

**4. FURTHER INDEPENDENT REVIEW OF A LICENCE TO OPERATE GRANTED TO FIROKA AND THE LOSSES CAUSED TO THE CHARITY (PAGES 1 - 40)**

Report of the Director of Corporate Resources, and Chief Financial Officer  
– London Borough of Haringey - (Page numbers shown at the foot of the  
report 1-63)

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Alexandra Palace - Stage Two InvestigationANNEX 1Role and liability of the General Manager/Consultant in regard to losses sustained in entering into the licence to operate**Summary**

This review was commissioned following the consideration of the reports into the development of the licence to operate with Firoka (Alexandra Palace) Ltd which took place at the meeting of Trustees in September 2008. This second report should be read in combination with that first report which provides much contextual and background information.

New information provided during this review creates further confusion as to whether the licence was necessary in the first place. It emerges that a briefing note was prepared by the then General Manager which strongly argues against the need for a licence. Despite this, he makes no reference to this when recommending the introduction of a licence only a matter of days later. His allegation that this was a result of instruction is disputed.

This report concludes that entering into and maintaining the licence has led to losses to the Trust in the region of £1.500,000. The Trustees were not given financial information of the effect of the licence continuation during the course of the licence operation nor were they given the opportunity to consider whether they wished to revoke the licence at various stages of that operation.

Despite this, in my experience as an investigator of such matters and subject to legal advice, analysis of the contracts of employment and consultancy suggests that little opportunity for successful legal action for recovery exists and the benefit would be exceeded by the costs of such action.

The report concludes that ensuring a culture and process of good governance should remain a key focus for the Trustees.

**Note:**

**Some aspects of this report are subject to restricted circulation to the Trustees only because of either the commercial confidentiality or the personal nature of the information. In these cases the word <exempt> will replace the word, sentence, paragraph or section in question.**

**Introduction**

1. In September of 2008 the Alexandra Palace and Park Trust received a report into the circumstances surrounding the development and execution of a licence which allowed Firoka (Alexandra Palace) Ltd to operate at the Palace. The report identified a poor governance framework both for the development of the licence and the decision process which approved it.

2. That first report's conclusions were as follows:

- This report is prepared upon the instruction of the Director of Corporate Resources of the London Borough of Haringey.
- In May 2007, the Alexandra Palace and Park Trust entered into a licence agreement with Firoka (Alexandra Palace) Ltd. This licence enabled Firoka (Alexandra Palace) Ltd to operate within the Alexandra Palace buildings. It provided staffing resources at no cost, building and other infrastructure facilities at no cost and it transferred existing negotiated contracts. It entitled Firoka (Alexandra Palace) Ltd to operate the Ice Rink. Firoka retained all profits and sustained all losses.
- The licence was granted as a way of maintaining Firoka (Alexandra Palace) Ltd's interest in a development project for which they had successfully tendered. It was believed that Firoka were disappointed in delays in completing the full lease arising from the need for Trust Commission approval which had repeatedly been postponed. The licence also achieved the transfer of risk to Firoka of poor anticipated trading results and it gave some continuity to staff affected by the transfer.
- Whilst there is some minor conflict over the extent and evidence of the reality of these anxieties, when taken at face value it is apparent that there was a need for some mechanism to retain Firoka's interest and a good business case can be made for the use of such a mechanism.
- No other mechanism was researched or considered. No evaluation of any alternative took place and records have not been produced which would justify all the concessions given in the licence although full explanations as to the circumstances and intent have been reported through interview and other correspondence.
- The report to Trustees seeking authority for the licence was hurriedly produced; it was tabled at the meeting and contained no justification for the licence although it does present the need for a mechanism within the context of the anxieties listed above. No understanding of the financial effects of the licence are given in the report and no evidence can be found that this was provided, even in the most basic form, at the meeting itself.
- Arrangements for ensuring that the Trustees were sufficiently informed to make such a key decision were scant. Confusion exists over who was seen as responsible for briefing Trustees. The key decisions of the Trustees, to assign the APTL licence and to seek a management arrangement for the Ice rink, were taken as no more

than a framework by those who then developed the licence. The licence differs in many key respects from the APTL licence and rather than seeking a management agreement for the Ice Rink it is simply subsumed into the new licence.

