

TRAFFORD COUNCIL

Report to: Accounts & Audit Committee
Date: 28 September 2022
Report of: Director of Finance and Systems

Insurance Performance Report 2021/22

Summary

This report provides a summary of insurance performance for 2021/22:

- Gross cost of the insurance activity was £1.209m; comprising £507k of premium costs and £702k for claims. Savings in premiums and claim payments resulted in an underspend of £89k against budget. The balance of £89k was redirected to the Insurance Risk Reserve to address potential sector wide emerging claims.
- The provision for outstanding liability claims was £3.323m at 31 March 2022, compared to £3.215m at 31 March 2021, an increase of £108k.
- Claim numbers decreased in 2021/22, 209 new claims received compared to 284 in 2020/21.
- Repudiation rates for liability claims remains consistently high at 74%
- Changes to The Data Protection Act (DPA) presents an emerging risk to the Council, 5 claims received in 2021/22

Recommendations

That the report be noted.

Contact for access to background papers and further information:

Name: Dave Muggerridge
Extension: 4534
Background Papers: None

1. Introduction

1.1 This report updates the Committee on the Council's insurance activities for 2021/22, the report focuses on:

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

2. Cost of Insurance

2.1 The insurance programme covers a broad range of insurable risks; a summary of policies and appointed insurers are detailed **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 where claims may exceed the net revenue budget.

2.3 The Council's Insurance Provision was £3.323m as at 31st March 2022. This amount is set aside by the Council to meet claims costs which fall within the Council's elected policy excesses (detailed in **Annex 1**). The level of the provision is reviewed, biennially, by an external Actuary. The likely growth of the cost of claims received is assessed and a forecast provided in respect of potential claims, yet to be reported (IBNR).

2.4 The Insurance Risk Reserve is maintained in the event of a catastrophic insurance loss or in the event of a large number of high value claims and is 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 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 MMI claims and a balance of £450k to smooth any fluctuation in provision level and cover any uninsured losses over budget. The balance on the reserve was reviewed as part of the budget robustness exercise when preparing the 2022/23 budget and the reserve was reduced by £250k at the time.

2.5 The 2021/2022 net budget for insurance activity of £860k consists of insurance premiums at £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 £488k.

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. In 2021/22 reductions in prior year claims provision of £22k, savings in premiums of £29k and self-insured claims being £88k under budget against a reduction in income from schools of £50k resulted in an underspend of £89k.

2.7 In 2021/22 a new actuary was appointed to assess our provision. Taking a different stance to the previous actuary, a suggestion was made that the Council should identify a risk reserve to cover potential costs associated with sector wide emerging claims which we may become exposed to as a result of legislative changes. Such advice was considered by officers as a prudent measure, against which ring-fencing further resources needed to be considered alongside other council-wide financial risks. A decision was made to bolster the

insurance reserve over a period of time to reach a figure of 50% of the balance suggested by the Actuary, a figure of £240k. The insurance reserve was subsequently topped up by the £89k underspend, resulting in a breakeven position in the total insurance budget.

Table 1 – Insurance Expenditure for 2021/2022	Budget £000	Actual £000	(Under)/ Over Spend £000
Premiums	536	507	(29)
Provision for Claims	712	690	(22)
Self-insured Loss Claims	100	12	(88)
Gross Cost	1,348	1,209	(139)
Income	(488)	(438)	50
Contribution to/(from) reserves		89	89
Net Cost	860	860	0

2.8 The balances of the Insurance Provision and the Insurance Risk Reserve at the 2021/2022 year end were:-

Table 2 – Provision and Reserve Balances			
Provision	£000:	Insurance Risk Reserve	£000:
Balance as at 01/04/2021	(3,215)	Balance as at 01/04/2021	(1,700)
Less Claims Paid	582	Budget Support Reserve	250
		Transfer #	
Reassessed Provision	(690)	Contribution to Reserve	(89)
Balance as at 31/03/2022	(3,323)	Balance as at 31/03/2022	(1,539)

Balance on the reserve was reviewed as part of the budget robustness exercise in preparing the 2022/23 budget and the reserve was reduced by £250k to leave a reserve to cover 3 significant claims (previously 4).

