitcoin ransom to regain access to encrypted files. No sensitive data was taken.

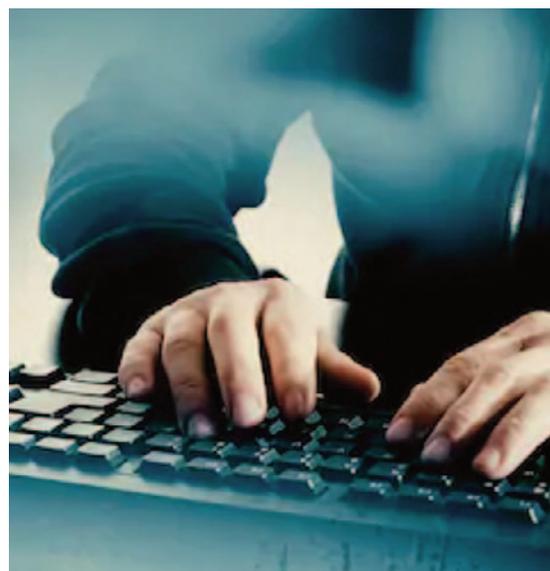
Some processes were not restored until February this year.

The council said the attack could not have been prevented because the virus used was so new at the time that it was not detected by antivirus software.

Council teams now use cloud storage for key documents.

The authority has also invested in more up-to-date IT equipment, introduced compulsory training and redesigned its internal networks to ensure they can be isolated in the event of a similar attack.

Police and the Information Commissioner's Office are investigating the attack.



4 Newham Council fined £145,000 over gangs' list leak

The Information Commissioner's Office (ICO) fined the borough £145,000 for disclosing personal details of people on the list.

A London council has been fined after a Metropolitan Police list containing names of suspected gang members ended up in the hands of rival gangs.

The unredacted list, which included addresses of 203 alleged gang members, was leaked after being emailed to others by a Newham Council worker.

Investigators said some on the list had been "victims of violence", but it was "not possible to say" if the attacks had been a result of the breach.

Newham Council has apologised.

The Information Commissioner's Office (ICO) fined the borough £145,000 for disclosing personal details of people on the list.

In January 2017, the council worker sent

a copy of the list in an email to 44 recipients including the council's Youth Offending Team and other external organisations.

It has not yet been revealed how, but rival gang members then managed to obtain photos of the list via Snapchat between May and September that year.

News about the leak emerged as part of a serious case review into the murder of 14-year-old Corey Junior Davis who was shot dead in a playground in Newham on 4 September 2017

Newham Council said that following that review it had made changes "to ensure all data is protected" and apologised to Corey's mother "for the profoundly regretful data breach."

5 Former council officer fined for emailing CVs of rival job applicants to his partner

Not respecting people's legal right to privacy can have serious consequences, as this case demonstrates.

A former senior local government officer has been prosecuted for passing the personal information of rival job applicants to his partner.

In July 2017, his partner applied for an administrative job at the council and he was not involved in the selection process because of his personal relationship. However, he accessed the authority's recruitment system and emailed the personal information of the nine rival shortlisted candidates to both his own work email address and also his partner's Hotmail account.

The recruitment packs he shared included the name, address, telephone number and CV of each candidate, along with contact details for each of their two referees. That was against the law.

The court was told that once the data breach had been discovered, the officer resigned and

although his partner had initially been successful, her employment was also terminated because she had been appointed on the basis of an invalid recruitment process.

He admitted a charge of unlawfully sharing data in breach of s55 of the Data Protection Act 1998 and was fined £660 and was also ordered to pay £713.75 costs and a victim surcharge of £66.

Steve Eckersley, Director of Investigations at the Information Commissioner's Office, which brought the prosecution, said:

"Not respecting people's legal right to privacy can have serious consequences, as this case demonstrates. Not only might you face a prosecution and fine, along with the attendant publicity, but you may also lose your job and severely damage your future career prospects."

Fraud Risks

6 Boiler grant fraud: Council did not 'deter' fraud

Out of a sample of 100 applicants checked by his team, he said 21 did not meet the criteria for grant aid.

A council failed to deter or prevent fraudulent claims in a boiler grant scheme it was managing for the UK government, an investigation has found. Auditors found one-fifth of claimants in a sample of 100 were not poor enough to qualify under the ECO2 scheme.

ECO2 was the second phase of a UK government programme to help reduce carbon emissions and tackle fuel poverty by paying for the installation of new gas boilers.

For administering the scheme, the council was paid £150 a time for checking the eligibility of each claim processed, according to the Local Democracy Reporting Service.

Following complaints from a group of local firms calling themselves the Powys Plumbing Group, independent auditor SWAP was called in by the council.

