

## Members' Library Service Request Form

Date of Document	07/11/18
Originator	Head Of Communities & Partnerships Per Derek Oliver, Service Manager - Protective Services
Originator's Ref (if any)	
Document Title	Annual Report - Coporate Insurance & Claims 2017/18

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Authorised By	Sharon Saunders
Designation	Head of Communities & Partnerships
Date	19/11/18

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**REPORT TO:** Members' Library Service

**MEETING DATE:**

**BY:** Head of Communities and Partnerships

**SUBJECT:** Annual Report – Corporate Insurance & Claims  
2017/18

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## **1 PURPOSE**

- 1.1 The purpose of this report is to provide Members with an Annual Report on Corporate Insurance and Claims for 2017-2018.

## **2 RECOMMENDATIONS**

- 2.1 Members are asked to note the decision of the Head of Communities & Partnerships to approve the Annual Report and to note the activities of Insurance & Risk of Protective Services.

## **3 BACKGROUND**

- 3.1 External Insurance is designed to protect the financial well-being of the Council in the case of unexpected loss, whilst achieving an appropriate balance between the cost of premiums and the risk the Council takes on under an insurance policy. Good risk management can help reduce reliance on external insurance so that cover is only required for major or catastrophic events. Insurance & Risk within Protective Services holds regular meetings with Risk Management and Corporate Health & Safety and will provide management information throughout East Lothian Council to identify the highest risks and costs of claims. Managing risks effectively before they materialise into incidents or claims, and learning from claims made, is the approach the team is developing with services.
- 3.2 **Insurance Policies:** East Lothian Council currently has in place a number of insurance policies with various providers/insurers, as outlined in the table below (a summary description of each policy type is detailed in Appendix 1):

Policy Type	Insurers	Policy Cost (£)	Excess (£)	Policy Expiry
Employers' & Public Liability	QBE via RMP	118,900	75,000	30/09/19
Motor Fleet	QBE via RMP	52,690	75,000	30/09/19
Professional (PI) & Officials Indemnity (OI)	QBE via RMP	23,500 (OI) 6,600 (PI)	75,000	30/09/19
Property, Material Damage & Business Interruption	AIG via RMP	204,071	250,000	30/06/20
Travel	AIG via RMP	9,364	Nil	30/06/20
Contractors All Risks (CAR)	HSB via RMP	5,535	50,000	30/06/20
Engineering, Plant & Equipment Insurance & Inspections	BRITISH ENGINEERING	57,153 Deposit Premium 17/18	50,000	30/09/18
Fidelity/Fraud	QBE via RMP	13,440	10,000	30/06/19
External Claims Handling	GALLAGHER BASSETT via RMP	24,936 Deposit Premium 17/18	Nil	30/09/19

**3.3** In sourcing these insurance policies, a Broker Fee of £2,000 was paid to Marsh Ltd.

**3.4** Policies are tendered every three to five years and are renewed annually. The Council self-funds almost all property or liability losses with insurance cover only for critical losses. The bulk of the losses are met from the Council's insurance fund, the cost of which shall be apportioned to services by exposure (value of assets, number of employees, budget etc) and weighted according to claims experience (number X value). All insurance premiums, consultancy fees, administration costs, statutory inspections, negotiation and payment of claims and payment of legal expenses are paid from the fund.

**3.5 Home Contents Insurance:** the Council operates a Scheme designed to offer low cost cover for Council house tenants. The policy was tendered this year and a new provider was awarded the contract from June 2018. This Scheme has no cost to East Lothian Council. Premiums are collected through tenants' rent accounts fortnightly. The premiums payable to the provider each month depend on the number of tenants and sums insured. Insurance & Risk administer the scheme provided by AON Limited, underwritten by Aviva. The Council receives 15% commission of the

premiums collected each month excluding Insurance Premium Tax. This equated to £8295.89 income in 2017-18.

