

Somerset County Council  
Audit Committee 21 June 2018

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## **Service Showcase - Insurance**

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Cabinet Member: Cllr Mandy Chilcott for Resources

Division and Local Member: All

### **1. Summary/link to the County Plan**

- 1.1. Even with the best risk management possible, not every mitigation is going to be successful.

Somerset County Council provides a wide range of services to the public; it has a large workforce and engages with a large number of partner activities to achieve its vision. As a result, it is exposed to a wide variety of risks. Insurance cover is one of the key measures that the County Council puts in place in order to mitigate the larger financial risks where we are deemed liable and to also ensure that our assets and business continuity is covered.

- 1.2. Following on from interested comments from Audit Committee members at Cabinet in February 2018, when the insurance tender renewals were approved, it was agreed to schedule a “service showcase” to provide the necessary assurance to members. This report, which will be supplemented by a short presentation at the public meeting, sets out how Somerset County Council arranges its insurance provision and provides some information to inform members on the service’s performance.

### **2. Issues for consideration**

- 2.1. Members are asked to consider the service information as outlined in this report, and to comment on the service provided.

### **3. Background Information**

#### **3.1. Insurance Team**

Somerset County Council’s Insurance Team comprises 7 members of staff. The Service Manager provides overall management and is the technical lead for the County Council. Recently, she has been appointed as the Chair of the South West Local Authority’s Insurance Group. The Service Manager reports to the Strategic Manager – Financial Governance (Deputy s151 Officer).

There is one Claims Officer, who deals with the more complex and costly claims against the County Council, and who manages 2 Insurance Assistants who deal with more routine claims such as highways public liability claims (“pothole claims”) and motor claims.

There is one Technical Insurance Officer, who leads on insurance policies and guidance, who manages an Insurance Assistant who manages the Supply Mutual Fund for schools.

There is one Senior Financial Assistant, who manages payments on behalf of the team and recharges to services from the Insurance Fund. She is also responsible for the team’s web pages and asset register.

In addition to providing a comprehensive service for the County Council, the Insurance Team provides a claim handling service for Taunton Deane.

### **3.2. In-house management**

The service ethos is to manage as many claims as possible in-house (up to a £100,000 claim limit following our last tenders). This has the double benefit of our being able to have greater control over how claims are managed, and at a fraction of the costs, that would be required to have an external insurance service provide these functions.

This requires suitable training for all staff involved, and this is carried out by a variety of means, such as training days hosted by our insurance solicitors, active participation in ALARM (Association of Local Authority Risk Managers) and by a strong internal training and development programme.

Being in house also allows the Insurance Team to interact with services to a greater extent than an external provider would be able to, providing a range of events, communication and advice to them and to schools, seeking to improve operational risk management and minimise the number of successful claims made against the authority. Site visits to schools have been delivered in the past including 16 risk management reviews with our insurer ZM.

Our external insurance solicitors provide training days and advice to the insurance team. The Insurance Fund has recently supported Highways by covering 50% of the cost to send all of their staff who are affected by the New Highway Management Policy on the required qualification training.

In October 2017 and February 2018 Insurance paid and arranged for 31 SCC Officers to attend training on the IOSH (Institute of Occupational Safety and Health) managing safely course; they are now all IOSH qualified.

The aim is to be proactive in our strategies and ensure that Insurance is known to be the support or guidance for any new or ongoing risk to the Council.

Not surprisingly, our in-house services are audited to make sure that they are sufficiently robust in order to assure the external insurers that we are acting in a professional manner and are not going to cause them financial losses.

Therefore, our insurers carried out a “claims audit” in May 2017. The Insurance Team scored 93% (Merit) on this audit, which was a significant improvement on the 2016 audit, which scored 84.4% (Requires Improvement). This Merit score was despite some staff vacancies within the team (now filled) and the implementation of a new dedicated insurance IT system (now completed and working well).

In addition, SWAP carried out an audit on the insurance function in 2017/2018 as part of their review of nationally known fraud targets, to ascertain whether or not there were suitable controls in place. (Insurance fraud is one of the top 10 frauds perpetrated against local authorities). The SWAP audit concluded that the controls in place were good, and made no recommendations as to improvements or to the need for future work.

### **3.3. External insurance policies**

Along with many other local authorities, Somerset does not operate a “ground up” cover (100% externally insured) for the majority of its insurances as this would be prohibitively expensive and therefore not cost effective. This means that not only are smaller value claims managed in-house by the Insurance Team, but that these risks are not insured against with an external provider and fall directly to the County Council.