- No opportunity is given to Local Authority staff to comment either on the report or the subsequent licence. Despite the level of change, Trustees are not subsequently invited to consider whether the revised licence meets their expectation. The licence is not subjected to any final legal scrutiny before signature.
  - Whilst the case for such a mechanism is strong, the licence was generated without any consideration of alternatives. The governance regime surrounding its production, authority and agreement is weak.
3. As a result of considering the first report, the Trustees of the APPT commissioned a further review to examine the role and potential culpability of Keith Holder, who was the General Manager at the time of the licence development and approval and who was subsequently a consultant acting on behalf of the Trust. <exempt 1>
  4. <Exempt 2 >. This review deals with the role, conduct and culpability in law of Keith Holder although inevitably the investigation uncovers further shortfalls in the actions of others.
  5. The terms of reference for this subsequent review are enclosed within this report. In short, the terms of reference seek to establish what the loss to the Trust was by entering into and sustaining the licence. They then request examination of the extent to which this can be evidenced and to what degree the actions of Keith Holder contributed to this loss. It will then be a subsequent decision of the Trustees acting upon legal advice whether they believe any form of litigation is justified or warranted although observations and considerations on this issue will be discussed in this report.
  6. I have commenced the report with some observations that I believe the Trustees should have in mind whilst reading the report.
  7. In assembling the factual basis for this report I have had considerable help from, and placed reliance on, information gathered and provided by staff in the Legal Services Division and the Corporate Finance Division of the London Borough of Haringey as well as support from the Legal Advisor to the Trust, officers of the Alexandra Palace and Park Trust and the trading company.

### **Context**

8. The full context to this report is covered in the earlier report to Trustees and its accompanying summary. Obviously, the further work in this report has

produced additional evidence which helps to clarify, or in some cases further confuse, some of the unknowns that were presented in that report. None of this new information weakens the justification for the conclusions and recommendations in that report. On the contrary it generates further evidence of weak management responses, poor information flows and inappropriate behaviour and activity.

9. It may be useful to commence this report with some issues that the Trustees may wish to keep in mind as they consider its content and findings. It is now possible to present a refreshed understanding of the context of the decision making process in regard to the licence development and the reality of the outcome.
10. As intimated in the first report, the actions of those involved appears to stem from a certainty of belief that the transfer to Firoka would be taking place in the early summer of 2007 and that all actions should be driven towards this outcome and conditioned by its effect. Although statements are made about the relative (admittedly low) probability of the Judicial Review succeeding, there was no real contemplation that it would succeed and no advice proffered as to the potential outcomes should this happen. This gave a short term nature to all the decisions taken in regard to the company and the Trust and, indeed, it is argued, the potential for losses that might be incurred.
11. Secondly, and partly flowing from the above point, Trustees must consider the report in the context of a series of time frames. Judgements made at the creation of the licence against a background of traditionally poor trading in the early months of the year may not be as relevant at the point when a) consideration to renewal of the licence should have taken place on August 1<sup>st</sup> 2007, b) when the Judicial Review was determined on the 5<sup>th</sup> October 2007 and c) as the busiest, and most profitable, part of the year was approached beyond this date.
12. Thirdly, Trustees will receive formal legal advice on whether this report produces any evidence which suggests that further action may be warranted. This is not my area of expertise and I am not capable of giving professional advice on such a matter. However, my relatively extensive experience in the field of criminal and civil actions suggests that Trustees should give careful regard to the tests that the courts will apply. These generally extend beyond proof of error into considerations of personal benefit, wilful negligence and deliberate harm. Trustees should also give consideration to the costs of such an action both directly incurred in legal costs but also the management overhead which such action will produce.
13. Timescales for court proceedings are often very long. They should also give consideration to the impact that such action will have on the reputation of the Palace and its Trust and the ability of the organisation to attract investment and business during such a period. These matters represent a difficult calculation for trustees in taking these issues into account against the

need to take proper action in the interests of the Trust.

14. Finally, Trustees may wish to consider issues of the culture of the organisation which this report implies. Investigations of this kind depend upon documentation, contracts, codes of conduct and protocols. They centre on the way in which individuals have reacted to their stated responsibilities. Views expressed casually in emails may implicate or relieve individuals in relation to those responsibilities. In such a situation as this, where the reactive nature of an individual's approach to their responsibilities is being evaluated, I believe the Trustees should balance this with their view of the extent to which senior officers of the trust should have acted on their own initiative and taken steps to protect the Trust even though it was not their direct commission to do so.