**3.6** At present around 10% of tenants are members of the scheme. The main reasons for tenants not joining the scheme:

- Unable to afford premiums
- Unable to join scheme owing to previous claims
- Unable to join scheme owing to convictions
- Unable to join scheme because of rent arrears
- Encouraged by other provider to join their scheme, usually banks

**3.7** All new Council tenants receive an application in their new home pack. Application Forms are displayed at all area offices and at other locations throughout East Lothian. Information is also provided in tenants' handbooks. The Council is working with the insurer to deliver marketing tools to encourage greater uptake.

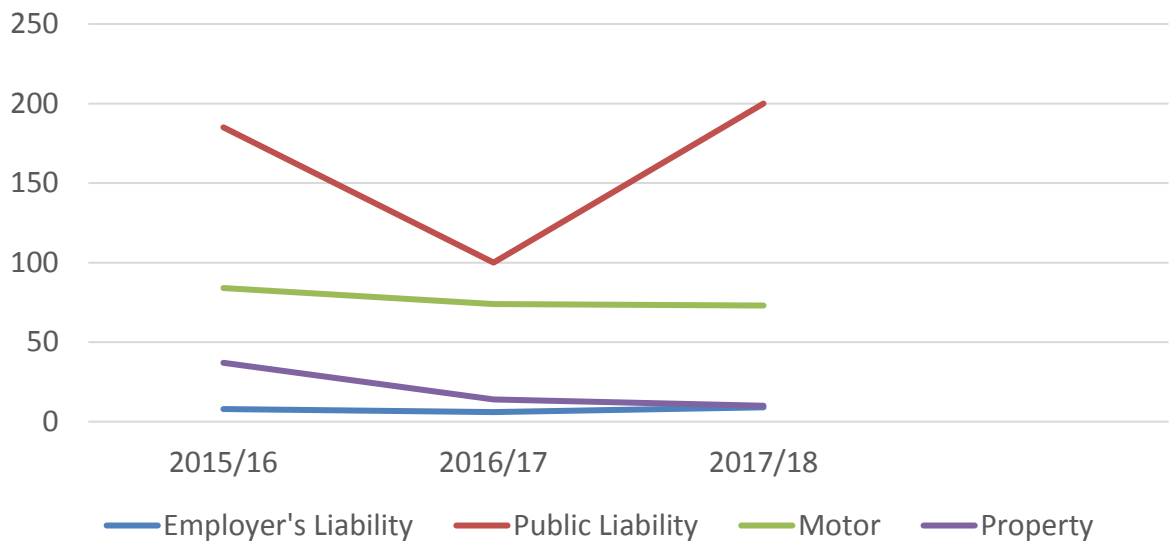
**3.8 Reserve for Previous Insurer** Municipal Mutual Insurance (MMI) was East Lothian Council's Employers' Liability Insurer from 1985 until 1993. Following a series of large claims in the early 1990's, by 1992, their net assets were less than minimum solvency requirements. Subsequently, it was decided to cease writing new business and following this, Zurich acquired the rights to the business with agreement that the MMI group would still operate run-off and pay claims.

**3.9** East Lothian Council (as a scheme creditor) had to pay a 15% levy in 2014 which amounted to **£99,891**. The Council also had to pay £15,000 to City of Edinburgh Council for its portion of Lothian Regional Council claims. The Council has had to make a further contribution of **£66,594** in April 2016 to MMI as the levy has increased 25% of current claims. A further payment of **£10,898** has also been made to City of Edinburgh Council for East Lothian Council's share of Lothian Regional Claims in May 2016.

**3.10** There is a remaining reserve of £108,000 in place for future claims, in particular disease claims such as Asbestos Mesothelioma and historical child abuse claims. The levy is still 25% which means the Council is, in effect, self insured for this percentage of each claim. The current procedure is for the Council to pay the full claim and then submit a claim to MMI for 75%. Reserves will have to be reviewed if new child abuse claims are received which fall into the period of insurance with this company.

