

**How Christchurch
City Council
managed conflicts
of interest when it
made decisions
about insurance
cover**

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Introduction

What is Civic Assurance?

1. Mr Tony Marryatt was appointed as the chief executive of Christchurch City Council (CCC) in 2007 and reappointed in September 2011. In March 2008, he was appointed as a director of New Zealand Local Government Insurance Corporation Limited.
2. New Zealand Local Government Insurance Corporation Limited is a company created and owned by local authorities to provide them with insurance cover. The company uses “Civic Assurance” as its trading name.
3. Most local authorities, including CCC, are shareholders of Civic Assurance. Directors of Civic Assurance need a strong understanding of local authority matters – all of the current directors either are in senior management roles in a local authority or have previously been in such roles.
4. Civic Assurance also administers several funds operated by other entities, including:
 - the New Zealand Local Authority Protection Programme Disaster Fund (LAPP), which is a charitable trust set up by Local Government New Zealand and Civic Assurance in 1993 to provide insurance for local authority infrastructural assets that are difficult to insure (for example, underground pipes and stopbanks);
 - a KiwiSaver scheme for staff working in the local government sector; and
 - Riskpool, which is a mutual liability fund that provides professional indemnity and public liability insurance for local authorities and council-controlled organisations.
5. The Appendix sets out more information on the relationship between LAPP and Civic Assurance.

Christchurch City Council’s insurance arrangements

6. From June 2007 until June 2009, CCC had insurance cover for material damage to above-ground assets with New Zealand Insurance (NZI) and QBE Insurance (International) Limited (QBE). In June 2009, CCC decided to change its insurer for this cover to Civic Assurance. In June 2010, CCC changed again and insured its above-ground assets with LAPP.
7. CCC has had insurance cover with LAPP for its infrastructural assets since 1 July 1993, including during the recent earthquakes. In 2010, when CCC decided to insure its above-ground assets with LAPP, it kept its “forest and rural fire”, “machinery breakdown”, and “marine hull” insurance cover with Civic Assurance.

Year (starting 1 July)	Cover for damage to above-ground assets	Cover for damage to below-ground assets and some infrastructural assets
2007	NZI/QBE	LAPP
2008	NZI/QBE	LAPP
2009	Civic Assurance	LAPP
2010	LAPP	LAPP

What we have looked at in this inquiry

8. The changes in insurance cover have prompted some questions about whether Mr Marryatt has had a conflict of interest arising from his roles as director of Civic Assurance and chief executive of CCC:
 - When CCC was considering who to appoint as chief executive in June 2011, a question arose about the compatibility of Mr Marryatt's two roles. The recruitment consultant assisting CCC wrote to the Auditor-General for advice. Our reply encouraged CCC to get direct legal advice on the issue.
 - Councillor Tim Carter wrote to us in November 2011, asking us to investigate CCC's decisions on insurance and any potential conflicts of interests for Mr Marryatt.
 - Later in November 2011, we received a letter from the General Manager Regulation and Democracy Services at CCC. The Council's CEO Performance Review and Remuneration Sub-committee wanted advice about whether Mr Marryatt had a conflict of interest such that he should not be a director of Civic Assurance.
9. We have inquired into:
 - whether Mr Marryatt was involved in any decisions about CCC's insurance after he became a director of Civic Assurance; and
 - whether Mr Marryatt's roles as a director of Civic Assurance and as chief executive of CCC are compatible.
10. On the first question, we have concluded that:
 - Mr Marryatt appropriately excluded himself from decisions about the placement of CCC's insurance cover after he became a director of Civic Assurance in March 2008.
 - However, nobody identified that the consequence of this exclusion was that the delegation was not being complied with and so the decisions were not properly authorised.
 - Mr Marryatt and CCC should have identified the risk of a conflict of interest arising when he was first appointed as a director of Civic Assurance and at that time changed the delegations to exclude him from decisions about insurance cover.
 - Having missed that opportunity, the delegation problem should have been identified and addressed to ensure that decisions were properly authorised when insurance cover was next arranged.
11. In our view, CCC needs to take better care to ensure that staff understand that delegations are important and that decisions made without delegated authority expose the organisation to legal risk.
12. On the second question – whether Mr Marryatt's two roles are compatible – we have concluded that there are few areas of overlap between his roles as chief executive of CCC and director of Civic Assurance. The potential conflict of duties is not so pervasive that the two roles are incompatible. In our view, there is no reason for him not to continue in both roles, if CCC puts in place better arrangements to manage his involvement in decisions about insurance.