### **THE TERMS OF REFERENCE**

15. The terms of reference document states:

“Proposed terms of reference for the second stage of Martin Walklate's independent review of Alexandra Palace into Keith Holder. This will result in officers and the Trust Solicitor reporting back to the board with a recommendation on future action.

- What was KH's precise role in securing that the licence was signed on 04/05/07?
- was the signature of the licence outside the authority given by the Board on 24/04/07?
- What losses were caused to the Trust by entering into the licence with Firoka? Can these be evidenced?
- How far was KH responsible for any losses by breach of his duties as an employee before May 2007?
- How far was KH responsible for any losses by breach of his consultancy agreement with the Council after April 2007
- Did KH commit a breach (under clause 29.2) of his consultancy agreement with the Council
- What action was taken by KH to monitor the financial and other effects of the Firoka licence on the Trust and APTL
- What action was taken by KH to monitor Firoka's compliance with the licence terms
- Why was there delay on the part of DL and KH after the judicial review on 05/10/07 in considering the case for termination of the licence and reporting to the Board to secure this decision?

Once this work is complete

Trust Solicitor and section 151 officer to advise on the following with input from the Council's legal team.

- What are the prospects for recovery of any losses (identified above)

- from KH personally
- o "Would the commencement of legal proceedings be likely to be cost effective for the Trust."

## THE FINDINGS OF THE REPORT

To assist Trustees a list of key dates during this process is attached as appendix four.

### New Information relevant to the Trustees consideration

16. Prior to consideration of the terms of reference, I believe that it is important that I bring to the Trustee's attention information obtained during this second review which has an impact upon both their considerations of culpability but also matters of governance considered in the reports already received.
17. In his invitation to interview, Keith Holder was informed of the terms of reference of this review, invited to be accompanied and invited to provide a written response if he so wished. Upon his arrival at the interview of the 23<sup>rd</sup> October 2008 he produced a letter addressed to me which was accompanied by various appendices. (The letter and appendices are attached as appendix one to this report although two items are restricted for reasons of commercial confidentiality.)
18. His submission papers are:

Letter –	Keith Holder to Martin Walklate 22 <sup>nd</sup> October 2008
Email –	Keith Holder to Cllr. C Adje – 17 <sup>th</sup> April 2007
Attachment –	Chairs Briefing note –
Email -	Automatically generated response
acknowledging receipt	
<Exempt 3>	
Letter-	Keith Holder to Cllr. Matt Cooke
19. The latter items in this correspondence are considered where appropriate in discussion of the associated term of reference. Particular attention however is now given to the letter addressed to me and the attached copy of the Chair's briefing note sent to Cllr. Adje.
20. In summary, Keith Holder presents a version of events leading up to the report on the licence and its subsequent development. According to that version:
  - A meeting took place between Firoka, Cllr. Adje and Keith Holder on the 11<sup>th</sup> April with further telephone discussion between the Cllr. Adje and Kassam over the following weekend.
  - A discussion between the Chair and a Firoka representative on the Monday
  - The receipt of the draft order on Monday 16<sup>th</sup> April giving a clear indication that the matter was soon to be resolved



- Further conversation with the Trust's legal advisors (not specified who by and with) on Tuesday 17<sup>th</sup> April
21. This led to the production of the briefing note contained as part of appendix one. This was sent to Cllr. Adje on the 17<sup>th</sup> April and automatically acknowledged as being received.
  22. I do not intend to evaluate the full briefing note at this stage but it is attached for Trustees to consider. I believe that the thrust of the document is that Keith Holder's strong advice in this note is that no licence or similar mechanism is required. This is summarised in the final paragraph (7.3)

"Whilst there have been irritating delays and frustrating questions to be dealt with throughout, the process is on track to deliver albeit not in a timeframe of our choosing. Nevertheless it does not appear that we have to take any action at this point other than to keep a watchful eye on progress"

23. The briefing note gives the following strong officer (Keith Holder) interpretation of the current position with Firoka at that time
  - 'Kassam' had 'no easy escape' from the transfer arrangement
  - That 'Kassam' would be challengeable for non performance if he did withdraw
  - That no 'methodology' was available to 'Kassam' which would allow him to 'get out'
  - That a possibility existed that the whole 'I want out' scenario might simply be a mechanism to launch an inducement argument
  - Caution should be exercised
  - That there do not appear to be any grounds for a 'rushed decision'
  - That any decision to financially assist 'Kassam' would generate public opposition and that any assistance would have to be restricted to some legitimate expense prior to transfer.
  - That the process is on track to deliver and that no further action is necessary at this point other than to keep 'a watchful eye' on progress.
24. This, taken in the context of the detailed briefing note, would appear to be direct advice to Cllr. Adje that no form of intervention was necessary and that the position of the Trust was appropriately protected. The briefing note advocates caution, states that there are no grounds for a 'rushed' decision and offers no support for any inducement to Kassam whatsoever.
25. Trustees may consider that this submission, whilst underlying the anxiety about withdrawal expressed by some in the first report, does not give

credence to any necessity for a licence given the level of protection that the Trust enjoyed.