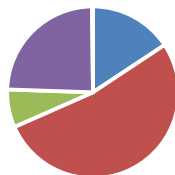
### 3.11 Claims Received 2015-18

#### All claims



	2017-18	2016-17	2015-16
<b>Employers' Liability</b>	9	6	8
<b>Public Liability</b>	200	100	185
<b>Motor Accident</b>	73	74	84
<b>Property</b>	10	14	37
<b>Other</b>	0	0	1

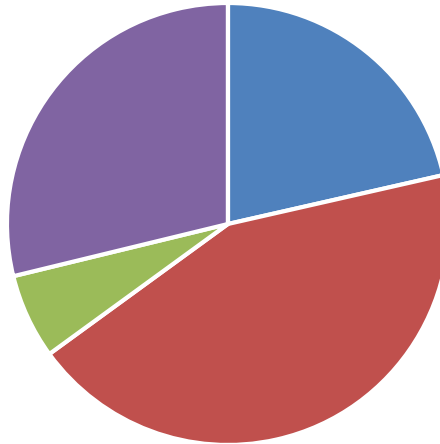
#### Breakdown of Claims Costs 2015-18



<b>Employers' Liability</b>	<b>£197,400</b>
<b>Public Liability</b>	<b>£662,359</b>
<b>Property</b>	<b>£305,485</b>
<b>Motor Accident</b>	<b>£89,576 (from insurance fund)</b>
<b>Other</b>	<b>£2,085</b>
<b>Total</b>	<b>£1,256,905</b>

*NB: These figures include the cost of compensation and all associated costs paid up to 31/03/18. While some payments have been made, not all these claims have yet had final costs paid.*

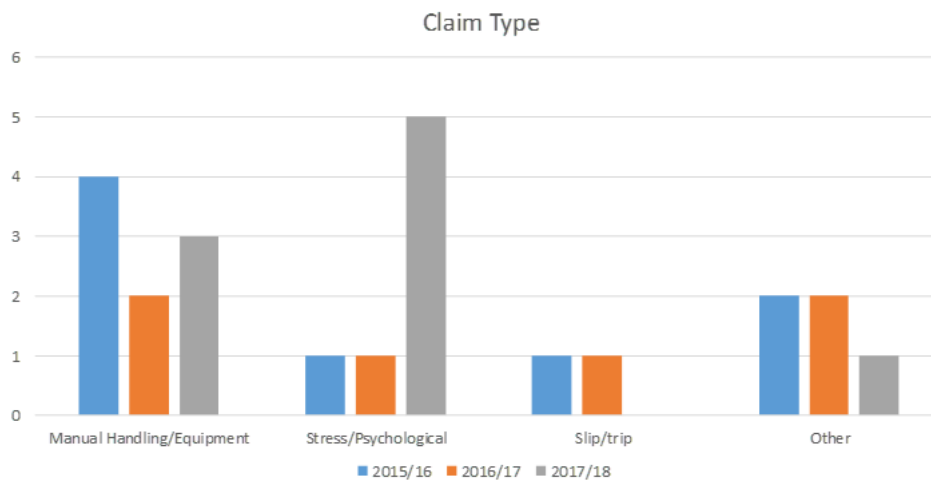
## Breakdown of Claims Costs 2017-18



<b>Employers' Liability</b>	<b>£98,298</b>
<b>Public Liability</b>	<b>£199,600</b>
<b>Property</b>	<b>£132,000</b>
<b>Motor Accident</b>	<b>£28,493 (from insurance fund)</b>
<b>Other</b>	<b>Nil</b>
<b>Total</b>	<b>£458,391</b>