At the other extreme, not having any external insurance cover at all is an unacceptable financial risk. The more considered debate is the level of deductibles (excesses) that the County Council includes within its external cover. There is a trade-off between the amount of risk the County is willing to accept, set against the amount it is willing to pay for external insurance cover. The lower the deductible, the higher the premium will cost.

This is never an exact science, because it is not possible to know exactly what claims will be made in a given period, or what the extent of the County Council’s liabilities might be. However, it is possible to form judgements from previous claims history and the knowledge of the wider insurance market.

Historically, the County Council has had relatively high levels of deductibles (when benchmarked against other local authorities) meaning that its annual insurance premium costs are probably lower than the average, but that it will meet all the costs up to the deductible limit itself, so potentially exposing itself to more risks. Therefore, the opportunity was taken during the recent tender process to test the market at both the existing deductibles and at a lower limit to reduce our risk exposure.

By way of example, bidders were asked to provide quotes for both Motor Fleet and Public Liability at £250,000 and £1,000,000 deductibles per claim, and Officials Indemnity and Professional Indemnity at £100,000 and £1,000,000 deductibles per claim.

The recent tender exercise resulted in Cabinet approving policies that had lower deductibles in some cases (particularly motor and crime), wider cover in terms of what is insured against (such as our Crime cover as opposed to Fidelity Guarantee cover previously), and the premium costs (excluding Insurance Premium Tax) reduced by £74k per annum (over £0.5m if the covers all run for the maximum 7 years).

A definition of the insurance policies operated by SCC from 1<sup>st</sup> April 2018 is included at Appendix A to this report. Subsequently to the main tender process, a separate process was run for terrorism cover (a very specialised market) and a new policy obtained that has very low deductibles in the event that there is such an incident. A comparison was carried out for a larger deductible but the cost saving was negligible.

### **3.4. Claims handling and repudiation rates**

A total of 535 Claims were received in the financial year 2017/18 compared to 521 in 2016/17. Of the 535 claims received, 413 were Public Liability claims, of which 389 were claims against the Highways. Typically, at any one point, the Insurance Team will have between 250 and 400 claims open.

On a 4-year claims history (01/04/2014 to 31/03/2018) on all Public Liability claims SCC have a 94% repudiation rate. This means that in 94% of all such instances, Somerset was able to deny liability and no payments to third parties were made at all as a result. This is the result of very good claims procedures and record keeping that allow us to demonstrate that we are not at fault. This is the single key metric to determine performance on claims handling, and recent CIPFA Benchmarking shows that we are above the average performance (typically in the high 80%s).

Open claims have an average cost per claim of £6,688.04 and the settled claims within this period has a £3,250.44 average cost per claim. Whilst these are reasonable low and deemed acceptable to our insurers through their audit work, this particular statistic is always vulnerable to one large claim, which could skew the figures substantially.

### **3.5. Insurance Fund**

Costs of running the in-house provision, any claims settlements paid out, plus external insurance premiums and legal costs, are managed from year to year through our Insurance Fund. Costs are recharged to services.

A dedicated Insurance Fund is a mechanism that allows us to smooth costs over time for services, and also manage any large claims or spikes in costs. For larger cases, it can easily take more than one financial year to reach a final settlement. Premiums collected annually from services are therefore collected at a relatively stable budget level, and the Fund is used to make payments out as and when they arise.

A project for 2018/2019 is to review the recharges that we make to individual services to best reflect the risks that they present to the authority and the Fund. Some of the recharges are historically set and need to be adjusted. It is hoped that this will also make services improve their risk management processes.

The Insurance Fund is also part of Somerset County Council's financial resilience – it is an earmarked reserve that makes insurance payments without a call on other reserves or budgets. Grant Thornton will assess the adequacy of the Insurance Fund when looking at the County Council's financial position.

At the end of the 2018/2019 financial year, the Insurance Fund "balance" was £8.953m. Of this amount, £4.933m is effectively earmarked for specific known claims, where we have made an assessment of the potential claim values and legal costs if liability is admitted. Whilst the remainder of £4.020m seems a large amount, there are a number of potential financial exposures. There will always be a number of claims that are Incurred But Not Reported (IBNR), where we are unaware of potential liabilities against the County Council. There are also a number of potential historic liabilities that we need to hold balances to meet.

The levels that we are obliged to hold are subject to actuarial review, and the last analysis was that we needed at least £2.93m for these liabilities. With some inflation in claims paid out being noticed across the insurance industry, and with some of the new case law (below), we believe the Fund remains adequate, but the margin is not as great as it might appear.