26. I would wish to make it clear that Keith Holder was given every opportunity at his interview for the first report in the summer of this year to produce such documentation and explanation and did not do so. The question put to him was:

*"Did you prepare or contribute towards any background papers or briefings relating to that licence development?"*

*Either for;  
Other company officers/directors  
The Board either as an entity or for individual trustees  
Local Authority Officers  
Local Authority Members  
Legal advisors"*

27. His response as recorded in his signed interview note was:

*"Keith prepared the tabled report that went to the Trustees on the 24<sup>th</sup> April 2007. He confirmed that no other papers were produced for the board of trustees. The board of directors had been provided with a report and written resolutions which evolved from that report were signed by the majority of the directors. "*

28. I would have to say that the above response is, in the light of the material now produced, at best, economical. Had the material and explanations been provided at the time of the first investigation it would have allowed a much fuller picture of events to have been known and may have guided Trustees into other decisions? The submission indicates a number of inconsistencies between actual events and those provided to my initial investigation.

29. The letter to me of the 22<sup>nd</sup> October raises a number of issues which I believe need to be confirmed or addressed.

1. Did Cllr. Adje approach Keith Holder and 'made it clear' that the arrangements with Firoka were not to be jeopardised?
2. Did Councillor Adje have discussions with other senior politicians who had agreed that Firoka could operate on the same basis as the lease? Was this subsequently confirmed in discussions held in October and November of 2007?
3. Keith Holder's briefing note suggests that the Leader of the Council, although aware of the licence arrangement, was not aware that this included the retention of profits. This position is contrary to the finally agreed licence and the decision not to include profits would have impacted considerably on the losses made by the Trust over the licence.

4. Keith Holder states that he was instructed to produce the report that went to the Board on 24<sup>th</sup> April 2007. Did Councillor Adje actually give such an instruction and did he have the authority to make such an instruction.
  5. Did he similarly instruct David Loudfoot and Ken Harington to sign the licence?
  6. Keith Holder alleges that the response from Firoka to many of the difficulties in resolving disputes on the licence was that 'Cllr Adje agreed the detail and will confirm our view'. This is clearly contrary to many of the points raised in his initial interview. It is important to determine whether Councillor Adje continues to maintain that he had no involvement in the detail of the licence either in its composition or in the discussions with Firoka that led to the licence and its terms?
30. Cllr. Adje has been given the opportunity to respond to these points and the issues surrounding the licence development. His response is attached at appendix two. I have taken that response and interposed this with the questions that were put to Councillor Adje to aid comprehension of his answers. This is attached at appendix three. In addition I have contacted the, then, Leader of the Council, the Chief Executive and the labour group members on the Board at that time to receive their views on what happened.
31. Councillor Adje's submission is important to this process. Cllr. Adje presents a submission which contradicts many aspects of Keith Holder's view of events. His chronology of events appears to indicate that although the alleged contacts took place they did so for differing reasons. Whilst accepting that he saw the briefing document prepared by Keith Holder he does not accept that he in any way rejected it or 'instructed' Keith Holder to proceed with the licence despite the advice given.
32. This is important because Keith Holder may well consider that he was working under direct political instruction and therefore, all his actions could be both seen as being in 'good faith' or following the wishes of the majority party whom he perceived as having the right to give him instruction. The apparent ambivalence of Councillor Adje on the matter denies this and presents Keith Holder as the architect of the whole licence agreement and its major motivator. Councillor Adje presents himself as someone following Keith Holder's advice and leadership almost without question. He quotes Keith Holder's thanks to him for allowing him (Keith Holder) to work independently. He sees Keith Holder as being the instigator and author of the report to the Trustees and the person who determined that only limited information should be included for reasons of confidentiality. He presents himself as having little or no contact over the licence agreement following the Board meeting although this appears to contradict not only the submission by Keith Holder but information provided in interview by David Loudfoot as part of the initial investigation.

