



**ALARM Awards 2007**

**Risk Based Methodology In  
Managing Liability Claims**

**Category 2 – Asset Risk**

An April 2007 submission by the Risk & Insurance Team, Wirral Council  
Application endorsed by Ian Coleman, Director of Finance



## **Executive Summary**

Losses relating to compensation claims have always been one of the Council's largest insurable risks. Much effort has traditionally been put into loss prevention. However, a surge in new claims starting in 2003 exposed flaws in the way we addressed the management of the claims themselves. This submission describes the risk-based methodology we used to redress this significant and increasing threat.

Existing claims handling arrangements gave us little control over the final outcome of a claim and no idea of, nor influence over, the quality of file handling. Procurement arrangements gave service providers no incentive to maximise quality or maintain competitive pricing. The appointment of claims handlers, solicitors and barristers was determined largely by the insurer and the selection of insurer was, itself, driven principally by cost, as we had no effective way of judging quality.

A deterioration in the claims experience partly due to these weaknesses led to the Council having to increase the contributions from departments year on year; from £1.9m in 2000/01 to £5.7m in 2004/05, taking funds from front-line services. Insurers lost confidence in the account (the aggregate stop loss almost trebling in this period, effectively rendering the Council self-insured). A complete restructure of our activity was needed.

The approach was driven by the view that the quality of claims handling was absolutely paramount. We began by critically examining our own claims processes with our partners inside the Council to identify internal areas for improvement. It was recognised early that a radical new claims strategy was required.

Whilst some elements were an enhancement on the way we had operated previously, other aspects, which have since been adopted by other authorities, were particularly unusual at the time.

- Acceptance that claims handling quality was paramount
- Concentration on public perception and reputation
- Innovative and detailed procurement process
- The creation of continual competition in the provision of legal services
- Introduction of strict Service Level Agreements for all suppliers (including barristers);
- A strong and transparent performance management system within which each link in the supply chain reports on the performance of the others;
- Council officers conducting formal on-site quality audits of suppliers;
- Implementing a reward for information leading to a successful fraud prosecution;
- Introducing pre-trial conferences for all cases and providing our witnesses with award-winning training to improve preparation for court hearings.

### **The impact of the initiative**

- Market leading highway claim repudiation rate of 90% and improved reputation.
- Release of £6.2m for front line services and further risk improvement measures.
- Revenue savings of £2.66m per annum
- Introduction of a feedback loop to support continuous risk improvement.
- We also hope that this initiative has had a wider benefit as we have shared our strategy, process and documentation, recognised as best practice by suppliers, with several other authorities.

## **Main Submission**

Wirral Council serves a population of 312,000 within a peninsula of 60 square miles. The workforce of 12,000 is responsible for 130 schools, 1,080km of adopted highway and manages commercial property valued in excess £1billion. Whilst the west coast of Wirral contains areas of real affluence with some of the highest property values outside of London, the east side of the peninsula covering the urban areas of Birkenhead and Wallasey contains areas of relative deprivation. The complexity and diversity of the services we provide and the socio economic profile of metropolitan boroughs has traditionally provided a challenging liability risk.

The North West of England, and Merseyside in particular, has customarily been regarded as the heart of the UK claims culture. Even prior to the explosion in claims experienced by all Local Authorities in 2001 to 2003, the background level of liability claims costs sustained by Wirral exceeded the national norm. Many of the largest claimant solicitor firms are based in the Merseyside area and they have traditionally viewed Local Authorities as an easy target. The Merseyside area courts have also historically been viewed as predominantly pro claimant, making successful defences difficult.

### **Identification – The Need For The Initiative & Analysis of the Causes**

During 2004 it became evident that the increasing budget required to keep pace with actuarial determined liability funding levels was unsustainable. Insurers began imposing ever larger aggregate stops, leaving the authority effectively self-insured. The required liability funding requirements had grown from £1.9m in 2000/01 to £5.7m for 2004/05, a 300% increase. This cost had to be sourced directly from reductions in front line service budgets.

That year, the Risk and Insurance team began a detailed review and identified the following factors as having a significant impact on the liability funding requirement:

- The onset of the claims culture with the emergence of the large claims ‘farmers’ and double-digit annual claims cost inflation following the civil justice reforms;
- Perception of the Authority as a soft target by claimant solicitors;
- Perception that attempted claims fraud was risk free to the claimant;
- Jaundiced view of Wirral by local judiciary making successful defence difficult;
- Hard insurance market coupled with a lack of competition for Metropolitan Authority business driving up liability insurance costs;
- Insufficient management investment in the liability risks themselves, particularly highway related risks;
- View of claims as an administrative function with no formal claims philosophy in place and lack of control over outcome of claims;
- Procurement process that focussed on quality and value of liability terms rather than quality of post loss claims process;
- Contracts covering service supply provided no incentive for the provision of a quality service and no formal performance management mechanism.