How Christchurch City Council made decisions about insurance

Who is responsible for decisions about CCC's insurance?

13. Within a local authority, the council itself (the formal body made up of all the elected members) is responsible for making decisions, unless it delegates authority to the local authority's staff. Decisions must be made by staff members who have the delegated authority to make them. If that is not possible or there is no relevant delegation, then the council must make the decision.
14. CCC has a delegations register, which sets out all the delegations to staff. The register states that:

Once delegations have been made by the Council, then the person to whom the power is delegated is legally able to make a decision within that delegation as if they were the Council itself so that decisions made by committees, community boards, subcommittees and officers within this Delegations Register legally bind the full Council.
15. In August 2003, the Council resolved to delegate its power to purchase insurance cover to the Chief Executive and the Director Strategic Investment. The delegations register states:

*CHIEF EXECUTIVE
COUNCIL DELEGATIONS
...
6. That the Chief Executive and the Director Strategic Investment jointly be granted delegated authority to enter into arrangements for the placement of all the Council's insurance policies, subject to the exercise of such delegated power being reported back to the Council in each case.*
16. Mr Marryatt told us that the position of Director Strategic Investment was disestablished in 2007, and the role was replaced by the General Manager Corporate Services. The delegations register was not updated to reflect the changes in positions.
17. In practice, sometimes decisions about insurance cover need to be made quickly. Brokers provide advice on options and prices for cover but sometimes this advice may only be available shortly before the existing cover is due to expire. In such a case there would not usually be time to put a decision to the Council or a committee. Delegating the decision to senior staff, along with an obligation to report back to the Council, is a practical response to this situation.

The decisions to place insurance in 2007/08 and 2008/09

18. Mr Marryatt took up the role of chief executive of CCC in May 2007. He and the General Manager Corporate Services made decisions about insurance cover, in keeping with the delegation (allowing for the change in position title). At that time, Mr Marryatt was not a director of Civic Assurance.

19. In June 2007, CCC changed its insurance cover from Civic Assurance to NZI/QBE for a period of two years. CCC staff prepared a report to the Audit and Risk Management Subcommittee on the intended approach to that year's reinsurance programme before the insurance renewal in June 2007. There is no record to show that the decision to insure with NZI/QBE was reported to the Audit and Risk Management Subcommittee after it was made.
20. In March 2008, Mr Marryatt became a director of Civic Assurance. In June 2008, CCC staff briefly considered whether to continue with the second year of the insurance cover with NZI/QBE or switch to another provider, but concluded that no action was necessary. CCC decided to continue with NZI/QBE for 2008/09.

Insurance decisions for 2009/10

21. In June 2009, CCC's cover with NZI/QBE expired. CCC told us that Mr Marryatt and the General Manager Corporate Services discussed the insurance renewal process some time in the second week of June 2009. Mr Marryatt told us that he made it clear in that discussion that he should play no part in CCC's insurance renewal process, because of his role as a director of Civic Assurance. Mr Marryatt also told us that he made it clear that Civic Assurance should only be considered if it "stacked up on the merits".
22. Aon New Zealand Limited, CCC's insurance broker, gave CCC a report on 25 June 2009 about the options for insurance cover for material damage (that is, cover for damage to property such as buildings and contents) and business interruption. The report presented three options – continuing with the existing insurer, or moving to either Civic Assurance or LAPP. The report noted that the premium offered by Civic Assurance provided a significant cost saving.
23. There were only three working days between the time CCC received this report and the expiry of the policy.
24. Based on the report from Aon New Zealand Limited, the General Manager Corporate Services authorised an email to be sent by the Corporate Finance Manager to Aon New Zealand Limited. The email instructed Aon New Zealand Limited to place the insurance cover for material damage with Civic Assurance on 30 June 2009.
25. CCC told us that the General Manager Corporate Services had monthly meetings with the Chairperson of the Audit and Risk Management Subcommittee to provide updates on financial and risk management issues. He also attended quarterly meetings to brief the Chairperson on upcoming agendas for the Subcommittee. The General Manager Corporate Services discussed the renewal of the insurance for material damage with the Chairperson of the Audit and Risk Management Subcommittee on 23 July 2009.
26. CCC staff prepared a report for the meeting of the Subcommittee on 14 August 2009. The report noted that CCC's insurance was renewed as expected. The report set out the credit ratings of CCC's insurers, but did not state which insurer was providing cover for which aspect of CCC's operations.