33. It is also difficult to understand Councillor Adje's making no reference to Keith Holder's apparent U-turn from being against the licence as stated in his briefing note to promoting it within the officer report.
34. Cllr. Adje's submission does accord with some aspects of Keith Holder's version. He confirms that the Leader of the Council was involved in the discussion but, very importantly, confirms that the Leader's understanding did not extend to the inclusion of profits and losses in the licence. Had the licence not included retention of profits (which I assume to include profits from the Ice Rink) the impact on the Trust finances would have been negligible or even favourable. Where the submissions do not accord is on the question of whether Cllr. Adje knew that the licence should include profits and losses. Keith Holder maintains that Councillor Adje led on this matter. Cllr. Adje states that there was no such discussion.
35. Cllr. Meehan's recollection only supports Cllr. Adje's submission in the most general terms. He states:

'In answer to your question I would make clear that I can recall only one occasion *where* I discussed the matter in detail with Cllr Adje. This was an informal meeting which took place in my office at River Park House probably during April 2007. Cllr Adje brought to my attention that Firoka were becoming impatient at the length of time it was taking for them to assume the responsibility for the functions of the Alexandra Palace Trading Company Ltd. Both Cllr Adje and myself were in agreement that it would be helpful for the matter to be brought to a conclusion as early as possible.

At this discussion it was my understanding that Firoka would be taking on the functions of the Alexandra Palace trading company on the same terms as the trading company therefore there was no discussion of terms and conditions relating to the licence.'

After answering specific questions put to him that support the above statement, Cllr. Meehan concludes by stating:

'I have had no discussion directly with Firoka. I may have been introduced to Mr Kassam at a Haringey event but other than that I have had no discussions with the company. As Leader of the Council I made it a practice not to discuss such issues with companies unless officers of the Council were present and meetings noted.

36. The Chief Executive similarly responds that she was not involved in any meetings at the time of the licence development nor given the role to convey any matters to Keith Holder. Her role and involvement came later when the matter of the licence revocation was under consideration.
37. I have received two written responses from the Labour Members on the Board at that particular time. The questions that were posed to them were:
- Can you recall any discussion when the issue of a strategy to retain Firoka's interest was discussed? If so, when and who with?
  - At what stage can you recall being made aware of the need for a licence or similar mechanism?

- Who made you aware and how?
  - What were the reasons given to you for the need for such a mechanism?
  - Were you advised as to any financial consequences of the 'licence'?
  - Did you realise that the granting of the licence gave Firoka the right to retain all profits?
  - Did you realise that the granting of the licence would bring about the loss of the annual licence fee to the charity?
  - Did you realise that the income from the Ice Rink would be included in the licence and that the charity would forego its income accordingly?
  - Were you aware of how long the licence would be operative for?
  - Were you asked to consider the continuation of the licence in August 2007?
  - Were you asked to consider the revocation of the licence at any point prior to the actual decision to revoke in December 2007?
38. Councillor Egan, whilst correctly asking that his recollections be considered within the context that a considerable time frame has elapsed since these events took place, recalls that discussions did take place at the Board Meeting and Committees. He believes that Keith Holder led on these matters and brought to the Boards attention the impatience of Firoka, the need for some form of interregnum, the need to facilitate the transfer and to regularise the situation with staffing. He has some recollection of, or assumed that there was, a need for the mechanism to allow Firoka to carry on the business from APTL with liability for losses and retention of profits.
39. Councillor Peacock has responded by answering 'no' to all the questions posed. I have spoken to Cllr. Thompson on the telephone although due to his personal circumstances it was not possible to explore the matters before this report had to be concluded. I do understand that his recollection is limited due to the passage of time and the fact that he was undertaking other Council duties during this particular period.
40. Finally, on this issue, Keith Holder makes the point that Firoka in their negotiations over the termination of the licence have cited Cllr. Adje as the person who agreed various matters. Cllr. Adje refutes this and presents arguments demonstrating that this was neither practical nor according with

custom and practice. As Trustees will be aware from the first report, Firoka have refused to respond to questions regarding the licence development.