3. Claims

3.1 Activity

Financial Year	Amount Paid in Claims Across All Policy Years (01/04/1992 to 31/03/2022) £000	Number of New Claims Received and Processed in Year
2021/2022	582	209
2020/2021	553	284
2019/2020	405	390

3.2 Claim payments of £582k were made in 2021/22, an increase of 5% on 2020/21. Three large public liability claims (those in excess of £50k) settled in 2021/22 contributed to the small increase.

3.3 **Annex 2** provides an overview of our five years claims experience by policy year (01/04/2017 – 31/03/2022) split by the following risks: Employer’s Liability, Highway Injury, Highway Property, Highway Trees and Public Liability.

3.4 **Employer’s Liability** numbers remain consistently low with 5 claims received for 2021/22 against a yearly average of 4 claims

3.5 The Governments 2019 manifesto encouraged new flexible ways of working resulting in a new hybrid way of working for most Council employees.

However, the Council’s duties under The Health and Safety at Work Act 1974 also apply to those working from home and, whilst a rise in claims was initially predicted from remote employees, for example, muscular skeletal disorders caused by poor working conditions, this has not yet borne true for Trafford. A personal injury claim can however be received some three years post incident.

3.6 **Highway Injury** whilst we only received 42 claims in 2021/22 against a yearly average of 73 these claims remain the largest financial risk to the Council. The ability to successfully defend claims relies on the effectiveness of the Highway Inspection Regime and timely repair of defects. Through partnership with our Highway colleagues and the One Trafford Partnership we ensure a high repudiation rate of 85%.

3.7 **Highway Property** damage such as that caused to vehicles due to potholes in the carriageway, remain the largest risk in terms of numbers of claims received. Despite only 75 claims being received for 2021/22 against a yearly average of 229; due to the fall in road users/commuters. Whilst these claims are typically low value, we adopt the same robust approach to defence as we do with personal injury; ensuring our Highway inspection regimes are up to date and having open dialogue with our Highways colleagues. We successfully defend 3 out of 4 claims.

- 3.8 **Highway Tree** we received 47 claims in 2021/22 against a yearly average of 49 claims over a five year period. Work continues in improving our response to this risk. A tree liability review was carried out in 2020/21 and has led to revisions of policy and planned investment into new software to support risk mitigation. We are mindful that external factors such as extreme weather, now being experienced in the UK, and climate change will always be against us, but the proposed changes afoot will ensure that we are achieving best practice working models.
- 3.9 **Public Liability** – 20 claims were received in 2021/22 against a yearly average of 28. We currently have 14 large claims (those in excess of £50k), 7 of which relate to safeguarding concerns. These cases are complex, require specialist legal knowledge and carry high award levels if the Council is deemed liable.

In recent years precedent has been set in several significant abuse and care cases and established rulings of vicarious liability in respect of alleged abuse by foster carers (*Armes v Nottingham County Council*) together with clarifying the duty of care which may be owed to non-looked after children (*GN v Poole*), which has resulted in an increase in alleged Human Rights Act violations.

Cases of this nature are known as long tail claims, meaning that the allegations received in present day may relate to historic events. They are particularly difficult to foresee, given that claims may be brought due to changes in legislation, as mentioned above.

We appoint specialist solicitors to represent Trafford from the outset and we work closely with the appropriate heads of service within Legal, Safeguarding and our HR teams to ensure that the Council's interests and funds are fully protected.

Please note that Data Breach claims also form part of our Public Liability claims experience, refer to point 4.4 for detail.