27. However, the delegated authority to arrange insurance was jointly delegated to the Chief Executive and the Director Strategic Investment. Excluding Mr Marryatt from the decision meant that the decision was not properly authorised. No-one appears to have recognised this consequence or considered whether corrective action was needed (for example, full Council confirming the decision).

Insurance decisions for 2010/11

28. In June 2010, CCC staff again obtained an insurance renewal report from Aon New Zealand Limited. The renewal report assessed options for insurance cover provided by Civic Assurance and LAPP for material damage and business interruptions. Previously, LAPP had provided insurance cover only for infrastructural and below-ground assets. It was now offering cover for other assets, such as buildings and contents, and also offering cover for business interruptions.
29. The General Manager Corporate Services and the Corporate Finance Manager decided to place the insurance cover for material damage and business interruptions for 2010/11 with LAPP. They determined that it was inappropriate to involve Mr Marryatt in this decision, and the General Manager Corporate Services told us that he never discussed this matter with Mr Marryatt. He also told us that he briefed the Chairperson of the Audit and Risk Management Subcommittee on the insurance renewal at a regular meeting on 23 July 2010. There is no record of this renewal being reported to the Subcommittee.
30. Again, no-one appears to have recognised that excluding Mr Marryatt meant that the decision was not properly authorised.

Our conclusion on the annual insurance contracts

31. Mr Marryatt was right to identify, in June 2009, that he would have a conflict of interest because of his role as a director of Civic Assurance and should not be involved in decisions about insurance cover.
32. The risk of a conflict of interest was managed by ensuring that he was not personally involved with insurance decisions. In 2009 and 2010, the General Manager Corporate Services and Corporate Finance Manager made these decisions, and the Chairperson of the Audit and Risk Management Subcommittee was told about decisions after they were made.
33. However, this response to the conflict of interest meant that decisions were not made by staff with the delegated authority. The delegation to obtain insurance cover for CCC was to the Chief Executive and the Director Strategic Investment jointly. This meant that the people in these two roles had to jointly make this decision, or the decision had to be made by the Council. Instead, the decision was made by only one of those people. Nobody identified that the consequence was a failure to comply with the delegation, or that this created a risk.
34. In our view, Mr Marryatt and CCC should have identified the risk of a conflict of interest arising when he was appointed as a director of Civic Assurance in March 2008. CCC's delegations should have been changed before the next insurance decision was due in June

2008. At the latest, changing the delegations should have been the response when the conflict of interest was first clearly identified by Mr Marryatt and CCC staff in June 2009.
35. Having missed the opportunity to fix the delegation problem in advance, CCC staff should have identified the problem and managed the risk of decisions being made without proper authority when insurance cover was next arranged. They should also have arranged for the Council to change the delegations. Instead, the same problem arose a year later. The response again was to make insurance decisions without proper delegated authority.
 36. We note that the delegation also requires decisions about insurance cover to be reported back to the Council. In 2009, a report was provided to the Audit and Risk Management Subcommittee but it did not meet the requirements of the delegation. CCC staff did not provide a report to the Council or the Subcommittee in 2010.
 37. In our view, CCC needs to ensure that staff understand that delegations are important and that decisions made without delegated authority expose the organisation to legal risk. It needs to ensure that it maintains a delegations system that is up to date and meets the current needs of the organisation, and that it complies with it.

Are Mr Marryatt's two roles compatible?

