

CITY OF PLYMOUTH

Subject: Insurance Compensation Costs

Committee: Overview and Scrutiny Management Board

Date: 27th October 2010

Cabinet Member: Cllr Bowyer

CMT Member: Director for Corporate Support

Author: Mike Hocking, Head of Corporate Risk and Insurance

Contact: mike.hocking@plymouth.gov.uk
Tel: 01752 - 304967

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Part: I

Executive Summary:

At its meeting of 30th June 2010 Members of the Board requested information on the level of costs of insurance compensation payments.

This report summarises the number and cost of claims per annum for Public Liability and Employer's Liability for each of the twelve financial years since 1st April 1998 when the Council became a unitary authority together with information on the most common claims types.

The report also includes information about the structure of the Council's insurance programme, how claims are investigated and managed and how the costs are funded.

Corporate Plan 2010/13:

Management of the cost of compensation payments contributes directly to CIP 14 Providing Better Value for Money

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:

Insurance compensation costs are met from Insurance Provisions which are reviewed and monitored quarterly to ensure that the MTFP includes provision for adequate funding for predicted future costs.

Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment etc.

Claims trends are reviewed regularly both during investigation and at conclusion to ensure that early risk management action can be taken to minimise the probability of similar incidents occurring in the future.

Recommendations & Reasons for recommended action:

The Overview and Scrutiny board is recommended to:

- Note the current position with regard to the costs of compensation claims and how claims and costs are managed and funded.
-

Alternative options considered and reasons for recommended action:

Not applicable

Background papers:

Sign off:

Head of Fin	SW	Head of Leg	DS	Head of HR		Head of AM		Head of IT		Head of Strat Proc	
Originating SMT Member : Assistant Director, Democracy and Governance											

Overview and Scrutiny Management Board – 27th October 2010

Insurance Compensation Costs

1. Introduction

- 1.1** At its meeting of 30th June 2010 Members of the Board requested information on the level of costs of insurance compensation payments.
- 1.2** This report therefore now summarises the number and cost of claims per annum for Public Liability and Employer's Liability for each of the twelve financial years since 1st April 1998 when the Council became a unitary authority together with information on the most common causes of claims.
- 1.3** The report also includes information about the structure of the Council's insurance programme, how claims are investigated and managed and how the costs are funded.

2. Types of Compensation Claims – Public and Employer's Liability

- 2.1** Compensation claims made against the Council that are covered by insurance result primarily from two sources – Public Liability and Employer's Liability.
- 2.2** Public Liability insurance covers the legal liability, arising out of the Council's negligence, to pay compensation for injuries to third parties or damage to third party property. A typical example of a claim in this category would be where a member of the public slips or trips over a pavement defect.
- 2.3** Employer's Liability insurance covers the legal liability, arising out of the Council's negligence and/or breach of a statutory duty, to pay compensation for bodily injury or disease sustained or contracted by its employees in the course of and/or arising out of their employment. Typically this category covers accidents to employees where, for example, a failure in health and safety procedures led to the accident.
- 2.4** A more detailed list of cause types for both Public and Employer's Liability are included as appendices to this report.

3. Structure of Insurance Programme and how claims are funded

- 3.1** Single tier authorities are large and complex organisations which face a broad range of risks in delivering their statutory responsibilities and these give rise to an inevitably large number of claims.
- 3.2** This "predictability" has resulted in the insurance industry distancing itself from the associated financial risks by imposing large deductibles, or "excesses", on the larger authorities so that the majority of losses borne by the authorities fall to be met from their own funds.

- 3.3** Authorities therefore have to consider how much self-insured risk they are willing to accept within the constraints of the insurance market and balance the costs of making internal provision for meeting the cost of claims against the relative cost of insurance for different levels of deductible.
- 3.4** This exercise is carried out on a regular basis when insurance policies are renewed to ensure that the balance between self-insured retention levels and the purchase of external insurance continues to offer best value for money.
- 3.5** In Plymouth's case, the deductible is £100,000 for each and every claim which means that the Council has to meet the cost of individual claims falling within this figure. For claims costing in excess of this sum, the Council would be responsible for the first £100,000 of the claim with its insurer meeting the balance thereafter.
- 3.6** To ensure that the cost of claims within the deductible can be met, Insurance Provisions have been established which are funded by contributions from all Services based on historic numbers of claims and the costs associated with those claims. Services generating the largest number of claims and costs will therefore be subject to the highest contribution.
- 3.7** As there is a statutory accounting requirement for the Council to maintain levels of funding in these Provisions at year end that are at least equivalent to its known liabilities, the Provisions are ring-fenced.
- 3.8** This also means that the level of Provision contributions needs to be reviewed regularly against predictions of future costs based on an examination of historic claims frequency and costs.
- 3.9** At the end of the last financial year, as at 31st March 2010, the total amount held in Insurance Provisions for outstanding claims stood at £5.4m.