### 3.12 Employers' Liability Claims

#### Employers' Liability Claim Cause

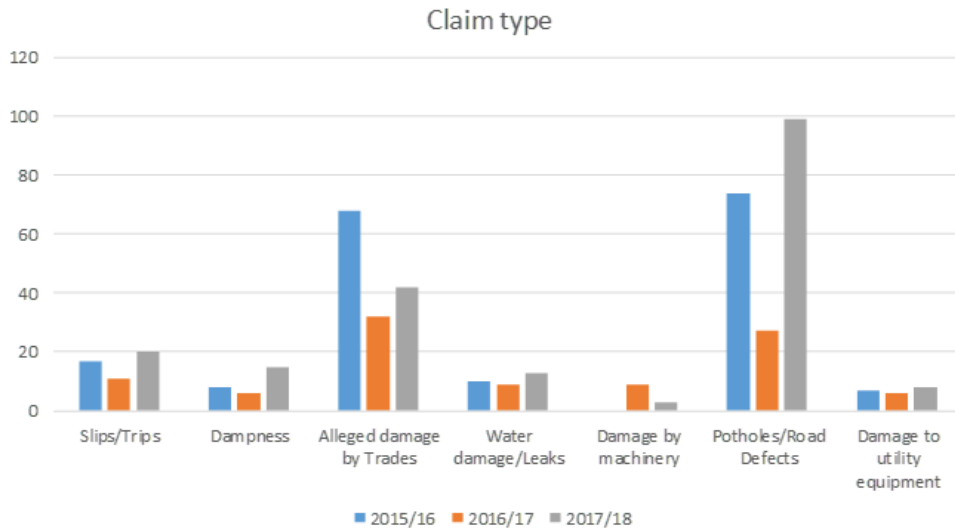


The number of **Employers' Liability claims** has remained fairly consistent. In previous years the majority of claims were associated with manual handling injuries or Hand Arm Vibration Syndrome. In 2017-18, an

increase in claims were received associated with stress/anxiety and psychological injury, particularly from Education school-based staff.

### 3.13 Public Liability Claims

## Public Liability Claim Cause

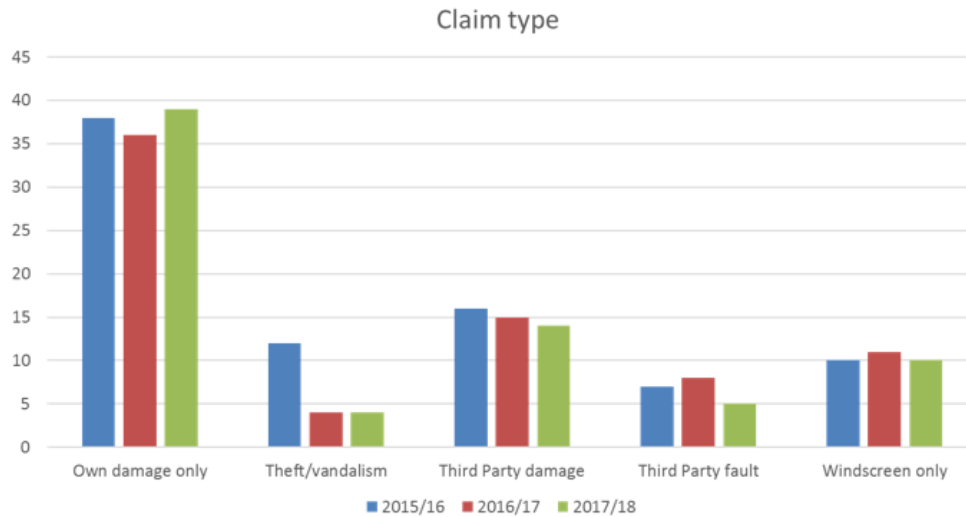


The number of **Public Liability claims** has increased significantly since 2016/17 which can be attributed to:

- Local residents are linking the state of roads to the increase in Council Tax and feel that they should get compensation for vehicle damage which they consider is being caused by the poor state of the roads. The biggest rise in claims is in relation to road defects.
- Severe weather in 2018.
- Public more aware of how to claim compensation as a result of newspaper and television programmes.
- Claims Management Companies using aggressive techniques to drive business.