**Conclusion on this matter**

41. The two submissions directly contradict each other in many respects and, in the most important of all regards, present opposing views as to who the architect of the licence intervention was and who determined that it was even necessary and whether the subject of profits was discussed between them. In other contexts this difference may be important and may require resolution. From the point of view of this review it weakens any reliance that can be placed on either submission from an evidential point of view. The contributions from Councillor Meehan, Councillor Egan and Councillor Peacock, when taken together, are unable to really give support to either submission.
42. In the context of the terms of reference as set, paraphrased as 'how much was lost and can civil action be taken against Keith Holder for recovery' the issue is about whether Keith Holder can claim that he was acting in good faith when he produced the licence.
43. To this end he can rely on his submission and Cllr. Adje's response that:
  - o Cllr Adje was given the opportunity to be fully aware of his actions up to and including the point of the Board meeting,
  - o He could believe that the Leader of the Council was similarly aware of the actions being taken,
  - o Whilst both the Chief Executive and Councillor Meehan are clear that they were not party to any such meeting or subsequent instruction and Councillor Adje does not accept that he 'instructed' Keith Holder over this matter, Councillor Adje does imply that a meeting took place. It is plausible that Keith Holder can claim that Councillor Adje's submission supports his view that the impression he was given is that the strategy of the licence mirroring the lease provisions had the support of these individuals.

Matters remain contradictory as to whether, in including the profits from occupation, Keith Holder was acting over and above any given or implied authority and consequently beyond the 'good faith' that his contract of employment required.

**RESPONSE TO THE TERMS OF REFERENCE**

44. The following represents a response to the terms of reference. However, it is essential that they are read in the context of the report considered by the Trustees in September 2008.

**What was KH's precise role in securing that the licence was signed on 04/05/07?**

45. This matter is important as the signing of the licence committed the Trust to the beginnings of a process which results in considerable financial loss.
46. As at 4<sup>th</sup> May 2007 Keith Holder was a consultant employed by the London Borough of Haringey on a consultancy contract for the purposes of discharging activities for the Trust. His contract makes no specific reference to either securing the signing of the licence or, until an amendment in December 2007, any role regarding the licence itself. However, in the first few days of his contract he concludes the licence, presumably concludes negotiation with Firoka (Alexandra Palace) Ltd and, again presumably, arranges for its signature by the three parties. His actions when taken with his role as set out in the first report strongly indicate that he remained the driving force for concluding the licence during this time. To the extent that he was following the wishes of the Board there is nothing wrong with this even though it may have not been specific in his contract to do so.
47. Keith Holder's recollection is that he felt he may have been on holiday during the time of the actual signing of the licence and that he made no practical steps to obtain its signature by any of the parties.
48. That Keith Holder prepared the document is not disputed although his authority for its content is. The responsibility for signing the contract by the General Manager to the Trust and the Company Secretary to the Company must be held by them. Both are senior managers who should not sign anything without ensuring that they have both the authority to so do and that, in signing the document, they are acting in the best interests of their respective organisations.
49. Some sympathy can be attributed to the signing parties, particularly the General Manager who maintains that he was instructed to sign the licence at a meeting attended by Cllr. Adje and Keith Holder. He would have been placed in some difficulty by such an instruction but arguably dealing with such difficulties is an essential element of his role. It should be noted, however, that Cllr. Adje states that he gave no such instruction and that he cannot recall such a meeting. What is clear is that Cllr. Adje was kept informed of the signing process by David Loudfoot.

### **Was the signature of the licence outside the authority given by the Board on 24/04/07?**

50. The first report concluded that the licence signed on 4<sup>th</sup> May 2007 went beyond the authority given by the board on 24<sup>th</sup> April 2007 in the following regard:
  - o The licence agreed with Firoka differed materially from the terms of the licence with APTL. It was the express decision of the Board to assign the terms of the APTL licence.

- The inclusion of the ice rink income in the licence does not accord directly with the Board decision to seek a management contract for this area
  - There is some doubt as to whether the power to sign the licence lay with the officers of the Trust given a) that this was a matter of considerable strategic importance, b) that no express authority was given at the meeting of the 24<sup>th</sup> April 2007 and c) custom and practice may indicate that signature by the officers was inappropriate.
51. In his interview, Keith Holder felt that the General Manager did have the authority to sign the document particularly given the report to the Trust and his claim of the clear political indications given by Cllr. Adje following receipt of the briefing note.
52. He felt that the delegations to officers allowed him to enter into operational matters on behalf of the Trust. He did not see the licence development as strategic within the context of the agreed strategy for transfer.
53. He also felt strongly that the licence was a short term expedient and, as such, confirmed his view that he, and the subsequent general manager, were acting 'operationally' in giving their signature.
54. It would be open to Keith Holder to argue that he was reasonably entitled to treat the Chair's "instruction" as a proper instruction of his employer given the long custom and practice at Haringey. He may well say that the labour Members of the APPB were privy to the briefings and fully aware of the main thrust of the licence proposal despite the rather ambiguous nature of the report/minute. There will need to be legal advice as to whether a claim could succeed in Court having regard to the above matters .