SWAP assistant director Ian Halstead told an

audit committee meeting while the authority charged the fee, there was no checking of financial or fuel poverty criteria, and "minimal" record-keeping.

Out of a sample of 100 applicants checked by his team, he said 21 did not meet the criteria for grant aid.

"Vetting procedures did not show due diligence and did not deter or prevent fraudulent claims," Mr Halstead said.

Powys accounted for more than 2,000 ECO2 installations out of a UK total of 15,500.

Prevention & protection advice

- Always consider the risk of fraud at the outset of any new initiative
- Design fraud prevention into procedures
- If in doubt seek advice from the Assurance People.

7 Council officers jailed for £1m housing benefit scam

Menelik Cowan, 38, was sentenced to six and a half years behind bars at Southwark Crown Court yesterday afternoon.

A group of seven London council officers have been jailed for a combined total of 17 years for stealing more than £1m through a housing benefit scam.

The officers created fake housing benefit claims over a period of six years while working as benefit assessors for Lambeth, Kingston, and Barking and Dagenham councils.

Menelik Cowan, 38, was sentenced to six and a half years behind bars at Southwark Crown Court yesterday afternoon.

He was found guilty of stealing £293,147 from Lambeth Council over six years.

Mr Cowan and his six associates had denied fraud but were convicted by a jury following a three-month trial.

The other six defendants were given prison sentences of between 18 months and three and a half years.

Ben Reid, a specialist prosecutor in the Crown Prosecution Service's (CPS) specialist fraud division, said:

"These council-employed assessors were trusted to look after badly needed public money meant to help people find somewhere to live. Instead they corrupted the systems and sent over £1m to money

launderers in the criminal underground".

During their trial, the gang said that they did not know the claims were false and were processing papers handed to them by managers.

But the jury was shown messages exchanged between those involved planning the scam.

They would identify properties to pay out housing benefit, collect details for false claims and arrange fake appointments through their jobs at the councils. They would later approve the claims and prevent letters from being sent out to the homes in question.

The stolen money was sent to accounts controlled by money launderers, who left the UK before they could be charged.

Prevention & protection advice

- Identify unusual claim activity – for example;
 - where no award notifications have been issued;
 - where there has been no customer contact; or
 - where all activities on a claim are carried out by one officer.



8 Housing manager defrauded council to help vulnerable



The officer forged invoices and letters from housing suppliers while working for Southend Borough Council.

A council housing manager defrauded his employers of £300,000 to help 'vulnerable' people because he felt guilty, a court heard.

The officer forged invoices and letters from housing suppliers while working for Southend Borough Council.

Basildon Crown Court heard the officer had not benefitted personally and wanted to help 'put a roof over people's heads'.

He was jailed for 18 months.

He had pleaded guilty to three counts of fraud by abuse of position and one count of attempted fraud by abuse of position.

The court was told that the officer felt guilty and had made a promise never to harm anyone after an elderly couple froze to death when he had inadvertently cut off their gas supply while working for an energy company.

The court was told how he 'cut corners' to give public funding to two Southend housing projects, after rule changes meant they may not have been eligible.

He also invented invoices to pay rent for a

family without a home just before Christmas 2016.

In mitigation, the court heard that he had suffered a breakdown two months before he began his crimes in May 2015.

But Judge David Owen-Jones said: "It is the hard working residents of Southend who suffered.

"They are the council tax payers and everybody knows how difficult it is with reduced income for local councils to operate".

A spokesman for Southend-on-Sea Borough Council said the officer was no longer employed by the council and it was "reviewing our internal procedures to help minimise the risk of this happening again".

Prevention & protection advice

- Ensure that there is a clear segregation of duties on financial systems
- Ensure budgets are properly monitored
- Report any suspicions of financial irregularity to the Assurance People.



9 Resident handed £12,000 council tax bill during local authority worker's 15-month fraud spree

The fraud was detected when a resident flagged up a council tax bill totalling £12,470.94, which has since been paid back by the former staff member.

A cashier for Perth and Kinross Council swindled thousands of pounds by fiddling council tax accounts and reversing transactions, a damning report has revealed.

The thefts were uncovered in an internal audit by the local authority, which said the former employee, who has been reported to the police, had been tweaking accounts for more than a year before being caught, due to inadequate checks and record keeping.

The fraud was detected when a resident flagged up a council tax bill totalling £12,470.94, which has since been paid back by the former staff member.

The audit report said the cashier had taken the money from accounts which were in credit, so they would not be flagged up as arrears when money was taken.

"One cashier had routinely been reversing some cash transactions where the reversal would not highlight an account as being in arrears. Other cash transactions were also

reversed for the payment of items such as trade waste sacks".