4. Public Liability Claims

4.1 Claims Numbers

The graph at Appendix A shows the number of claims received for each of the 12 financial years since 1st April 1998.

- 4.2** This shows a peak in 2001/02 when claims numbers were nearly 800 per annum followed by a sharp fall over the next five years to just over 400 in 2006/07.
- 4.3** There are a number of factors which have contributed to this fall in numbers - during the late 1990s there was a surge of activity by unregulated claims management companies encouraging the public to make claims against local authorities via aggressive media campaigns.
- 4.4** This development, widely believed to have been accelerated by the American experience, led to the "where there's blame, there's a claim" culture and this,

together with the advent of Conditional Fee Agreements (the “no win, no fee” contracts with solicitors), resulted in an increase in claims numbers nationally.

4.5 This led to a renewed effort in terms of risk management by local authorities to ensure that processes and procedures in areas like Highways and other services were robust enough to provide a defence to claims.

4.6 The in-house team also at this time re-enforced its robust philosophy towards settlement of claims, refusing to make “economic” settlements on nuisance claims or as a result of pressure from claimants’ solicitors – claims were, and still are, paid only where a legal liability can be established.

4.7 Claims Costs

The bar chart at Appendix B shows the ultimate cost (i.e. the total paid and outstanding) for each policy year and Appendix C shows the number and cost of claims for each year split between payments already made and estimates for claims yet to be settled.

4.8 The tables show that in twelve years the ultimate cost of claims is just over £15.1m and the Council has dealt with 6,421 claims and paid out £11.37m in settled cases.

4.9 It can also be seen that, although claims numbers have reduced as described in the previous paragraphs, costs have not followed the same pattern – this is due in part to the severity of injuries and losses in any particular year being unpredictable but is also due to some significant changes to the judicial system which have increased defendant costs.

4.10 These have included the introduction of success fees where claimant solicitors can claim an uplift of up to 100% of their base costs and the recovery by the NHS of treatment costs – the success fees in particular have led to an increase in “costs building” by claimant solicitors.

4.11 Appendix D lists the costs by department and shows that Highways, Housing, Parks Services and Children and Young People generate the largest number and cost of claims.

4.12 Causes of Claims

Appendix E shows the same cost information split across the full range of causes whilst Appendices F and G list the top ten causes by number and cost respectively and Appendices H and I list the top ten causes purely by cost.

4.13 Whilst the top ten causes by number of claims are varied, the top ten by cost confirm that claims due to surface defects on footways, carriageways and open spaces account for the majority of costs.

4.14 Plymouth compared with other Authorities

The Council is a member of the national CIPFA (Chartered Institute of Public Finance and Accountancy) Insurance Benchmarking Club and the results of a comparison with 18 unitary authorities in a selected peer group have recently been published.

- 4.15** Based on the last five years, this shows that Plymouth receives an average of 8.5 claims per 1,000 population against the unitary average of 9.1 and the average cost per claim paid is £4,064 against the unitary average of £4,471.

5. Employer's Liability Claims

- 5.1** The graph at Appendix J shows the number of claims received for each of the twelve financial years since 1st April 1998 and shows a peak of 62 in 2001/02 followed by a trend of falling numbers per annum to 34 in 2009/10.

- 5.2** The number of employees suing the Council for work-related injuries is therefore reducing significantly and this is indicative of a marked improvement in the corporate performance around the management of health and safety.

- 5.3** Appendix K shows the costs related to a total of 539 claims with the ultimate cost of claims predicted to be around £8.2m of which £6.8m falls to be met from the Council's own funds.

- 5.4** Appendices L and M show, respectively, the most frequently occurring causes of claims and the claims causes that have generated the highest costs.

- 5.5** The tables confirm that the most common causes of claims are manual handling and slips, trips and falls and that accidents due to lifting lead to the highest levels of compensation.

5.6 Plymouth compared with other Authorities

The CIPFA Insurance Benchmarking report confirms that the Council receives 11.7 Employer's Liability claims per 1,000 FTE against the unitary average of 17.9 in the Council's peer group of 18 comparable authorities, the second lowest in the group.