### 3.14 Motor Vehicle Claims

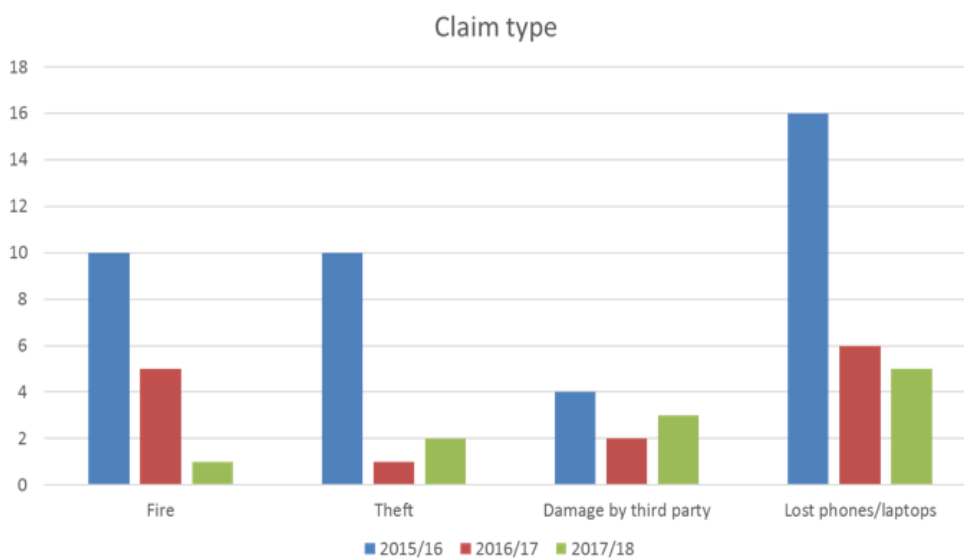
## Motor Vehicle Claim Cause



**Motor vehicle claims** remain fairly consistent across the time period, although there is an increase in claims which include personal injury as well as vehicle damage.

### 3.15 Property Claims

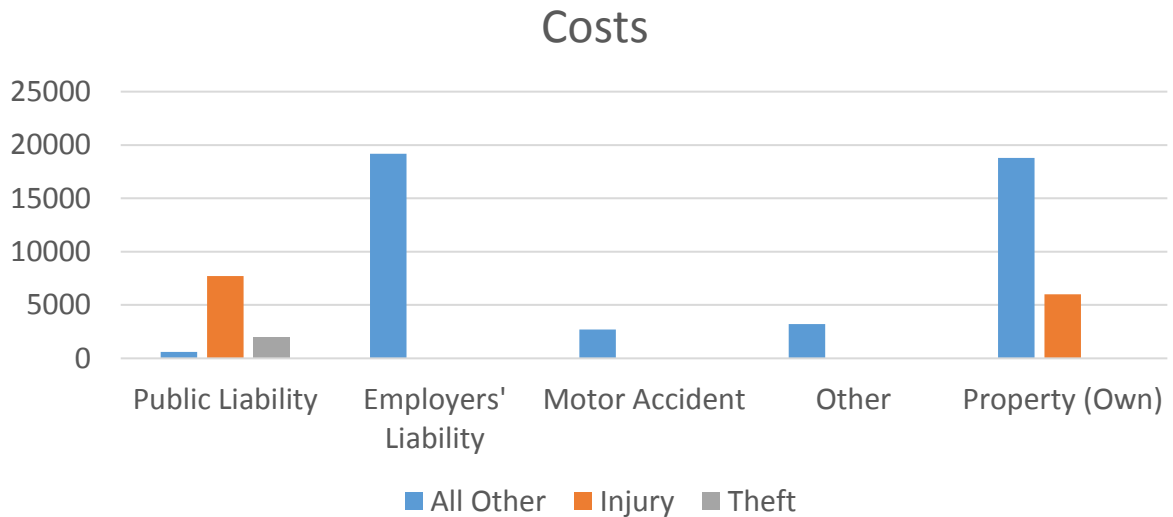
## Property Claim Cause





**Property Claims**, in particular damage to Council Houses, have decreased with fewer fires which is consistent with the findings of the Scottish Fire & Rescue Service.

### 3.16 Repudiation Rates/average cost per claim over last three years



Insurance	Claim Type	Average Cost per Claim	Repudiation Rate
<b>PUBLIC LIABILITY</b>	Road/pavement related non-injury claims	<b>£590.00</b>	<b>84% repudiated</b>
	Road/pavement related injury claims	<b>£7,718</b>	<b>80% repudiated</b>
	Claims for dampness/damage to third party property and personals effects/water damage	<b>£1,945</b>	<b>85% repudiated</b>
<b>EMPLOYERS' LIABILITY</b>		<b>£19,189</b>	<b>Defensibility rate 49%</b>
<b>MOTOR ACCIDENT</b>	Third Party vehicle damage	<b>£2,697</b>	<b>liability denied 15%</b>
<b>PROPERTY (OWN)</b>		<b>Fire £ 18,789</b>	<b>Repudiation for damage not insured by our policy 5%</b>
		<b>Theft £6,000</b>	
<b>PROFESSIONAL NEGLIGENCE/ OFFICIALS INDEMNITY</b>		<b>£2,085</b>	<b>95% repudiated</b>

