

For the attention of Catherine Whitehead
Darlington Borough Council
Town Hall
Darlington
DH1 5QU

Your Ref:
Our Ref: (L)RFJW.JC.DAR023.2
Date: 23 September 2009
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Dear Sirs

Re: Pedestrian Heart Scheme

We have considered the further EC Harris Report dated 19 July 2009. This Report was commissioned by the Council following receipt of Ward Hadaway's draft report in January 2009, which commented upon the difficulties in advising upon responsibility and liability in the absence of files and records reflecting the Council's own involvement and decision making in the project. This resulted in further investigations into the whereabouts of relevant material and the identification of electronic records which had not been previously available for review.

The Council's officers decided upon our advice to instruct EC Harris to carry out a further review to identify whether the new material demonstrably contradicted the versions of events provided to us by Gillespies and positively demonstrated a breach of their duty of reasonable skill and care as discussed in our Report.

The recent EC Harris Report achieves its purpose in that the new documents have now been reviewed but the conclusions of that report do not materially affect our conclusions at paragraph 7 on page 13 of our Report. If anything, the new EC Harris report raises and theorises upon many alternative uncertainties in the chain of causation which would each add to the factual complexity of any legal analysis and increase the level of uncertainty in the outcome of any legal proceedings against Gillespies. Whilst some of the explanations given by Gillespies are challenged, there is no positively stated case made out which would permit a sensible claim to be made with reasonable prospects of success. It is not sufficient simply to throw doubt upon Gillespies' explanation of events.

With regard to the position under the engineering contract, we would reiterate paragraph 4 of our Report which points out that Clarus who replaced Gillespies, and who made most of the Compensation Event assessments and Kinslers, the Quantity Surveyors who audited the applications for payment by Birse, were not the view that Birse had been overpaid or that there were grounds for reducing the amount claimed by them under the contract.

Ward Hadaway Solicitors

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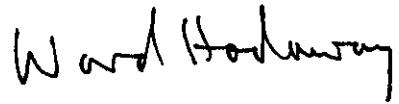
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For the sake of good order, we would advise that the statutory limitation period will expire 6 years from when any allegedly negligent advice was given by Gillespies and damage suffered as a result of any breach of its duty of reasonable skill and care in the performance of its duties and we are advised that they commenced work in Autumn 2003 on this project, which means that if any further investigations are to be carried out with a view to litigation, they have to be concluded very shortly, failing which any claims will be debarred by statute.

We trust that this is of assistance.

Yours faithfully

A handwritten signature in black ink that reads "Ward Hadaway". The signature is written in a cursive style with a large initial 'W'.

Ward Hadaway