**What losses were caused to the Trust by entering into the licence with Firoka? Can these be evidenced?**

55. This is one of the most complex and difficult parts of this report. The calculation of loss can be considered from a number of perspectives. The standards and quality of the information held at Alexandra Palace to substantiate any claim for loss are variable. Staff turnover in the last eighteen months again gives rise to a lack of continuity. In such circumstances the answer to these terms of reference can descend into an academic accountancy exercise of allocation and estimation which would be unhelpful. It is very important to note that the calculations presented in this report are for indicative use only and are intended to give Trustees an understanding and awareness of the sums involved. They do not derive directly from the management accounts of the Trust and cannot be compared directly with them.
56. In consequence, I wish to begin by giving the rationale behind my approach to this element of the terms of reference. This is simply an attempt to assist Trustees with my thinking in order that they can determine whether it is valid



and should be given weight in the consideration of their deliberations.

57. It is my view that in any trading situation, any income received whatsoever represents a contribution to overheads and, possibly, profit. Any income forfeited, must, by definition, represent a reduction in that contribution. If that income forfeited brings about a strategic benefit to the organisation then it cannot be considered a loss. If it simply flows into the hands of others, then a loss results.
58. When the Board gave agreement to assign the terms of the APTL licence to Firoka (Alexandra Palace) Ltd it did so on the advice of its then General Manager that it would bring about a number of benefits. That is; it would help to secure the likelihood of Firoka continuing with the main lease, it would settle staffing concerns and it would assist in the transfer of risk. If these issues are accepted (and the first report makes comment on the lack of direct evidence supporting some aspects of these matters) then trustees should have been faced with a business case comparing the cost of long term failure to secure Firoka against the costs and loss of income occasioned by the agreement to the licence. In these circumstances the 'loss to the Trust' would be the resultant calculation.
59. It is clearly not possible to create a hypothetical model that attempts to justify the broader definition of a 'loss to the Trust'. All that can sensibly be presented here is an assessment of the individual elements of the licence and the impact on the Trust of the inclusion of such sums.
60. However, the decision to enter a licence can be considered a response to risk. Risk can be defined as the relationship between impact and likelihood. In most risk models the relationship is defined by a multiplication of impact by likelihood.
61. Impact in this case was undoubtedly considerable. Various figures have been considered but it is not unreasonable to assume that a withdrawal by Firoka would lead to an increase costs in any other bid if it could be found. Keith Holder, in his first interview places these in the region of £10m. This figure is derived from an approximation of the costs of retendering, interim management and, most significantly, the increase in development costs between the received tender and modern day prices.
62. Likelihood is more difficult to predict. At the time of making the decision the Trustees were faced with unevidenced but indicative information that:
  - A real chance of withdrawal by Firoka was likely and imminent
  - That a phased transfer was beneficial to both staff and the trading environment
  - That insolvency of the company was a real possibility
63. In reaching their view as to the validity of a licence development they were being assured by both the, then, General Manager, and the Chair that

withdrawal was a real anxiety. In the circumstances known by them at that time, the probability was that they were making a justifiable judgement as to a high degree of likelihood.

