

TRAFFORD COUNCIL

Report to: Accounts & Audit Committee
Date: 25 November 2021
Report of: Director of Finance and Systems

Insurance Performance Report 2020/21

Summary

This report provides a summary of insurance performance for 2020/21:

- Gross cost of the insurance activity was £1.171m; comprising £481k of premium costs and £690k for claims. Savings in costs of premiums and a reduction in the number of claims resulted in a net underspend of £66k against budget.
- The provision for outstanding liability claims was £3.215m as at 31 March 2021, compared to £3.162m as at 31 March 2020, an increase of £53k.
- Claim numbers received in the year 2020/21 have decreased with 284 new claims compared to 390 in 2019/20.
- Repudiation rates for liability claims remains consistently high at 73%. We successfully defend 3 out of 4 claims received.

Recommendations

That the report be noted.

Contact for access to background papers and further information:

Name: Dave Muggerridge
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Background Papers: None

1. Introduction

1.1 This report updates the Committee on the Council's insurance activities for 2020/21, the report focuses on:

- **Section 2** – Cost of Insurance
- **Section 3** – Claims
- **Section 4** – Achievements/Outlook

2. Cost of Insurance

- 2.1 The current insurance programme covers a broad range of insurable risks and a summary of these policies and the appointed insurers is shown in **Annex 1**.
- 2.2 Premium and claims costs are the main items of expenditure for the insurance budget with an annual provision made to cover the estimated cost of claims. An Insurance Risk Reserve allows us to absorb and smooth out any significant pressures during years when claims exceed the net revenue budget.
- 2.3 The Council's Insurance Provision was £3.215m as at 31st March 2021. This is the amount set aside by the Council to meet the cost of claims that fall within the Council's elected policy excesses as detailed in **Annex 1**. The level of this provision is reviewed by an external Actuary, on a biennial basis. They assess the likely growth of the cost of claims received and forecast the potential costs of claims which are yet to be reported (based on our claims experience).
- 2.4 The Insurance Risk Reserve is maintained in the event of a catastrophic insurance loss or a large number of high cost claims and is also used to balance any fluctuation in the overall provision level and additional costs associated with historical Municipal Mutual Insurance claims. The amount set aside is sufficient to cover the excess of three to four large insurance claims, where the Council is required to pay the first £275k/£250k. The Insurance Risk Reserve also includes £500k for potential additional costs associated with the MMI claims costs and a balance of £200k to smooth any fluctuation in provision level and cover any uninsured losses over budget. To support COVID risk and pressures £200k was redirected reducing the Insurance Risk Reserve to £1.7m.
- 2.5 The 2020/2021 net budget for insurance activity of £840k consists of insurance premiums of £536k, provision for claims of £712k, provision for self-insured loss claims of £100k (which are largely property related) and income from recharges to schools and trading functions at £508k.
- 2.6 The insurance budget is held within Council Wide, however is only reported in detail at year end due to the evolving nature of the way claims histories develop. An underspend of £66k was reported for 2020/21 which consisted of reductions in prior year claims provision of £122k, savings in premiums of £55k and additional income from schools of £14k. A figure of £125k was transferred to the Finance and Systems Reserve in recognition of the proactive work of the insurance team in delivering the underspend and to provide some relief in meeting the immediate savings target required from Financial Management in 2021/22.

Table 1 – Insurance Expenditure for 2020/2021	Budget £000	Actual £000	(Under)/ Over Spend £000
Premiums	536	481	(55)
Provision for Claims	712	590	(122)
Self-insured Loss Claims	100	100	0
Gross Cost	1,398	1,171	(177)
Income	(508)	(522)	(14)
Contribution to/(from) reserves		125	125
Net Cost	840	774	(66)

