

Report

Report to:	Risk and Audit Scrutiny Committee
Date of Meeting:	27 November 2019
Report by:	Executive Director (Finance and Corporate Resources)

Subject:	Actuarial Review of the Council's Self Insurance Fund
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ provide an update on the financial health of South Lanarkshire Council's self-insurance fund, following an interim actuarial review.

2. Recommendation(s)

2.1. The Risk and Audit Scrutiny Committee is asked to approve the following recommendation(s):-

- (1) that the conclusions of the actuarial report be noted and that it be noted that further funding requirements will be considered as part of future revenue budgets; and
- (2) it be noted that the position for pre 1996 liabilities will be monitored and managed as required.

3. Background

- 3.1. In common with other Scottish authorities, South Lanarkshire Council operates a self-insurance fund to pay for purchased insurance cover, the settlement of excesses for liability, motor and property claims against the Council, other self-insured losses and the cost of administering an in-house risk management section.
- 3.2. The Local Authority (Scotland) Accounts Advisory Committee (LASAAC) advises that regular actuarial reviews should be undertaken on insurance funds. The last full actuarial review of the Council's insurance fund took place in 2017.
- 3.3. At the time of the last full review, excluding pre fund liabilities, the fund was in a neutral position assuming wind up at 31 March 2017, that is the balance of the fund was sufficient to meet known and yet to be intimated claims from past insurance policy years (incidents on or before the valuation date of 31 March 2017), and no further action to increase the balance of the insurance fund was required.
- 3.4. At the time of the last review, the actuary estimated pre fund liabilities (net of the Municipal Mutual Insurance (MMI) provision) at £4m. This covers the Council's liabilities resulting from its predecessor authorities for asbestos and abuse claims where insurance cover does not exist, and for any future MMI levies. Given uncertainties around potential abuse claims and disease claims, as well as the long term nature of such potential claims, a decision was taken to consider any additional funding requirements for pre fund liabilities in year, i.e. no additional funding would be added to the insurance fund in advance.

4. Actuarial Review of Insurance Fund

- 4.1. The main aims of the interim actuarial review of the Council's self-insurance fund is to undertake a financial health check between full reviews, to estimate future insurance claim settlement costs of known and yet to be intimated claims from past insurance policy years (incidents on or before the valuation date of 31 March 2019) against the fund balance as at 31 March 2019 and to estimate annual contribution rates required for the overall fund, to ensure that the balance of the fund does not fall into deficit.
- 4.2. Following a Quick Quote exercise, HJC Actuarial Consulting Limited were appointed to undertake a full actuarial review as at 31 March 2017 and an interim review as at 31 March 2019.
- 4.3. Actuarial reviews are only concerned with claims payments from the insurance fund, those that are already known as well as those incidents that have been incurred but have not yet been reported to the Council. All amounts used in the review take into account any potential recoveries from the Council's insurer.
- 4.4. The report focuses on two distinct areas, namely post 1996 liabilities and pre 1996 liabilities. Pre-1996 (legacy) liabilities arise from authorities who were predecessors to SLC, such as Lanark County Council and Strathclyde Regional Council. They do not arise from the current SLC authority, which was formed in 1996.

5. Conclusions from Actuarial Review

5.1. Post 1996 liabilities

The actuary's overall conclusions and recommendations as at 31 March 2019 were:-

- ♦ That the level of estimated future claim payments since 2005 has remained broadly stable at each review carried out, with this amount being in the region of £3m to £4m. This is a positive position, given that uninsured excess limits have increased over recent years. The excess for employers' liability and public liability claims increased from £100,000 to £250,000 on 1 April 2017 and the excess for motor insurance claims increased from £100,000 to £150,000 on 1 April 2018.
- ♦ That the estimated value of future claim payments from the fund is £3.2m. This is the same value noted at the last review and the actuary has taken into account the increased insurance excesses in these results.
- ♦ That the fund is currently in a neutral position for post 1996 claims costs; that is the balance of the insurance fund is currently sufficient to meet all estimated post 1996 claim liabilities.
- ♦ The current level of annual Resource contributions (for claims below the excesses) at £2.7m is in line with the actuary's recommendations, albeit as noted at 4.3, the actuary's report only covers claims costs and not other costs which impact on the insurance fund such as insurance premiums and the cost of administering the in-house risk management section.