### **Treatment – Our Approach**

It was clear from the diverse nature of the identified causes that a multi faceted approach to tackling the varied issues would be required. Some would be within the team's immediate control and others, such as the subsequent redesign of highway maintenance / inspection policy would require a partnership approach. Others, such as claims costs inflation and government led access to justice policies are outside the team's influence. Given the constraints of this submission, focus will be on the elements specifically under the control of the Risk & Insurance team.

Initial action involved the design and implementation of a detailed claims audit programme to identify weakness in the outsourced supply chain and internal claims systems and processes. This programme identified significant areas of failing / leakage and informed immediate risk improvement measures. This process also led to an internal understanding that the quality of the pre and post litigation claims handling is the single most important factor in the liability management programme. A fundamental redesign of the claims management process was required. The standard market contracts and practices allowed for little flexibility of approach and provided no incentives for contractual partners to maintain standards or take ownership of the consequences of oversight or omission. The 2005 tenders for liability and legal services were chosen as the opportunity to make the necessary changes.

### **Partnership Working**

Considerable time was invested in the programme redesign, with consultations involving both existing and potential internal and external partners. Early consideration was given to the Council taking full ownership of the pre-litigation claims process and creating an in-house claims handling team. This was later discounted following a risk assessment in favour of retaining the decision making in-house, but outsourcing the administrative process elements and transferring associated potential procedural cost risks. By retaining management control of the individual claims, we have been able to bring to bear local geographical and claimant knowledge and ensure that all decisions are made by key experienced and qualified personnel in line with a focussed claims strategy. This has enabled improved identification of claims clusters and trends and has allowed the precise targeting of claims investigation resources.

At this stage Members were approached for approval of the proposed quality orientated, bespoke tender process. The requirement for quality was endorsed by Members and the tenders proceeded with selection procedures based on a 75%/25% quality / price split. We recognised that whilst costs must be contained, for a quality service to be maintained, the service must be profitable for contractual partners.

The preliminary phase of the tender process was for officers to sell Wirral to underwriters to obtain the best available terms. As noted previously, the historic profile of the Authority was not attractive to insurers. The team created and personally delivered presentations to potential insurers outlining the positives of the account and identifying the proposed risk improvements. This commercial approach was well received and afforded the underwriters far greater insight into the risk than that usually provided by standard public sector documentation based approaches.

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Following detailed design and consideration of the required service level agreement, a multi stage tender was undertaken to identify appropriate claims handling partners. The successful submission had to provide evidence of embedded quality within the organization and plans to provide Wirral with an innovative, proactive and cost effective claims solution. After an initial detailed paper based review exercise, all 3 remaining candidate firms received on site quality assessment visits. The proposed claims handling teams were interviewed to ascertain knowledge levels and compatibility with our new philosophy and approach. This resulted in the appointment of a small, dedicated, highly experienced team keen to meet our high expectations.

### **Innovation**

To avoid contractual complacency and maintain competition it was determined that a 2 firm legal panel would be appointed, neither guaranteed any value or volume of work. Working in partnership with the new claims handlers, a detailed tender process was undertaken with the key criteria being performance, transparency, continuity / accessibility of named personnel, and innovation of approach. It was also vital that the successful firms had an excellent knowledge of Wirral's geography and judiciary. Following an extremely competitive selection process, the successful firms not only met the strict award criteria but also delivered excellent costs proposals. These firms have met our request for innovation by utilising the Wirral account to pilot new IT, fee structure and service solutions.

A further innovative supply chain approach has been the introduction of a direct service level agreement with Chambers. The appointment and control of barristers is traditionally a protected role for solicitors. The Wirral owned and managed service level agreement with chambers provides guaranteed service and availability for a preferred named panel of barristers together with reductions in fixed fee terms. The small named panel ensures consistency of approach and enables key relationships to be established with individual barristers.

To ensure that the agreed quality levels from all links of the supply chain are maintained, a detailed feedback and audit process has been written into every service agreement. Whilst Wirral officers conduct regular formal audits of all suppliers, the supply chain is self-regulating, each element reporting directly to Wirral on the quality of its interactions with other members. With the agreement of both parties and following the innovative SLA, Chambers have even consented to report directly to Wirral on the quality of instructions received from the legal panel. Further details of the quality review programme are provided in appendix 1. The loop is supplemented by detailed quarterly statistical analysis to identify areas of shortfall or concern.