2.7 The balances of the Insurance Provision and the Insurance Risk Reserve at the 2020/2021 year end were:-

Table 2 – Provision and Reserve Balances			
Provision	£000:	Insurance Risk Reserve	£000:
Balance as at 01/04/2020	(3,162)	Balance as at 01/04/2020	(1,900)
Less Claims Paid	553	Transfer to COVID-19 reserve contribution to Revenue	200
Reassessed Provision	(606)		
Balance as at 31/03/2021	(3,215)	Balance as at 31/03/2021	(1,700)

3. Claims

3.1 Activity

Financial Year	Amount Paid in Claims Across All Policy Years (01/04/1992 to 31/03/2021) £000	Number of New Claims Received and Processed in Year
2020/2021	553	284
2019/2020	405	390
2018/2019	634	520

3.2 The current amount of claims paid during 2020/2021 is £553k, an increase of 37% when compared to 2019/20. This is partly due to the settlement of one large claim (those which carry a reserve in excess of £50,000) being made in the 2020/2021 period.

3.3 As a direct result of the pandemic and subsequent lockdowns, we have seen total claim numbers received (claims irrespective of policy year/date of incident) reduce overall by 27% from 390 in 2019/20 to 284 claims in 2020/21.

3.4 Overall Claims Profile.

Annex 2 provides an overview of our five years claims experience by policy year (01/04/2016 – 31/03/2021) split by class of insurance; Employer's Liability, Highway Injury, Highway Property, Highway Trees and Public Liability.

3.5 Trends and Observations:

3.6 **Employer's Liability** – We have a continued positive claims experience on this policy, this reflects the fact that Trafford's workforce is predominately office based and therefore, generally low risk.

Within the figures shown in **Annex 2**, there is a high value claim that occurred in 2017 which held a reserve of £363k. This case was successfully defended at the beginning the current financial year and the only payment made refers to Defence fees in the sum of £4k.

Highway Injury – As with other Local Authorities, Trafford has seen a decrease in highways claims made against the Council, as a result of the Coronavirus (COVID-19) pandemic. As a nation, we were advised to work from home and encouraged to use other forms of transport in an attempt to avoid travel on public transport. In 2020/21 we received 51 claims compared to an average of 74 per annum over the last five years. However, we must exercise caution as we are aware that in times of an economic downturn, claims - in particular fraudulent claims, have a tendency to increase. We will continue to work closely with our Insurers and internal Counter Fraud Team in order to deter and detect all potential spurious allegations.

It is also predicted that Local Authorities will begin to see an increase in claims involving cyclists as more people take to alternative methods of transport and people are encouraged to spend time outdoors.

However, we are pleased to report that we have not yet experienced an overall increase in cycle related claims during the current year. That said, we have received one large claim (those with a reserve in excess of £50,000) involving a cyclist which occurred in 2020/21, and which currently carries a reserve of £236,000.

We are investigating this matter closely with our Highways colleagues and alongside our specialist Solicitors to identify the dynamics of this incident and to establish if the Council is liable.

3.7 **Highway Property** – As with highway injury claims, the decline in road use has reduced the number of property claims made against the Council. The current number of claims received is significantly lower at 94 in 2020/21, when compared to an average over the five years of 208 per annum.

3.8 **Highway Trees** – The number of claims attributable to trees on the highways has risen by 68% to 52 claims in 2020/21 from 31 claims received in 2016/17 and an average of 45 per annum over the five years. Trafford has the difficult job of delicately balancing a commitment to supporting its ambitions under Manchester's Clean Air Plan alongside managing the common law duties of nuisance posed by trees in urban environments.

This year, the insurance team lead a review alongside our Insurers and Tree Unit colleagues to evaluate the Council's current strategic policies and procedures in order to help mitigate the increasing risk we are experiencing.

We have also sought independent legal advice on the defence and mitigation of these types of claims in order to protect Trafford's claims experience and budget expenditure whilst balancing residents' expectations. This is an area of ongoing commitment and review, please see paragraph 4.6 for more detailed information.

3.9 **Public Liability** – The number of claims received to date have decreased, however this is likely to be related to the numerous lockdowns, when services were not fully operational and some completely closed.