5.2. Pre 1996 liabilities

- 5.2.1. There has been no new movement in terms of further levies, in respect of Municipal Mutual Insurance (MMI) since the last review. A provision of £0.740m currently exists within the Council's balance sheet to meet the cost of any future levies.
- 5.2.2. The Scottish Child Abuse Inquiry is looking at the abuse of children in care. It was set up on 1 October 2015. The Inquiry will raise public awareness of the abuse of children in care. It is assumed that it will be at least another year before the findings of the inquiry are reported.

- 5.2.3. The Limitation (Childhood Abuse) (Scotland) Act 2017 came into effect on 4 October 2017. The Act removes the three year limitation period to intimate abuse claims. For those whose abuse occurred before 26 September 1964, the law of prescription will continue to apply and there will be no right to raise a civil action for damages for personal injury.
- 5.2.4. It is anticipated that the Council will receive a number of further claims for historic childhood abuse as a result of publicity surrounding the Inquiry and the introduction of the new Act.
- 5.2.5. Furthermore, a Supreme Court decision deemed that Nottinghamshire County Council was vicariously liable for the actions of their foster families. This follows a claim pursued by an individual who suffered both physical and sexual abuse whilst in the care of two separate foster families. The outcome of this case could have significant implications for local authorities.
- 5.2.6. Insurers have advised that they are broadly in agreement that cover will be provided for abuse claims, but that each case will be dealt with on its own merits and subject to the terms and conditions of the policy. The financial impact on the Council for potential abuse claims will, therefore, depend upon insurers' interpretation of policy wording.
- 5.2.7. For the periods where the Council remains unable to prove that insurance cover existed, the Council will continue to self-fund these claims.
- 5.2.8. Based on information currently available, a contingent liability for historic abuse claims is included within the Council's 2019 Annual Accounts. This position will be reviewed on an annual basis.
- 5.2.9. The actuary has given consideration to the recent changes to legislation, case law and levels of insurance cover available within the pre 1996 liabilities. The review also studied details of all known abuse claims against the Council.

6. Further Financial Obligations

- 6.1. As stated at 4.1, the actuarial review only covers the cost of insurance claim settlements and does not give consideration to the cost of insurance premiums or other miscellaneous charges to the self-insurance fund.
- 6.2. Aside from the cost of self-insured insurance claim settlements, insurance premiums is the most significant other expenditure to the self-insurance fund. For 2019/2020, insurance premiums and other insurance related fees will total £1.7m.
- 6.3. Further financial pressures on the insurance fund may arise from increases in insurance premiums. Premium levels can be influenced by market conditions, the Council's claims experience, increases in Insurance Premium Tax (IPT) and other Government policy decisions such as fluctuations in the Ogden Discount rate which may result in insurers applying a levy to premiums to counteract the increased settlement costs of significant injury claims. The Ogden discount rate is used by the Courts when calculating compensation in personal injury cases.

7. Employee Implications

- 7.1. There are no employee implications associated with this report.

8. Financial Implications

- 8.1. In respect of claims costs only, Table One below shows a summary of the insurance fund's estimated financial position as at 31 March 2019.

Table One - Insurance Fund Summary Claims Costs – Post 1996 Liabilities

Fund Claims	£m
Fund Balance as at 31 March 2019	3.3
Less estimated future claims payments	(3.2)
Estimated fund surplus/(deficit)	0.1

Position outlined in table one, assumes wind up of the insurance fund as at 31 March 2019

- 8.2. Based on the findings of the Actuarial Review, per 5.1, Table One shows that there is adequate funding to meet the cost of all outstanding claims for incidents occurring between 1 April 1996 and 31 March 2019, assuming wind up of the fund as at 31 March 2019, with a surplus of £0.1m.
- 8.3. As noted at 4.4, a review into pre 1996 liabilities was also undertaken. This covered the Council's liabilities resulting from its predecessor authorities for asbestos and abuse claims where insurance cover does not exist, and for any future MMI levies.
- 8.4. Table Two below shows a summary of the Council's pre 1996 liabilities resulting from predecessor authorities as at 31 March 2019.