### **3.17 Challenges**

- 3.17.1** From the 1st June 2017, the standard rate of Insurance Premium Tax (IPT) was increased from 10% to 12%. This has increased the cost of the Council's policies.
- 3.17.2** Lump sum compensation payments for personal injury claims are designed to represent the present value of future losses the claimants will suffer. The Discount Rate, set by the Government, which is applied in doing so reflects the amount of interest that a claimant can expect to earn by investing the money, above the rate of inflation. The Ministry of Justice changed the discount rate in personal injury claims for lump sums from 2.5% to -0.75%. This discount rate was changed largely because of the drop in value of Index-Linked-Government Stocks (ILGS). The rate had been unchanged since 2001. This adjustment is positive for claimants, meaning insurers are paying out more in compensation as a result. This has therefore impacted on premiums, resulting in increases.
- 3.17.3** A new compulsory pre-action protocol was introduced for accidents occurring on or after 28<sup>th</sup> November 2016, with a value of up to £25,000. There are strict time limits for dealing with these claims and establishing liability putting pressure on services within the Council to provide information timeously. The Insurance & Risk team was advised by Legal Services in early 2017 that any Freedom of Information requests which relate to claims after this date should be dealt with by Insurance & Risk and not as FOI requests. Since April 2017, this has caused extra work for the team as these requests are usually for a considerable amount of information.
- 3.17.4** The Enterprise Act 2016 imposed a duty on insurers to make prompt payment of claims otherwise policyholders are able to claim damages where insurers breached that duty. The late payment provisions came into effect on 4<sup>th</sup> May 2017. A "reasonable time" to pay a claim has not yet been defined. However, this may have an impact on how quickly claims are paid in the future compared to the present time. This will need to be monitored to ensure that this is accounted for within the insurance fund budget.
- 3.17.5** The Limitation (Childhood Abuse) (Scotland) Act 2017 came into force in October 2017 lifting the three year time limit in compensation actions arising from childhood abuse. In light of this change, the Council along with many other local authorities has received a number of claims in relation to alleged abuse. The Council has successfully defended two such claims where formal court proceedings had been raised. These court actions are believed to have been the first raised in Scotland. We are attending regular meetings with Scottish Child Abuse Inquiry (SCAI) Working Group within the Council and have set up a sub compensation claims group. There are a number of outstanding claims which have been passed to the relevant insurers. It is anticipated that further claims may be received.
- 3.17.6** Incidents incurred but not yet reported (IBNR) applies equally to claims for the Council's own insurance programme and MMI. The two main local

authority insurers (AIG via RMP and Zurich) have both recently expressed concern about late notification of claims. From an insurer's point of view, they are offering renewal terms based on calculations of the claims history provided by clients at point of renewal and tender. The Council has been reminded to ensure that insurers are notified of any potential claims as soon as possible, in particular, child abuse and social services claims. Protective Services requests that all departments inform the insurance & Risk team of any incidents/correspondence received which could lead to a claim being made against East Lothian Council now or in the future.

**3.17.7**A review of the Council's insurance fund has been carried out every three years by an Actuary from the Council's appointed Insurance Broker. The last review was carried out in March 2016 along with a Risk Optimisation review which assisted in redesigning the Cross Class insurance programme. The need for a review to be carried out externally in 2019 should be re-assessed before the end of 2018.

**3.17.8**Software to replace the Council's current claims and insurance database is being developed. This will allow real time reports to be produced on a frequent basis.