3.10 As highlighted last year, although the claims numbers for this policy are consistently low, claims involving high risk departments such as a Social Services do have the propensity to be extremely costly. For example, we currently have one Social Service claim within the 2018/19 period for Failure to Care, with a reserve of £100,000.

3.11 The changes made to the EU **General Data Protection Regulation** (GDPR) on 25th May 2018 present an emerging area of risk for Trafford. The changes in legislation have placed an increased level of responsibility on those who process personal data.

Individuals affected by a breach have the right to complain to the Regulator and the right to receive compensation for distress and damage suffered as a result of a GDPR infringement

To date, we have received 5 such claims (3 of which were received in the first half of the new financial year 2021/22). The total incurred (paid and reserve) is currently valued at £286k.

Please note that cover for GDPR claims sits within our public liability policy.

Please refer to section 4.4 for more detailed information.

3.12 Defence Rates

Class	Number of Closed Cases between Policy Years 01/04/2016 and 31/03/2021	Number of Closed Cases Defended between Policy Years 01/04/2016 and 31/03/2021	Defence Rate
Employer's Liability	13	10	77%
Highway – Injury	305	245	80%
Highway – Property	971	701	72%
Highway – Tree	161	103	64%
Public Liability	140	94	67%
Total	1,590	1,153	73%

3.13 Defence rate across all policies are high at 73% with a slight increase on last year at 71%. This increase demonstrates our continued commitment to fully investigate all allegations

made against Trafford, taking a robust stance on those claims where we have a defence in law and working collaboratively with all Council services to gather the documentary evidence required in order to support our defence.

- 3.14 The defence rate for Employer's Liability and Highway Injury claims in isolation are higher still at 77% and 80%, this helps us to highlight to potential insurers that Trafford have effective procedures in place, which have been translated in to lower costs of premiums over time. Our work with all Council services ensures that procedures are reviewed and where applicable, appropriate risk management improvements are made in order to prevent future losses.

Achievements / Outlook

4.1 LGA Mutual

At the beginning of the year, we participated in feedback sessions conducted by the Mutual as part of their self-review process, alongside the Leader of the Council.

It is understood that the Mutual was refining its proposition in preparation for a relaunch. The Mutual hope that this period of self-review will enable them to attract additional members when they relaunch. The timeframes for the proposed relaunch have not been finalised at the time of writing.

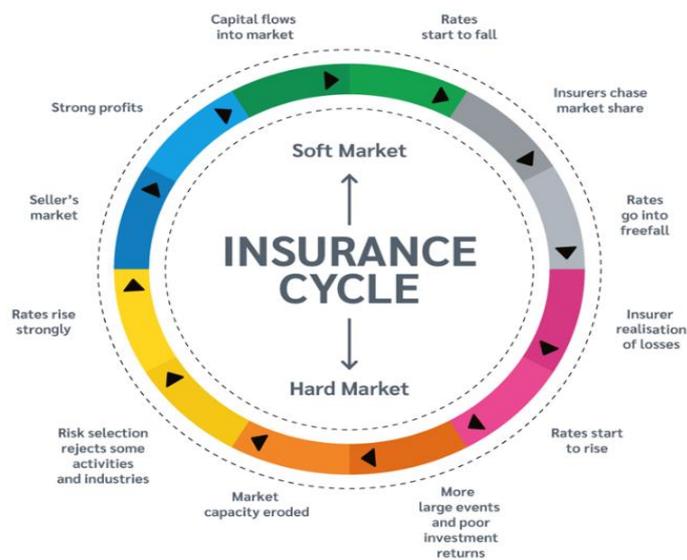
The Mutual was not operational when the Council carried out their full market tender in 2019. Our insurance portfolio was placed on a new 5 year long term agreement with our incumbent insurer. This agreement ends in 2023 and we will invite the Mutual to provide a quotation alongside the wider insurance market.