Table Two – Pre 1996 liabilities (unfunded)

Pre-fund liabilities (predecessor authorities)	£m
MMI provision (to cover levies)	0.8
Estimated MMI/Pre 1996 claims	(2.8)
Estimated Historic abuse claims	(2.0)
Overall pre 1996 liabilities surplus/(deficit)	(4.0)

Figures noted in respect of pre 1996 liabilities and historic abuse are broad outlined estimates based upon research and findings of the review

- 8.5. It is envisaged that longer term liabilities for disease claims will take up to 40 years to diminish, with the majority of any potential historic abuse claims being intimated broadly over the next 10 years. Further funds are likely to be required during this period to meet these potential claims or liabilities may turn out to be materially lower, given the uncertainty arising from projecting over such long time periods, for incidents (exposures to asbestos, child abuse) occurring before the valuation date of 31 March 2019.
- 8.6. These liabilities (except for the £0.8m MMI provision) are currently unfunded. The current forecast deficit of £4m above broadly equates to an annual in year cash strain of £0.1m per annum, over 40 years, therefore, is considered immaterial to the actuary, who is content with our reasoning for not funding these highly uncertain liabilities, subject to the proviso in 8.11 below, i.e. regular monitoring, by an actuary of the Council's choice, experienced in forecasting child abuse claims and the complex insurance histories and insurer disputes which can arise. There is also uncertainty over the timing and value of liabilities which may arise in any one financial year.
- 8.7. As referenced at 5.2.6, insurance cover may reduce the impact on the insurance fund for abuse claims. The actuary estimates that these potential recoveries could reduce pre 1996 liabilities by around £0.500m, but has made no allowance in the results for any such recoveries, due to the untested nature of the policy wordings.

- 8.8. Looking at the wider picture with the insurance fund (excluding pre fund liabilities), factoring in non-claims spend, Table Three below summarises the closing position as at 31 March 2019 and estimated position for the following three years.

Table Three – Insurance Fund Projections All Costs (Post 96)

	2018/19 £m	2019/20 £m	2020/21 £m	2021/22 £m
Total Income	-	4.1	4.0	4.0
Total Expenditure	-	5.5	5.7	5.7
Closing Balance	3.3	1.9	0.2	(1.5)

- 8.9. It is, therefore, envisaged that the fund balance will reduce on average by around £1.7m per annum over the next three years. There is no requirement at present to increase contributions to the insurance fund for post 1996 liabilities. However, in light of the decreasing fund balance, it is envisaged that the fund will be in deficit by 2021/22, and that this will be considered in the preparation of future revenue budgets.
- 8.10. In order to facilitate a review of the cost of operating the self-insurance fund, a terms of reference for a service review will be prepared to assess its operation.
- 8.11. The position with pre 1996 liabilities and the overall balance of the self-insurance fund will be closely monitored and any additional funding requirements will be managed as required. A deficit position may, however, arise earlier if claim values are higher than expected.

9. Other Implications (Including Environmental and Risk Issues)

- 9.1. There is the risk that, in future years, there may not be an adequate balance within the insurance fund to meet liabilities. As Council funds are facing various pressures due to the current climate, there may not be sufficient funding available to top up the insurance fund if this is required. It is, therefore, necessary that the Council takes steps to protect the current funds and to restrain any future insurance premium increases by aiming to reduce the number and cost of claims intimated against the Council.
- 9.2. A consultation on a Financial Redress Scheme for historical abuse is currently being undertaken by the Scottish Government, with a closing date of 25 November 2019. Proposals indicate that Local Authorities will require to provide a financial contribution to the scheme. The financial implications of this, if any, are unknown at present.
- 9.3. There are no implications for sustainability in terms of the information contained in this report.

10. Equality Impact Assessment and Consultation Arrangements

- 10.1. There are no equalities issues related to the proposals in this report.
- 10.2. There was no requirement to undertake any consultation other than with John Birkenhead of HJC Actuarial Consulting Limited, in terms of the information contained within this report.

Paul Manning
Executive Director (Finance and Corporate Resources)

28 October 2019

Link(s) to Council Values/Ambitions/Objectives

- ◆ Value: Accountable, effective, efficient and transparent

Previous References

- ◆ Report to Risk and Audit Scrutiny Forum – 13 June 2018 – Actuarial Review of the Council's Self Insurance Fund

List of Background Papers

- ◆ None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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