### **3.6. External risks in the insurance market**

There are always national cases that will have an impact on our insurances, whereby a ruling as to the duties and liabilities in one case will have a profound impact on all local authorities.

Recent case law of note includes (our wording):-

**Woodlands V Essex**; a school had outsourced swimming lessons that were part of the curriculum. Due to the negligence of the third party provider, a legitimate claim was made. Judgement at the Supreme Court agreed that the authority responsible for the school had a non-delegable duty of care towards the pupil, making them liable for that negligence.

This was not an open ended liability; a local authority will only be held liable for contracted third parties if it is their duty to carry out the relevant function. As local authorities are increasingly seeking to outsource services, it is more important than ever to ensure that those third parties are reasonably competent and able to carry out services on behalf of the local authority. It should be noted, that this case may have far reaching consequences and apply to vulnerable adults, the elderly, patients and prisoners.

**CN v Poole Borough Council**; this case is to be heard by Supreme Court in July is significant to all those involved in litigating claims in negligence against local social services authorities. CN and GN, aged seven and nine years old, and their mother were rehoused by their local authority to a housing estate. CN suffered from severe physical and learning difficulties and was a 'child in need' under the Children Act 1989. All the agencies around this family were aware of a nearby family on the estate who had persistently engaged in anti-social behaviour. CN, GN and their mother suffered regular and significant harassment and abuse at the hands of these neighbours. The mother had previously asked the local authority to take the children into care. Previously, claims brought on behalf of children who had not been removed from the care of parents, and who were subjected to neglect and abuse, had been struck out. The Courts seem to be taking a different approach with CN so we await this decision and its possible implications.

### 3.7. Future Plans to develop the service

Innovative and resource providing ideas are continually being thought of and discussed at team meetings to ensure that the whole team keeps our department efficient, effective and relevant. The Insurance team pride themselves on running a dedicated service whose goals are to provide claimants and customers with the information that they require to answer their enquires and claims. We also ensure that we are up to date on the market changes for Insurance and that we keep up to date on case law and changes that the Courts are providing with new judgements.

We have previously run additional support for Taunton Deane as a maternity cover, and have supported Exmoor National Park, and we are looking to offer a wider service to other local authorities.

The **Supply Mutual Fund** (SMF) for LEA schools has been running for 21 years. This is an insurance scheme that partially offsets the costs of staff sickness absence at maintained primary and special schools in Somerset. Claims are met at fixed rates from an annual pool of premiums paid by member schools, and any surplus in the Fund at the end of the year is distributed back to member schools who have not exceeded their premium paid in claims. The Fund is collectively owned by the member schools but administered by the Council's Insurance Section. A Board drawn from member schools and other interested parties provides governance.

Due to more Schools transferring to become Academies the current fund is not sustainable moving forwards. In 2014 we had 170 member schools by 2018 the scheme is down to 131 schools. As with any mutual scheme, there needs to be a quantum to make it viable. In addition, the schools' requirements are changing, with many schools open all year round offering holiday and after school clubs. This produces a greater risk for sickness schemes covering staff on a 52 week basis

SCC Insurance are planning to start a new mutual Fund that will encompass SCC and other Council's LEA Schools, plus Academies, to create a mutual that will be competitive if not better cover than the commercial alternatives, with flexible cover options to suit. North Somerset schools are interested in joining from September 2019.

**Somerset and South West Academy Insurance.** The Insurance team have been working hard to set up a package insurance available to Academies within Somerset and the South West. This package will be ground up cover for all the insurance policies for an Academy, supplied by one insurer. The Academy Insurance plan will be administered by SCC Insurance and the insurer will pay us a percentage for each policy.

Longer term, the Insurance Team is looking to **provide an insurance service to a wider range of local authorities in the South West** and create a larger single team with more resilience, and with career progression for staff. There are a number of smaller authorities who either buy in this service from the private sector or are reliant on a single staff member.

#### **4. Consultations undertaken**

- 4.1. Consultations will always depend on the individual decision being made. For decisions around the terms and conditions of a new Mutual Fund, we will obviously consult with the LEA and with schools.

The Insurance Team will always seek to involve the services in any changes to the policy or any emerging risks.

Technical support is also provided by an external insurance broker.

#### **5. Implications**

- 5.1. Our insurance arrangements form a crucial part of the County Council's financial risk management.

#### **6. Background papers**

- 6.1. Cabinet Report on Insurance Tenders, February 2018.

**Note** For sight of individual background papers please contact the report authors