"The thefts were undertaken by reversing cash transactions from earlier in the day, whilst not maintaining adequate records of the reason for reversals, either on the system or manually. Furthermore, there was no independent review of reversals to ensure these were appropriate".

The report added "high level controls" have been put in place following the thefts, including recording all transactions and explaining any reversals with supporting paperwork, which will be checked daily.

Prevention & protection advice

- Ensure that there is a clear segregation of duties on financial systems
- Ensure budgets are properly monitored
- Report any suspicions of financial irregularity to the Assurance People.

10 Reading Borough Council defrauded by abuse of direct payments system

Bia Abdul, 45, submitted bogus invoices for private care services between 2013 and 2016 in order to receive payments.

A woman who claimed more than £60,000 in benefits for care her disabled daughter never received has been given a suspended prison sentence.

Bia Abdul, 45, submitted bogus invoices for private care services between 2013 and 2016 in order to receive payments.

She was found guilty at Reading Crown Court of eight fraud offences, and handed a two-year prison sentence suspended for two years. Abdul was also ordered to do 50 hours of unpaid community service.

In three years of fraudulent activity, Abdul supplied the direct benefits payment team with fake information suggesting she was using the money for her daughter's professional care; but in reality she had used the money for things unrelated to her care.

Abdul gave the council fake information, which was supported by false payment references in

her online banking statements.

She also generated a large number of false invoices for several care companies, one of which had not supplied her daughter's care since 2013.

The court heard how she took great care to make sure she wouldn't be caught, going to extensive lengths to deceive the council

The deceit was uncovered after discrepancies were spotted by council staff in her paperwork.

Recorder Patrick Talbot told Abdul she had shown "no remorse" and that her "culpability was high", a statement from Reading Borough Council said.

A jury found her guilty following a 12-day trial of fraud by abuse of position, concealing criminal property, three counts of furnishing false information and three counts of fraud by false representation.

Insurance Risks

11 Gran suing council for £100,000 for injured arm exposed as liar after taking ice bucket challenge

A grandmother who tried to sue North East Lincolnshire Council for £100,000 was exposed as a liar after she was seen taking part in an ice bucket challenge video.

A grandmother who tried to sue North East Lincolnshire Council for £100,000 was exposed as a liar after she was seen taking part in an ice bucket challenge video.

Rachel Marie Brown from Grimsby was accused of "mindless extortion of the public money" after claiming the huge sum in a personal injury claim, saying she had been injured in an accident and could barely move her right arm.

The 50-year-old said she needed constant help from family members with basic household tasks, shopping and gardening and said she was unable to lift her grandchildren or lead a normal active life.

But after Brown was seen in a video taking part in the charity ice bucket challenge without any difficulty, council investigators started to check her claim.

She was monitored and was seen going to an appointment with a medical expert as part of her claim, telling them she told couldn't move her shoulder or elbow.

But on the same day investigators then saw her lifting a pushchair onto a train and carrying her grandchild.

Following the surveillance operation, the Council challenged Brown's case, accusing her of 'fundamental dishonesty'. Brown, immediately withdrew her claim.

However, the council pursued the case and District Judge Robert Thomson made a finding of fundamental dishonesty at Hull County Court against Brown.

She was also ordered to pay the council legal costs.



Speaking after the case, Scott Clayton, head of claims fraud at Zurich which covers NELC, said:

"This was a straightforward attempt of mindless extortion of the public money. The claimant did suffer some injuries as a result of the accident but the extent of exaggeration of the damage was such that our customer, the council, had to pursue the fundamental dishonesty charge to demonstrate the zero tolerance to fraud approach".

Suzanne Milne, casualty fraud partner at Weightmans LLP which represented the council, said:

"This case demonstrates the commitment of local authorities and their insurers to protect public funds by robustly investigating and defending suspected fraudulent claims. We hope this outcome sends a message – dishonest claims for compensation are not victimless crimes, they are incredibly costly to the wider community and will be treated accordingly".

Court Circular

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

NEGLIGENCE

LOCAL AUTHORITY FOUND TO HAVE BREACHED THEIR DUTY OF CARE AFTER A PUPIL KICKED A TEACHER.

Clarke v Hull City Council, 04.03.2019, Queen's Bench Division

The Defendant, D, a local authority, was appealing a decision that it had breached its duty to take reasonable care of the Claimant's, C's, safety at work.

C was manager of a special teacher unit at a school for children with special needs. Whilst restraining a pupil he was kicked several times in the knee. He was dismissed from his position three years later. He subsequently took a claim against D stating that the deputy head teacher, W, who was present at the incident, should have intervened. D denied it had breached its duty and claimed contributory negligence. There was a dispute around the fact of whether C had been repeatedly kicked. A medical report stated C had degenerative damage to his knee from arthritis and these changes had been "accelerated" by the school incident. The judge at first instance relied on C's incident form and on the incident form submitted by W which stated C had been "kicked in the knee, injured".