3.10 Defence Rates

Category of Claim	No of Closed Cases between 01/04/2017 and 31/03/2022	No of Closed Cases Defended between 01/04/2017 and 31/03/2022	Defence Rate
Employer's Liability	10	7	70%
Highway – Injury	279	236	85%
Highway – Property	938	686	73%
Highway - Tree	190	140	74%
Public Liability	106	61	58%
Total	1,523	1,130	74%

4 Market update / Outlook

4.1 Property

Inflationary pressures, labour shortages, increased reinstatement costs and supply chain issues mean that underwriters continue to push for increased property rates. Insurers are also tightening discipline around understanding the risks they write and require detailed risk information to firm up cover.

Cladding remains a concern, buildings with cladding can prove very difficult to insure. With the help of our property colleagues, our cladded risks have been surveyed to establish detailed cladding information and identification. This risk management work is set to continue throughout the year and has enabled us to satisfy insurers requirements and, therefore, continuity of cover.

4.2 Motor

Rates are expected to increase in 2022, with further concern around those moving towards dependence on electric vehicles, as the lengthy repair times and high cost of repairs increases claim costs.

4.3 Liability

Rate increases slowed in the early part of 2022, with insurers specifically targeting poorly performing risks. However, claims inflation remains a factor, running at anything between 5% and 15% due to increasing legal defence costs, conditional fee agreements, changes in legislation and legal precedent.

Insurers have been tightening policy terms and reducing limits due to the continued uncertainty in the Reinsurance markets surrounding the final Brexit outcomes on insurer's ability to access the "single market". This has implications on insurers ability to share the risk with reinsurers. It is reported that the London market lost £4.5 billion of premium to the European market in 2019 due to Brexit.

4.4 Data Protection Claims – Growing Risk

As mentioned in last year's report, the 2018 General Data Protection Regulations, which aligned the UK with the wider EU Law, means that Data litigation is on the rise.

At Trafford we have currently have 5 DPA claims, which sit within our Public Liability claims experience.

All organisations face challenges in the growth of privacy and data protection claims in relation to the exposure of sensitive information, for example, sending personal data to an incorrect recipient.

However, we are beginning to see positive Court judgments which suggest that the Courts have little time for opportunistic and low value claims being made.

We collaborate with our Information Governance team in order to consider the allegations made and to establish the facts surrounding the breach together with revisiting systems, software and supervision levels in order to mitigate matters and uphold good standards of practice.

4.5 **Cyber**

As detailed last year, the cyber liability market remains hard with the number and financial implications of attacks increasing.

Those insurers that remain in the market are increasing their key control requirements exponentially, making it harder still to obtain a quotation.

We have recently held tripartite risk evaluation meetings engaging our Brokers and IT colleagues to ensure that future planned investment is targeted at best practice and may help us to meet insurers requirements going forward.

Currently, Cyber risk is managed from our insurance risk reserve balances.

4.6 **Insurance Renewal 2023**

Concerns over inflation, elevated catastrophe activity, with climate change having a significant impact on weather patterns, together with a worsening experience on cyber as a result of ransomware claims, all represent key drivers behind expected market rate increases. Other challenges also include inflationary pressure and insurers lower investment yields.

Our partner Brokers and Insurers advise that rate increases are expected to fall in the range of 17% - 20%. Mitigating the potential exposure to cost increases continues to be our focus.

Our collaborative working approach ensures our ability to demonstrate continued risk improvements to Insurers, reflected in our improving claims experience, and ensures any cost increases are contained and commensurate with our own risk exposures.






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 31/03/2022

Annex 2

Class of Business	2017/2018			2018/2019			2019/2020			2020/2021			2021/2022		
	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 	5	61	1	2	8	73	4	0	11	5	14	8	5	3	5
Highway Injury 	82	161	38	87	156	270	69	94	53	53	55	453	42	5	313
Highway Property 	301	33	0	305	51	25	207	23	9	103	10	24	75	4	38
Highway Tree 	40	56	6	46	34	49	55	49	17	54	19	58	47	1	60
Public Liability 	38	60	0	34	171	21	28	296	200	10	11	5	20	3	78
Total	466	371	45	474	420	438	363	462	290	225	109	548	189	16	494