



Case Study

Health, Safety, and Asset Audit

July 2023

SLCC
For Local Council Professionals®



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Society of Local Council Clerks (SLCC)

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As the professional body for local council clerks and senior council employees, we ensure that our members are equipped with the necessary knowledge, training, and skills to thrive within their role and best support their council and community.

SLCC is a vibrant member focused organisation which helps local council officers to develop and grow professionally and so be able to better serve their councils and the communities they support.



Local Council Consultancy (LCC)

To further the service provided, LCC was launched in late 2018 by SLCC as an additional capability to its advisory and membership services. It draws on the wide and deep expertise of SLCC and seeks to provide councils with a value for money, sector-leading consultancy service.

LCC operates on a **'profit-for purpose' basis, reinvesting all surpluses to further the development of professional clerks and, through them, the development of the whole sector.**

LCC services are delivered by our team of associates and Certificate in Local Council Administration (CiLCA) qualified clerks who are grounded in core public service values, a number of whom have worked in principal authorities and are now in the town and parish council sector.

Case Study

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INTRODUCTION

Dr Ian Gardner Associate Consultant at LCC shares this audit case study case study, focusing on an interesting and complex project which was commissioned to undertake a review of council assets, and carry out a health and safety audit. The piece also shares learning outcomes from the project.

PROJECT BRIEF

1. Carry out a health and safety audit for a town council
2. Review the council's assets and compliance with property related safety guidance and legislation and consider the council's duties as an employer
3. Carry out the review remotely using documents and contact via email and telephone, producing and issuing a detailed report with recommendations within a month

HEALTH AND SAFETY AUDIT

The health and safety audit included an assessment of the safety arrangements at a park where the council was the freeholder.

The park had play equipment, sports facilities, and a pavilion and was managed by a committee of park users constituted as an unincorporated association. Governance arrangements at the park were somewhat unclear – there was a lease, and the committee was submitting annual returns to the Charity Commission, but due to the withdrawal of grant funding in previous years, the association was experiencing financial difficulties.

Members of the committee were concerned that if the association became insolvent, they would be personally liable for the debts of the association, and they had decided that it would be sensible for the association to re-constitute as a Charitable Incorporated Organisation (CIO).

This was completed in 2020 and the town council had nominated a number of its councillors to sit on the board of the new organisation, along with representatives of sports clubs that had historically used, and been involved in managing, the park.

IDENTIFYING RISK

The health and safety audit identified action had not been taken to transfer the existing lease, or assets of the association to the new CIO, and that the association's accounts were not up to date.

The project entailed sorting these issues out and preparing a business case to properly assess the costs of running the park, so that the new CIO could take over its management. This is where the project started to become both interesting and complex.

PREPARING ACCOUNTS

The first task I embarked on was to complete three years accounts for the association. Unfortunately, due to the death of the association's Treasurer the position was rather messy. Invoices and bank statements had to be located and then reconciled so the association's financial position could be understood. Details of the assets held by the association were also needed and this is where the project became interesting.

IDENTIFYING ASSET OWNERS

Although the freehold of the park had been registered with the Land Registry and the lease between the town council and the managing association had been recorded as a restriction on the freehold title, the lease did not make ownership of assets very clear.

The park had a pavilion and some play equipment that had been provided via grants. These had been applied for by the management committee after the lease was granted so it was conceivable that the assets could belong to the association - and would potentially need to be transferred to the new CIO.

It also became clear in preparing the association's accounts that these had been historically reported to the Charity Commission in summary format and so there was a question as to the charitable status of the association and the assets.

CONFIRMING CHARITABLE STATUS

Looking through the bundle of paperwork connected with the association's accounts, it became clear that grants and other financial support (business rates relief) had been obtained by the association based on a believed charitable status. There was nothing in the lease that indicated that a charity existed, and the association's constitution would not as originally drafted meet the Charity Commission's registration requirements. But a charity did exist, and association members were recorded as its 'trustees.'