- 5.7** As referred to in para 5.2, this is a valid indicator of the comparative effectiveness of the Council's health and safety management arrangements.

- 5.8** In terms of cost, based on the last five years, the average cost of a paid claim for the Council is £11,164 compared with the unitary average of £14,236.

6. Claims Management

- 6.1** Local Authorities commonly rely on their insurance company or their appointed loss adjusters to carry out investigation of claims on their behalf because they do not have the expertise in-house and they pay a fee for this service as part of their insurance contract.

- 6.2** The Council, however, has undertaken this function completely in-house since 1998, when it became a unitary authority, employing professional claims staff to carry out investigations and manage claims from the initial receipt of claim through to defending the Council in court.
- 6.3** The decision to bring this service in-house was taken because it was recognised that the Council would face a substantial increase in claims numbers from areas like Highways, Social Services and Education and that it therefore needed to take control of costs that would fall to be met from its own funds for claims that came beneath its deductible of £100,000.
- 6.4** There are a number of other benefits to an in-house service:
- More cost-effective than external provision (£140k cheaper than external - see 6.7 below)
 - Greater control and ownership of claims
 - Quicker investigation and decision making
 - Improved risk management
 - Greater financial control over costs within the self-insured retention programme
 - Avoidance of “factory approach” by external handlers
 - Enables a consistent and robust stance to be taken on claims
- 6.5** The CIPFA Insurance Benchmarking Club referred to earlier in this report includes a comparison of the costs of claims handling and participating authorities record their total costs for this function split between external claims handlers (i.e. insurer costs), loss adjusters and any in-house provision.
- 6.6** The CIPFA report indicates that the Council’s in-house service costs equate to a charge of £126.50 per claim compared to the average across 65 other unitary authorities of £266.50.
- 6.7** As a significant majority of those 65 authorities use external claims handling agents rather than an in-house service, this equates to a saving of 53% against the cost of external provision. Based on the total number of claims handled in the Council, this translates into a saving to the Council of some £140,000 per annum.
- 6.8** The report also compares staffing levels and indicates that the Council has 0.41 Insurance FTE per 1,000 employees against the average across 65 unitary authorities of 0.62 – this represents 34% fewer staff than the average which is significant from a VFM perspective, particularly as the Council has an in-house claims handling team which could be expected to increase comparative staffing levels compared with authorities that externalise this function to their insurers or to loss adjusters.

7. Claims and Risk Management

- 7.1** It is important that the Council takes a pro-active approach to the area of insurance claims to ensure that claims trends are regularly monitored and that

lessons are learned from claims investigations.

- 7.2** Issues are therefore routinely brought to the attention of operational managers both during investigation and also at the conclusion of each claim to ensure that any failure in processes or procedures can be addressed to minimise the probability of similar claims occurring in the future.
- 7.3** In addition, claims data is regularly analysed for trends so that procedures can be reviewed in areas that generate high claims numbers – as an example, close working with colleagues responsible for the delivery of highways maintenance and repair involves regular reviews of the effectiveness of inspection regimes to ensure that resources are directed at areas of the city that generate the highest number of claims.
- 7.4** Other areas of operation that have been the subject of risk management reviews include tree maintenance, management of asbestos and legionnaire and playground inspections.
- 7.5** Specifically in respect of Employer's Liability claims, a close working relationship is maintained with the corporate Health and Safety Team with regular exchange of information regarding claims, accidents and near misses to ensure that any gaps in the management of health and safety can be addressed in order to either prevent accidents happening or to reduce the incidents of re-occurrence.
- 7.6** In addition, information on the number and cost of Employer's Liability claims and the associated risk management activity is reported to the Health, Safety and Welfare Committee as a standard agenda item.

8. Conclusion

- 8.1** Although the number and cost of Public and Employer's Liability claims made against the Council are significant, there is an encouraging trend overall of falling numbers but costs continue to be an issue as a result of changes to the judicial system that have put an additional burden on defendants.
- 8.2** Whilst falling numbers can be attributed in part to a down-turn in the activities of claims management companies, other major contributors are the pro-active and robust stance taken in the management of claims and the risk management measures undertaken in response to the identification of problem areas.
- 8.3** This pro-active approach will continue to be promoted throughout the Council to ensure that further improvements to the overall risk profile are achieved.

9. Recommendation

- 9.1** The Overview and Scrutiny board is recommended to note the current position with regard to the costs of compensation claims and how claims and costs are managed and funded.