Conflict of roles generally

38. A conflict of roles or conflict of duties can arise when a person holds office in two entities and those entities are both involved in the same matter. The person will have separate duties to act in the best interests of both entities, which might come into conflict. The incompatibility can be about a general set of issues (for example, if one entity is responsible for regulating the activities of the other), or about a particular issue or transaction involving both entities.
39. A conflict of duties can create legal risks for the individual as well as for the entities. For example, an individual may be at risk of personal liability for breaching a legal obligation that they owe to the entity. Depending on the nature of the entity and the decision, its decision-making may also be at risk of challenge through judicial review, on the grounds of bias or predetermination. It is also important to consider how the situation might appear to a reasonable outside observer. Even if an individual is confident that they do not have a conflict of duties, there may still be a risk of legal challenge, and public criticism, if there is a reasonable perception of a conflict.
40. Once a possible conflict of duties has been identified, the affected person and the entities need to assess the scope of the conflict and what steps will be needed to manage it. The usual approach is to identify the particular issues or decisions where the duties will conflict and for the person to stand aside from one role for those issues. The person's normal responsibilities for those issues would be transferred to a colleague in one entity, and the person would be involved only in the other role. However, sometimes the conflict of duties will be pervasive and affect so many issues that it is not possible for one person to hold both roles.

What is the risk of a conflict of duties arising from Mr Marryatt's two roles?

41. At a general level, it appears obvious that Mr Marryatt's two roles could create a conflict of duties. To assess that risk properly, we sought information on the responsibilities of CCC's chief executive for insurance matters and on the involvement of directors of Civic Assurance in decisions about individual policies and claims.
42. CCC makes two main types of decisions about insurance: decisions on who to insure with and decisions about claims under those policies. We have already discussed who is responsible for decisions about insurance cover, and how those decisions have been managed in practice.
43. CCC told us that claims are made and settled by the staff responsible for the particular area of activity, as part of their normal financial management responsibilities. Staff are guided by the financial limits in the delegations for entering into contracts, and these then determine the monetary value of claims staff are able to settle. This delegation provides:

... the Council delegate the power of the Council to enter into contracts for the purchase of materials, works and services, subject to the specified amounts in respect of items provided in the Annual Plan of the Council:

 - (a) *Not exceeding \$500,000: to be exercised by any two of the Chief Executive, General Manager Corporate Services and General Manager Strategic Development.*
 - (b) *Not exceeding \$100,000: to the Chief Executive, all General Managers, and Managers of Business Units.*
 - (c) *The Art Gallery Director may expend funds available from the Art Gallery Acquisitions Budget to a limit of two-thirds of that budget (current delegation).*
44. CCC told us that, to date, Mr Marryatt has not been involved in any decisions about insurance claims because the value of the claims has fallen within the General Managers' delegated authority. If the amount exceeds that delegated authority, CCC told us that staff would take the decision to the Council.
45. The risk of Mr Marryatt having a conflict of duties will arise when a claim affects Civic Assurance, either directly as the insurer or indirectly as a reinsurer. Civic Assurance holds only a small amount of CCC's insurance cover. LAPP is responsible for most claims arising from the Canterbury earthquakes, but Civic Assurance is still involved as a reinsurer for LAPP.
46. CCC also told us that a paper was put to the Council on 8 December 2011, seeking staff delegations to accept certain insurance settlements. The Council approved these at its meeting on 15 December 2011. The delegations do not include any delegations to the Chief Executive. In our view, this is a sensible precaution while Mr Marryatt remains a director of Civic Assurance.
47. Civic Assurance told us that directors are not involved in decisions about who to insure or the terms of that insurance. It also told us that directors are not involved in considering claims because they are dealt with by management. Also, Civic Assurance staff would usually be acting as an intermediary in a chain of insurance and reinsurance arrangements, and would not normally be making substantive decisions about claims.

48. Civic Assurance told us that no aspect of CCC’s insurance arrangements, either directly with Civic Assurance or through LAPP, has come to the Board for a decision. Although the size and nature of CCC’s earthquake-related claims are significant, the Board’s role has been limited to considering the consequences for the company of the effects of settling the various claims. Civic Assurance directors have had no involvement in deciding what amount should be paid on any of the claims.

How does each entity manage conflicts of interest?