To throw light on the above, a copy of the charity's governing document was obtained from the Charity Commission. At the same time the town clerk unearthed some historic correspondence between the association and the Charity Commission, and the situation was discussed with specialist solicitors. The result.? Well, it appeared that the park was passed to the town's council's predecessor authority (the parish council) back in 1931 and that the land was a charitable endowment to be held in trust by the council in perpetuity.

The **land**, rather than the association managing the park, **was the charity**, but the position had become confused over time. Correspondence between the association and the Charity Commission from nearly 20 years ago had confirmed this, but this had been overlooked or ignored.

The same correspondence also confirmed the lease that the council had granted was void and had no effect because the land was charitable, and a lease would be a disposal requiring the consent of the Charity Commission - which had not been given. The town council was still therefore the corporate charity trustee for the park.

WHAT DID THIS MEAN FOR THE PROJECT?

Well, there was no lease to transfer as the lease was void.

Accounts which I had managed to compile were complete but whose accounts were they? Were they the accounts of the association, the association as a charity, or the park as a charity?

In the end I concluded that they were the accounts of the park as a charity and that the assets I had identified were part of these accounts - there was no need to transfer any assets to the new CIO. The assets were charitable assets associated with the park and there was no need to transfer these anywhere. They could continue to be held by the park as a charity.

The business case was also something which evolved. Initially it was being prepared to give comfort to the council prior to any assignment of the park's lease – to ensure that the costs of running the park were properly understood and to minimise the risk, should the new CIO encounter financial difficulties when managing the park in the future.

Now the position of the Council was clearer – as corporate trustee, the rationale for creating a new CIO was no longer relevant. The council could decide to manage the park directly or enter into a management agreement with the CIO or another organisation. The business case was revised to reflect both of these options not just the one that was presented at the start of the project.

'A project that started off being one where there were relatively straightforward administrative tasks, turned into a project involving quite challenging legal issues and complexities that were not initially foreseen!'

LEARNING OUTCOMES

- > Projects in smaller organisations can be as challenging and interesting as those in larger organisations
- > Never accept anything on face value – even though there are official documents or records that indicate what the position appears to be
- > Always seek specialist advice if you are unsure about something – don't guess or worse still, bluff your way through
- > Alternative options are likely to emerge as projects evolve, and these should be properly considered and presented, along with the options that were first identified
- > The charitable status of certain land or property may not be well understood by people inside the organisation or the organisation responsible for managing a charitable endowment
- > Relationships with organisations responsible for managing things like parks, playing fields, buildings etc. should be clear and recorded in valid legal documents like leases or management agreements
- > Organisations may need better information on the ownership of assets – some of which may be held in trust and not simply held freehold
- > Costs of running facilities (parks/ buildings etc) need to be properly understood and these need to include the costs of ensuring compliance with statutory or regulatory requirements
- > Project based external support can provide a valuable independent perspective at reasonable cost, particularly when property and assets are involved

CUSTOMER FEEDBACK



'Dr Ian Gardner was appointed via the Local Council Consultancy to undertake an audit of the council's current health and safety arrangements. Ian was very thorough and professional in his approach. He followed through all our documents and existing procedures in a systematic and thoughtful manner. The three areas investigated were:

1. Property management of our non-domestic premises, i.e. a sports pavilion, a chapel of rest and land – play areas, cemeteries, and bus shelters
2. People and organisation i.e. governance, organisation, and management; registers and risk assessments; and audits and inspections
3. Business processes and activities i.e. task/activity risk assessments and event risk assessments

The report was very easy to follow. The conclusions and recommendations were clear and concise and laid out in such a way that it made my job easier to explain to the council how to progress the report and how to make sure that we are compliant and diligent.

Dr Gardner also provided detailed verbal feedback and advice during the audit which was invaluable to me as clerk. He was available pretty much every day to support the clerk in finding the information and to start the next phase of making sure compliance with the Legal Responsibilities Recommendations.

He has been very patient in assisting us to making a start on his comprehensive list.

Ian was very professional and knowledgeable about health and safety, and I would recommend his services to other councils.'

Philomena Hearn, Clerk and RFO

Corwen Town Council

To find out more visit www.localcouncilconsultancy.co.uk
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