**3.17.9**When the Insurance Act 2015 came into force in August 2016, it significantly impacted upon disclosure obligations when taking out or renewing any business insurance. Under the new Act:

- If the Council does not comply with duties, insurers will have a new range of "proportionate remedies", which could include reducing claim payments significantly if it would have entered the contract on different terms such as a higher premium. If the breach was deliberate or reckless, the insurer can avoid the contract and keep the premiums paid by the insured.
- The Council will have to disclose information known by Senior Management and by the individuals responsible for arranging insurance to our insurers in a "reasonably clear and accessible" manner.
- The Council will have to carry out a reasonable search for information, which could include making enquiries of people outside the organisation, such as external consultants.
- It is imperative that all services makes Protective Services aware of any changes such as sharing of services, new or transfer of services or assets throughout the year, as well as notifying us of any potential claims.

**3.17.10** In terms of future claims, new rules established by the Civil Procedure (Amendment) Rules 2018 limit the costs that the defeated party has to pay to the other side at the end of a case. This is likely to mean that more claims will be made as claimants will not have to fear being left with a large legal bill. A date from which this will apply has not yet been set.

**3.17.11** While it may not be possible to reduce certain types of claims, as part of the Council's insurance programme, there are a number of "Risk Control Days" which can be used to buy training/review days, carried out by a Risk Consultant from Gallagher Bassett who are claims handlers and risk managers appointed by the Council's insurer. Each year, the Council's insurer assesses the information provided in relation to Council procedures and claims, with defensibility rates. Procedures and processes are required to be reviewed regularly, particularly where information from Corporate Health & Safety, Risk & Resilience and claims analysis identifies concerns or trends.

### **3.18 Insurance & Risk Action Plan 2018-19**

- Evaluate Employers' Liability claims in collaboration with Corporate Health & Safety to reduce incidence rate and costs.
- Provide regular updates to Heads of Services in respect of all claims for their area. Quarterly reports are suggested.
- Provide useful information on Intranet for Council staff in respect of how insurance and claims operates.
- Arrange for presentations and reviews to be carried out across the Council, working with Emergency Planning, Risk & Resilience Officers to identify areas where assistance could be given to make improvements in relation to risk management.
- Assess whether Risk Analysis for future reserves undertaken in-house would be more cost effective for the Council.
- Evaluate Risk Optimisation (review current sums insured, policy excesses and aggregates).
- Prepare tenders for insurance policies in 2019.
- Instruct the Actuarial Review of the Insurance Fund to be completed by April 2019.

## **4 POLICY IMPLICATIONS**

**4.1** External Insurance is designed to protect the financial well-being of the Council in the case of unexpected loss, whilst achieving an appropriate balance between the cost of premiums and the risk the Council takes on under an insurance policy. Good risk management can help reduce reliance on external insurance so that cover is only required for major or catastrophic events. Insurance & Risk within Protective Services holds regular meetings with Corporate Finance, Risk Management and Health & Safety and will provide management information throughout East Lothian Council to identify the highest risks and costs of claims.

## 5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

## 6 RESOURCE IMPLICATIONS

- 6.1 **Financial** - The Council has in place a statutory Insurance Fund, and the costs relating to the Insurance Premiums are met from within the Fund and applied to service budgets. Cost of insurance premiums is already budgeted with an inflationary increase being applied each year for future premiums. Tenders will be sought in 2019 for the insurance covers within this document to ensure best value.
- 6.2 **Personnel** - No change to existing personnel however Service resilience is being managed by integrating the insurance and claims functions into the wider Risk Management function and activities of the Council.
- 6.3 **Other** - None known at this time.

## 7 BACKGROUND PAPERS

### 7.1 Appendix 1: Summary description of insurance policies by type

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<b>DESIGNATION</b>	Service Manager – Protective Services
<b>CONTACT INFO</b>	Tel: 01620 827286 Email: <a href="mailto:doliver@eastlothian.gov.uk">doliver@eastlothian.gov.uk</a>
<b>DATE</b>	7 November 2018

The **Cross Class Policy** covers Employers' and Public Liability, Pollution, Libel and Slander.

**Employers' Liability** - Protects against liability for bodily injury or disease sustained by employees and arising out of and in the course of their employment. Premium based on number of employees and claims experience.

**Public Liability** - Provides cover for the Council's legal liability in respect of personal injury or property damage to any third party. Premium based on services and claims experience.