The pupil was also on record for kicking other staff members. It was held that on the balance of probabilities, C had been repeatedly kicked which established "the mechanism for the incident". In addition, W's failure to intervene established a breach of duty by D.

The appeal court held that the judge was entitled to find that C had been repeatedly kicked. The judge had found the witnesses to be decent and upright persons doing their best but had properly noted deficiencies in the evidence and made findings which were partly in favour of both parties. She based her finding that C had been repeatedly kicked on contemporaneous documents produced before the consequences of his injury had become clear, and before litigation was in contemplation.

It was also held that the trial judge was entitled to find that W had seen the kicking

(or should have seen it) and therefore ought to have stepped in and restrained the pupil. This finding was partly based on W's own evidence of what actions he would have taken if he had seen any kicking.

Finally, regarding the issue of causation, the appeal court held that the instant case was not a material contribution case. C could either show the repeated kicking permitted by negligent failure to intervene caused his injury or he could not. D had submitted at trial that if the pupil was kicking C, and W was walking behind them and had done nothing, then it would be liable. However, it now argued that its concession had been more narrowly focused, and the judge should have made proper findings of fact regarding causation. D was not, however, able to explain why its point, based on the injury being caused by kicks before any negligent failure to intervene, had not been taken at trial. It was therefore inevitable that the trial judge would find evidence of repeated kicking and a failure to intervene and this was enough to establish causation.

For this reason, the appeal was dismissed.

Comment

This case provides a simple illustration on the law of causation and reliance on expert evidence by the court. Quantum was agreed at £50,000 subject to liability.

The full decision can be read [here](#).

HIGHWAYS

LOCAL AUTHORITY FOUND NOT TO HAVE BREACHED SECTION 41 OF THE HIGHWAYS ACT 1980 AFTER CYCLIST INJURED

Hilliard v Surrey County Council, 16.10.2018, Queen's Bench Division

The Defendant, D, was appealing a District Judge's decision that he breached section 41 of the Highway's Act 1980 and therefore was liable for damages.

The Claimant, C, had taken part in a 100-mile closed-road cycle event. There were 16,000 cyclists participating and they occupied the entire road. Section 41 of the Highways Act 1980 required D to maintain the highway at public expense. C hit a depression of around 30mm which was located on the carriageway, fell off his cycle and suffered an injury.

The organiser of the race had carried out a pre-race inspection and reported defects to D. Any defects over 40mm were to be repaired; those with less depth were to be monitored. D had also issued Thames Water with a notice under the New Roads and Street Works Act 1991, section 81. In addition, Thames Water had commissioned an inspection of the highway, which referred to "trip hazards". The depression which caused C's accident was identified as such. A further inspection was carried out by the race organisers in which the 30mm depression was not mentioned. Evidence showed that at the time C suffered the accident, 12,400 cyclists had passed the depression safely. The Judge at first instance held the highway was dangerous and D failed in its duty to maintain the road. C was awarded £38,000 in damages.

D appealed on the grounds that: 1) the judge at first instance applied the wrong legal test; 2) the fact 12,600 riders passed the defect without incident was not evaluated; and 3) placed undue weight on the Thames Water report which had been commissioned for a different purpose.

The Court discussed the legal test. *Rider v Rider* [1973] Q.B. 505 stated the question was whether there was a chance that someone would be injured, or whether that chance was so remote that the risk should be dismissed. This had not been overruled; however, the law had developed since the decision. *James v Preseli Pembrokehire DC* [1992] 10 WLUK 343 held that the defect in the highway had to present the sort of danger which an authority might reasonably be expected to guard against. *Jones v Rhondda Cynon Taff CBC* [2008]

EWCA Civ 1497 stated the highway had to be maintained so that it was reasonably passable for the ordinary traffic of the neighbourhood without danger caused by its physical condition.

This was deemed to be the correct approach and set out in the judgment at first instance. All authorities had been carefully considered and attention had been paid to the fact it was not permissible to impose an unreasonably high standard on a local authority, and there had to be a reasonable balance between public and private interest.

However, the order was set aside by the appeal court on the grounds that the fact the depression had been passed over by 12,600 cyclists without any problems provided overwhelming evidence that section 41 had been complied with.

Comment

This case clarifies the correct legal test regarding a breach of section 41 is *Jones v Rhondda Cynon Taff CBC*. *Rider v Rider*, although still good law, was not the test to determine whether a defect in a highway was dangerous.