4.2 Insurance Market Update

As reported last year, insurer's approach to risk began changing before the effects of the global Coronavirus Pandemic were felt, global catastrophic events continued to impact the insurance market in the first half of 2020 with losses totalling USD30 billion. Since 2007, interest rates and investment returns remain low which severely impacts insurer's profit margins.

Insurers have also been severely impacted by above average claims activity, particularly business interruption losses, as a result of the Coronavirus disease, which sees UK insurers set to pay an estimated £2 billion. A further £152 million is expected to be paid in respect of travel insurance claims and £121 million in respect of other general insurance products which include events, wedding and liability insurance. (source: The Association of British Insurers (ABI) News/2021/02).

Indeed, we continue to see increased rates, reduced cover and some insurers withdrawing from the market. (Ref: Insurance Performance report 2019/20).



The Reinsurance markets have continued uncertainty surrounding any final Brexit outcomes in respect of insurer's ability to access the "single market". It has been reported that the London market lost £4.5 billion of premium to the European market in 2019 due to Brexit.

This is further driving insurers to tighten policy terms and reduce limits as they are unable to share the risk with reinsurers.

It has been widely publicised that we have entered the hardest insurance market in over 20 years, with pricing in financial and professional line policies seeing the highest rate of increase, followed by liability and property policies.

4.3 Covid-19

In terms of how Trafford's claims experience and loss portfolio has changed as a result of the pandemic, as mentioned in 3.3, the overall number of claims received has reduced by 27% when compared to 2019/20 (across all policies).

However, we have received 21 claims for cancelled school journeys and have successfully recovered £52k for Trafford schools in respect of planned trips that were cancelled due to lockdown and travel restrictions.

4.4 Data Protection Claims – Growing Risk

Considered by those in the market as the potential “next whiplash”, as claimant Solicitor firms explore new revenue streams. Solicitors have already been adversely impacted by fixed costs introduced on personal injury and whiplash reforms and in addition, the PPI window closed in August 2019.

As already mentioned, the introduction of the General Data Protection Regulations 2018, which aligns the UK with the wider EU Law, means that claimants no longer have to demonstrate that damage has occurred in order to bring about a claim; a claimant can now make a claim for mere distress.

Claimant Solicitors are taking to social media to advertise and provide advice on how to make data breach claims. The potential for claims has also increased, since lots of potential claimants have suffered due to the economic pressures caused by the pandemic and the heightened public awareness.

Whilst most data breaches are low level, they occur as a result of human error eg. emails sent to the wrong recipient, letters sent to incorrect addresses. This is a new area of law and consequently, there is little established case law for Insurers to draw upon at present. However, as more cases are heard, Insurers will have better guidance and will develop a framework of knowledge in respect of appropriate award levels.

Trafford’s Information Governance Team are working to mitigate our exposure to this risk and have implemented a number of training, software and procedural improvements in order to prevent future losses arising.

4.5 Insurance Renewal 2022

We remain in a long term agreement with our current insurer until April 2023, however, given the global pressures in the market, there is a potential for rate increases.

Our Insurers and Brokers have advised that this could be in the range of 10%. Nevertheless, our commitment to continued risk management, detailed claims analysis and high repudiation rates, alongside our agreed long term contract with our current insurers does provide increased certainty for Trafford. We are committed to ensuring that any market pressures are kept to a minimum and will be commensurate with our claims experience and Trafford’s true risk.

4.6 Tree Liability/Risk Management Plans

Highway Trees – Growth in the number of Tree liability claims (**Annex 2**) is not unique to Trafford, climate change dramatically increases tree root activity/growth and we are beginning to see these effects within our claims experience.

In March 2021, we undertook a Tree Liability Review in partnership with our Insurers, appointed Solicitors and the Council’s Tree Officers. The review assessed the council’s strategic systems of control, inspection frequencies and appropriate risk management systems providing constructive feedback on areas for improvement going forward.

Some of the risk improvements currently under review by senior service managers are:

- Carrying out a baseline condition survey of all council-owned trees
- Review of the Council's Tree Management Strategy/Policy
- A corporate approach to new developments where Trafford are the landowner
- Enhancements to the data within the asset register to support a risk-based approach and claims defensibility

Although we are experiencing higher claim numbers, when these are compared with the 6,000 trees within the Borough, they are relatively low.

