



Report of Town Clerk

Risk Management – Closure of a Potential Litigation Risk

Access Public

Background

1. On 27th October 2020 council received, from Messrs Watkins and Gunn, solicitors, of Newport, a letter before action. The letter was sent on behalf of a charity that represents travellers and their families. This letter gave rise to a risk that litigation may be commenced against council, with commensurate financial and reputational risks.
2. The letter also suggested, in confused language that was unhelpful, that the Town Clerk and the then Mayor, Cllr Forbes, had committed the criminal offence of misconduct in a public office. Leaving aside the issue of whether a letter issued under civil procedural rules is the appropriate way of making an accusation of criminal conduct, the matter had to be dealt with, but could only be dealt with under civil rules, since there is no way of inviting the police to confirm that an accusation is entirely without merit.
3. It would be unfair to the parties concerned if we did not make the following points at the head of this report:
 - a. The Town Clerk considered the matter in June 2020, provided advice to the Mayor, but concluded that it was not a matter for council since Cllr Forbes was not acting as a councillor when the post was made. This is relatively settled law since the Livingstone case, and hardly novel or obscure. All of these matters were considered in a statement issued by the Town Clerk, at the time.
 - b. The Monitoring Officer considered the matter, and has taken no further action.
 - c. Northumbria Police considered the matter twice, and no further action was taken.
4. In the current political climate, whilst not wishing to contribute to the public debate about the tenor and manner of public discourse, some social media comments on this matter gave the Town Clerk sufficient cause to advise Cllr Forbes as to their safety. These messages included explicit threats of damage to property, and evidence of individuals actively seeking Cllr Forbes address, as well as nuisance and threatening phone calls.
5. Similarly, the tenor and tone of some of the emails received by other councillors, especially Cllr Robert Bruce, who, as Deputy Mayor at the time, was responsible for leading the council's response, were neither generous nor fair.
6. This was a time of considerable stress for council, and for officers.

Update

7. Council claimed under its existing legal protection insurance, and solicitors were appointed. They sent a formal rebuttal to the claimants, and invited them, effectively, to either make their claim in court, or to desist. No response has been received to that letter.
8. Whilst a claim of this kind is in train, council is required to make no statement without the advice of its solicitors. Since the solicitors have received no response, and consider the matter closed, that no longer applies, and this report can be made to council.

Lessons Learned

9. The extent to which charities, or organisations with charitable objectives, are free to make public statements about the law, or potential changes to the law, is a matter of considerable public debate. This case, which hinged in large part on the interpretation of case law and statute law, illustrates well the extent to which activist charities can blur the distinction between the law as it is, and the law as they wish it to be in their statements. Council is strongly advised, in every instance to check any such statements by charities who wish to change the law before relying on them as statements of law.
10. The claims that the Town Clerk and Cllr Forbes were guilty of misconduct in public office are examples of accusation inflation, where a disagreement about a decision made in good faith is inflated, using hyperbolic language, into accusations of criminal misconduct. Members are invited to reflect on the impact of such hyperbole on officers and other members; whilst Town Councillors are not responsible for the prevailing tone of public discourse, the role of councillor includes a duty to provide leadership and to model behaviours that reflect the Nolan Principles, and councillors may wish to conclude that the avoidance of accusation inflation and hyperbole is a desirable way to proceed.
11. Members are invited to reflect on the weight that should be given to any letter received from solicitors in a case such as this. Whilst the proper response is to forward the matter to professional advisors, it's necessary also to remind members that a solicitor's letter will often set out what the solicitor's client thinks should be claimed, rather than a dispassionate statement of evidence and law.
12. Council is invited to reflect on the time it has taken to reach this point; whether such delays are conducive to good governance or the wellbeing of members and staff is questionable, at best.

Recommendations

1. That council note the report, and
2. That council confirm the decision of the Town Clerk (as the officer responsible for providing advice on risk to council) that there is no credible risk from this matter either to the council's finances or reputation.

Author	GD	Town Clerk sign off (if required)	GD
Checked by	SC	Finance Officer sign off (if required)	N/A