### **Tackling Fraud & Reputation**

To further change public perception of the “soft touch” and destroy the idea that claims fraud was risk free, a robust claims fraud policy has been implemented. This innovative policy has been endorsed by Council Members and covers many aspects of investigation including data matching/data mining/information sharing and surveillance. Wirral was an early adopter of the successful Fraud Line scheme and was the first authority to offer a £5,000 reward for information leading to a criminal conviction. This policy is aimed at both detection and perhaps more significantly deterring bogus claims. 150,000 specially commissioned leaflets were delivered to every Wirral address and hard-hitting posters are displayed throughout the Authority. The PR

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launch had front-page coverage locally and considerable national media interest. In line with this new policy, communication channels have been opened with Merseyside Police Fraud Squad that have led to successful joint working. An added advantage of the claims fraud hotline has been the number of calls received relating to Housing Benefit, leading to the establishment of partnership working and information sharing arrangements with our benefit fraud colleagues.

Media relations established in the fraud project have been further developed to place prominent local articles educating the community that claims are funded directly from taxpayer's resources and the efforts we are making to protect those. We have reinforced this message by adopting a hard policy of costs recovery. Examples include appointing bailiffs to seize goods from a claimant solicitor where we obtained an unpaid personal costs order and placing a charge for unrecovered costs on a vexatious litigants property.

To improve Wirral's image with the judiciary and give confidence to personnel who may be required to attend court, a detailed witness training course and information pack has been designed and delivered in partnership with our corporate training unit. The course covers all elements of the civil court process and provides specific training in giving clear evidence, maintaining a professional demeanour and dealing with cross-examination. This course has won official recognition in the form of National Training Award and now receives delegates from many neighbouring authorities. In line with a substantial improvement in our evidential ability to defend liability claims and the introduction of pre trial conferences with counsel on all matters, this has led to an exceptional record of trial success for Wirral.

### **Impact / Benefits**

Much improved liability terms have been received, **premiums have been reduced** and aggregate **stop losses almost halved** between 2005 and 2007.

Peer leading highways liability **claims repudiation rate of over 90%** for claims reported, and settled to date, within 2005 and 2006.

Strong image and reputation created with claimant firms being reluctant to take on claims against Wirral. Rate of liability **claims received fallen by almost 70%** over a 3-year period.

Of the 71 cases listed for trial within the last 2 years, 58 were successfully defended, an **81% success rate**. Actuarial studies have identified **savings** from the internal liability fund generated from the revised process and improved liability position **exceeding £6.2 million** to date. Over £3.8m has been returned to general balances for investment in front line services and £2.4 million has been retained by the Authority for investment into further targeted risk improvement measures. It is probable that an additional £2m of liability fund savings will be identified during the 2007 actuarial study.

In addition to the liability fund savings, annual liability budgets have also been capable of significant reduction. The estimated liability budget for 04/05 (set prior to strategy implementation) reached £6.16m. The estimated funding requirement for the current policy year is £3.5m. This represents an ongoing **year on year revenue saving of £2.66m**. Current budgets are set at a cautious level to allow for potential deterioration in the current scenario, actual required funding requirements may be even lower.

**Appendix 1 – Wirral Council Claims Supply Chain Regulation**

| Who is monitored                         | Monitored by                                     | Methodology   | Timescale  |
|--|--|---|--|
| Wirral Council                           | Claims Handlers<br>Legal Panel<br>Chambers       | Informal feedback & opening / closing reports<br>Pre trial conference reports<br>Formal claims audit process  | 6 Monthly service meetings<br>Ongoing case by case   |
| Wirral Council<br>Insurance Section      | Internal audit                                   | Formal quality audit  | At least once per 2 years  |
| Claims Handlers                          | Legal Panel                                      | Specific feedback sections built into standard opening & closing reports<br>Feedback to Wirral at formal service meetings   | Ad hoc case by case<br>6 monthly service meetings  |
| Claims Handlers                          | Wirral Council                                   | Formal on site open & closed file audit – adherence to SLA<br>Statistical monitoring  | 6 monthly formal audit<br>Quarterly statistical monitoring<br>Ad hoc case by case                                      |
| Legal Panel                              | Wirral Council                                   | Formal Audit<br>Review of professional accreditation audits (lexcel etc)<br>On line access to panels in house case management system<br>Access to panels own internal audit results<br>Statistical cost / outcomes analysis | Annual formal audit<br>When conducted by accrediting body<br>Ongoing regular review<br>Regular<br>Quarterly monitoring |
| Legal Panel                              | Claims Handlers                                  | Informal reporting on an ad hoc basis   | Ad hoc case by case  |
| Legal Panel                              | Chambers   | Formal report provided to Wirral at conclusion of case  | Conclusion of each instruction   |
| Chambers                                 | Wirral Council                                   | Formal audit / performance monitoring at conference & trial<br>Adherence to service level agreement   | Annual formal audit<br>Case by case  |
| Chambers                                 | Legal Panel                                      | Informal feedback at joint service meetings   | 6 monthly  |
| Investigation/<br>Surveillance<br>Agents | Legal Panel<br>Claims Handlers<br>Wirral Council | Formal review of quality, adherence to SLA and value for each instruction   | Each and every case  |