49. CCC has a conflict of interest policy and procedures for its employees. The content is also included in the staff code of conduct. The policy requires employees to inform their team leader or manager if there is a potential conflict of interest. The team leader or manager then determines whether there is a conflict of interest and consults with the employee about how to manage it. The policy does not explicitly state how a conflict of interest by the chief executive is to be managed. The procedures for identifying and managing conflicts of interest are clearly inappropriate where the employee with the conflict is the chief executive.
50. CCC also has a policy called “Additional work and conflict of interest policy”. This policy sets out how requests by employees to carry out additional work are considered or managed or where employees advise of an actual or potential conflict of interest. It states that requests to carry out additional work will be approved only where there is no conflict of interest in the employment being requested. It also requires that prior approval be granted by managers to employees. The policy states which managers can approve which level of employee. However, it does not state who is to grant the approval if the employee is the chief executive.
51. CCC’s conflicts of interest policies do not explicitly address how to manage a conflict of interest of the chief executive. We would expect the same principles that apply to employees would apply to the chief executive, but for the chief executive to be discussing the management of personal conflicts of interest with the Council or a Council subcommittee because there is no relevant manager.
52. No specific arrangements have been put in place to manage Mr Marryatt’s two roles. In practice, Mr Marryatt and his staff have identified the risk of a conflict of duties arising with decisions about insurance cover, and he has taken no part in those decisions. No issues about claims against insurance cover provided by Civic Assurance have needed the chief executive’s involvement, so there have been no conflicts to manage.
53. Civic Assurance has a Board Charter that includes a protocol on conflicts of interest. Civic Assurance told us that directors are asked at the start of each meeting whether there have been any changes to their list of declared interests, which is circulated with the agenda papers, and whether there are any items on the agenda that may give rise to a conflict of interest. As a company, its management of conflicts of interest for directors is governed by the relevant provisions of the Companies Act 1993. We have already explained that decisions about individual policies or claims are not made by the Board, so no conflicts of duties have arisen for Mr Marryatt as a director.

Our conclusion on the compatibility of the two roles

54. Although there is a general possibility of the duties of the two roles coming into conflict, in practice there are very few points where Mr Marryatt is likely to find that his duties as a chief executive of CCC and as a director of Civic Assurance will come into conflict.
55. The main risk is likely to be when CCC is deciding which company to insure with. As a director of Civic Assurance, Mr Marryatt has a clear conflict of duties in that decision. He has managed the risk by not taking part in those decisions. A similar risk would arise if the chief executive needed to be involved in a decision about a claim when Civic Assurance is the insurance company involved.
56. CCC staff have advised us that they will recommend that CCC amend the delegations register to put in place clear delegations for decisions about insurance cover. This would clarify who will be responsible for these decisions while Mr Marryatt continues to have a potential conflict of duties. Managing the issue in advance in this way will avoid the risk of decisions being made outside people's delegated authority, and avoid the legal and other risks that could follow.
57. Given the nature of the decisions that come to the Board of Civic Assurance, we consider that its existing procedures for managing conflicts of interests are adequate.
58. We do not consider that the potential conflicts of duties are so pervasive that the two roles are incompatible. In practice, the areas of overlap are few. If CCC puts in place better arrangements for managing Mr Marryatt's involvement in decisions about insurance cover, we consider that there is no reason that he should not continue in both roles.

Appendix: Civic Assurance and LAPP

The trading name of New Zealand Local Government Insurance Corporation Limited is Civic Assurance. It was formed under the Municipal Insurance Act 1960 and has been trading since 1961. It provides insurance for local authorities. Civic Assurance also administers several other funds operated by other entities, including Riskpool and the New Zealand Local Authority Protection Programme Disaster Fund (LAPP).

Local Government New Zealand (LGNZ) and Civic Assurance set up LAPP as a charitable trust in 1993. LAPP has traditionally provided insurance cover for essential services that it was impossible to obtain private cover for, such as storm water pipes and stopbanks for flood protection. In 2009, LAPP extended the cover it was able to offer to include cover for other council assets, such as buildings and their contents, and also for business interruptions. Only councils and council-controlled organisations can be members of LAPP.

LAPP is governed by trustees who are appointed by LGNZ, Civic Assurance, and the Society of Local Government Managers. LAPP is a separate legal entity to Civic Assurance, but Civic Assurance is the administration manager of the LAPP Fund.