Pollution & Premises Liability including own and Third Party liability. Premium based on number and type of services.

Libel and Slander provides cover for damage to reputation of an individual or business. Fixed premium based on number and type of services.

The **Motor Fleet Policy** meets the minimum requirements for insurance as set out in the Road Traffic Act for Third Party Insurance as well as own vehicle damage. Premiums payable are based on number of vehicles and market values.

The **Professional Indemnity Policy** provides indemnity for the Council for financial loss to third parties as a result of a wrongful act arising from professional services where a fee has been paid or where there is a written contract or agreement. **Officials Indemnity** cover is similar for unpaid services and provides indemnity for Consumer Protection Act 1987, Data Protection Act 1998 and Food Safety Act 1990. Premiums are determined by amount of fees paid and number of services declared. Any premium increase has been as a result of increases to fees and cover requested for new and revised services.

The **Property/Material Damage and Business Interruption** premium is divided as follows:

Property Material Damage is provided to cover damage caused by Flood/Fire/Storm: £186,220.00 (including IPT)

Business Interruption cover is provided for increased cost of working following an insured occurrence: £17,851.00 (including IPT)

Premiums have increased owing to addition of new housing stock/refurbishments and general increase to reinstatement values and business interruption costs for all property insured. The premium rate charged by the insurer has remained the same since last year. There have been no significant claims in the past renewal year, in particular, there has been no fire damage claims to any of our properties.

The **Travel Insurance & Personal Accident:** Policy provides medical cover, cancellation, loss of property/money while travelling on a business or school excursion overnight. There is also personal accident cover included for Council Officials. There has been an increase in claims paid in the last twelve months, mainly for school trips. Cost of policy is based on number of trips and locations and annual payroll. Claims are paid by the insurer and have no effect on the insurance fund. There have been no claims made for Personal Accident cover.

**Contractors All Risk Insurance (CAR):** this brings together two elements of cover that are needed for works carried out to existing structures. The policy covers damage to

buildings and property and liability for third party claims during the works. This aims to safeguard both the Contractor and Council against financial loss should a claim be made. This policy relates to refurbishment and extensions to existing properties. It also covers ongoing upgrades such as central heating and roofing works which are carried out by contractors. The goal of using a CAR insurance policy is to ensure that all parties are covered on a project, regardless of the type of damage to the property or who caused the damage.

The CAR policy cover will be as per the existing policy. It is recommended that the existing cover is maintained for the next year with a review of new contracts and claims experience to be carried out annually prior to renewal.

A deposit premium is paid at the start of the policy year. Adjustments to the premium are made throughout the year as and when new works commence or framework agreements put in place. This ensures that the Council is only paying for cover required depending on the contract amounts/term. The 2018 premium will be adjusted throughout the policy year. Difficulties in the past with notification of contracts to Insurance & Risk are being resolved. Departments are now ensuring that the team is provided with details of new contracts to insure. No claims have been declared.

**Engineering Insurance & Inspections:** The Council is required to carry out statutory inspections on plant and equipment. The type and nature of the inspection required varies depending on the equipment and which regulation it falls under. We also insure equipment such as boiler plant and pressure systems against explosions, collapses and accidental damage. Premiums and inspections costs have been fairly consistent. No claims have been declared.

**Fidelity Insurance:** This policy protects business from financial losses in the event of a breach of trust by an employee as a result of forgery, embezzlement, fraud or dishonesty. Premium is based on number of employees and annual payroll. No claims have been declared.

**Claims Handling Services:** Under the terms of our Cross Class, Motor, Professional and Indemnity insurances, all injury claims and third party property damage claims above £2000 must be dealt with by an external claims handler appointed by the insurer. The appointed handler is Gallagher Bassett. A deposit premium is paid at start of policy year based on expected number of claims which is adjusted at the end of the year. Fees are fixed depending on type of claim and whether independent investigations are required.

In addition to the above premiums, an annual fee of £2,000 is payable to Marsh UK Limited for Broker Services. The Council is provided with assistance in relation to complex insurance issues. The fee charged has remained the same as the 2017/18 fee.