- 4.7 **Cyber and Data Risks** - Premium rates for bespoke Cyber cover have increased between 100%-300% in the past twelve months and placement of cover is increasingly difficult with many insurers completely moving away from writing cover for Local Authorities since they represent one of the largest areas of exposure.

Much more detailed information is required by the few insurers that remain in the market, however, they are significantly increasing deductible levels whilst reducing cover.

We have recently submitted updated proposals to the insurance market, with the assistance of our IT Team, and are currently awaiting a response. We are, however, aware that other Councils are receiving "no quotes" and we should also prepare for a similar result. This will result in the Council continuing to manage the risk exposure from within its insurance risk reserve balances.

Available cover offered by insurers will need to be carefully considered alongside the cost of risk; evaluating our insurance programme alongside departmental action plans and recovery strategies in the event of a breach.

- 4.8 **Highway Asset Management and Liability Review** - At the end of last year, we had a Highway Asset Management and Liability Review carried out with our Insurers, Zurich Municipal. The review looked at current risk management arrangements and benchmarked Trafford against the Zurich Highways Grading Standard, which is based on the principles in the 2016 Department for Transport Code of Practice "Well-managed Highway Infrastructure". The review also assessed the robustness of the evidence and arrangements for prevention of accidents and defence of claims.

Representatives from all services who make up our extended Highways Team were actively involved in the review and we are delighted to report that we achieved the rank of Excellent on the Risk Quality Level Scale.

Trafford Council Current Insurance Programme

Policy	Property Damage / Business Interruption	Employers' Liability / Officials Indemnity	Public Liability	Motor	Personal Accident / School Journey	Money	Crime	Professional Negligence	Commercial Investment Properties
Limit of Indemnity	Declared Value Business Interruption Max Indemnity Period 36 months	£50m Employers Liability £2m Officials Indemnity	£50m	Unlimited Third Party Injury £5m Third Party Damage	Accidental bodily injury, death, disablement or the incurring of Medical Expenses, Travel cancellation	Various Physical loss of money	£5m Financial loss sustained as a result of a criminal act	£5m	Declared Value
Insurer	Zurich Municipal	Zurich Municipal	Zurich Municipal	Zurich Municipal	Zurich Municipal	Zurich Municipal	Zurich Municipal	Zurich Municipal	Zurich Commercial via Marsh
Excess	£250,000	£275,000	£275,000	£1,000	Various	£250	£10,000	£100,000	£250
Aggregate Stop Loss*	£750,000 £1m for BI	£2M	£2M						

* Provides budget certainty – Trafford’s claims exposure is capped per policy year. Once the ASL is breached, insurers pay all claims thereafter, no excess required.

Claims History by Policy Year as at 31/03/2021

Annex 2

Class of Business	2016/2017			2017/2018			2018/2019			2019/2020			2020/2021		
	No of Claims	Paid £000	Res £000	No of Claims	Paid £000	Res £000	No of Claims	Paid £000	Res £000	No of Claims	Paid £000	Res £000	No of Claims	Paid £000	Res £000
Employer's Liability 	6	13	0	5	15	389	2	1	20	4	2	7	2	0	8
Highway Injury 	89	425	22	81	77	133	83	98	136	68	33	213	51	9	609
Highway Property 	133	11	0	300	33	0	298	55	37	212	23	29	94	3	42
Highway Tree 	31	45	5	40	42	67	46	24	41	55	20	50	52	0	95
Public Liability 	37	30	59	40	41	138	43	101	151	28	62	286	9	0	26
Total	296	524	86	466	208	727	472	279	385	367	140	585	208	12	780

The total of the provisions (Res column) above is £2.563m for the policy years 2016 to 2021, the provision also includes £652k relating to the policy years 1992 – 2016 bringing the total balance to £3.215m