64. With hindsight and the benefit of Mr. Holder's submission, that consideration of likelihood must be considered questionable. Rather than being able to rely on two important views (that of the Chair and the General Manager) the actuality appears to be that the view of the General Manager at that time was that a contested withdrawal was a highly unlikely prospect. It appears that the Trustees, with hindsight, could only place emphasis on the presented view and that this, unknown to the Trustees, contradicted the formal officer view and the legal advice (unknown source) that he was aware of as outlined in his briefing note.
65. Similarly, given the knowledge now held, it is clear that the phased transfer did not benefit or settle staff. Indeed turnover increased during this period and the General Manager and Mr. Holder both comment on the need to deal with significant staff complaints.
66. Trading during the year 07/08 does not improve and with some notable exceptions the majority of trade relies on repeat business from previous years.
67. Had APTL continued for the full year and received the same levels of income that Firoka largely inherited, they may well have been solvent at the end of the year. Indeed, it does appear as though the intimation of insolvency presented by Keith Holder is driven not so much by a poor trading situation (which was not marginally less than usual) but by the need to meet dissolution costs if the Firoka transfer had gone through.
68. Overall, therefore, it must be considered that whilst the impact of the possibility of withdrawal was extensive the likelihood was low and, as Mr. Holder states in his submission and briefing note, there is no need for any action and that any claim of withdrawal may simply have been an opportunity to encourage an inducement.
69. This then leaves the issue of just how much is lost. As stated earlier, I have taken the view that the losses to the Trust can be equated to the income received by Firoka less any sums that he had to meet to provide the functions given to him under the licence. I feel that it is important to state that I could find no document whatsoever that indicated that any of the staff at Alexandra Palace or any Trustee or Director of the Trust or Company had any indication provided to them of the financial implications of the licence. All the figures I have used were available or could easily have been estimated.

***Nb: In all cases, the sums quoted should be seen as indicative. The actual sums will be affected by variations either in term of operation or the use of approximations or allocations. However, they will be a useful indication of the sum involved. The possibility for double counting items is considerable. Trustees should not simply add the various sums given in the following analysis. A full table***

**showing my view of the indicative losses is produced at the conclusion of this section.**

70. Given the emphasis of this report is to evaluate the extent of the losses and potential liability for them, I have categorised the sums under consideration in the following way.
- Those items where expenditure was retained by the Trust or the company but where the assets or resources were transferred to Firoka as approved in the report to the trustees on the 24<sup>th</sup> April 2007
  - Those items where expenditure took place or income lost as a result of the content of the licence agreement allegedly exceeding the approval given on 24<sup>th</sup> April 2007
  - Profits or losses falling to Firoka as a result of the licence which, had the licence not been created, would have fallen to APTL.

**Matters under the agreed licence**

71. These first elements only have validity if it can be proven that the Trustees were deliberately or negligently misled as to both the reasons for entering the licence or were misled as to the significance or effect of these items. This is a matter for your legal advisors. I believe the significant factors to take into account are;
- That the report of the 24<sup>th</sup> April does not give any indication as to term
  - That the report does not provide the significant legal information known to the general manager and the Chair relating to the low possibility of challenge
  - That no financial information is present in the report which would indicate potential loss
  - That the situation relating to insolvency of APTL is not adequately explained
  - That no options for alternate consideration were presented
  - As stated in the earlier report, no financial assessment by the CFO
72. One of the major criticisms made in the first report was the lack of financial evidence or information presented to Trustees when they made that initial decision. It may be that Keith Holder could justify the limited financial information on the grounds of existing trustee familiarity with the operation of the Trust and its associated company. This would have meant that in agreeing to the secondment of staff they were aware of the sums of money this entailed. Similarly, in agreeing to the novation of contracts they were aware both of the potential loss of revenue and the associated income from trading in catering etc. during the currency of those contracts. This may be so, but is considered unlikely as Councillor Adje in his letter to the Ham and High newspaper makes the point that the majority of the Trustees at the time of the decision were recent appointees.

73. The items in question are:
- The secondment of staff
  - The novation of the existing contracts
74. There is some dispute over the exact nature of the staff that were seconded but the licence is relatively clear that it covers all staff with a few specific exceptions covering agency staff, key management posts and their support staff. The aim of including the staff was to assist in a phased transfer and to provide some element of stability. Clearly, in hindsight, the phased transfer was never completed and there is considerable doubt as to whether the staffing secondment achieved any stability for those staff.
75. Potentially, the argument that could be presented is that the Company would have had to meet this expenditure anyway. This could only be based on the assumption that the staff would have had no alternative function which could have increased income in other areas or reduced expenditure.
76. Although staff were seconded by the Trust they continued to be paid by the APTL throughout the period of the licence. In total, £618,000 was reimbursed by the Trust to the company. In addition, a further sum was paid directly by the Trust for wages and salaries associated with the Ice Rink. This brings the sum to £769,000. This sum represented a payment to Firoka whereby the vast majority of staffing costs during the period of the licence were already paid for, including all overheads, contributions etc. Staffing is the major variable cost at the Palace and its inclusion in the arrangements meant that Firoka were able to staff operational management, day to day operation and contract delivery with virtually no substantial cost to themselves other than agency staff. Other than providing a financial settlement to Firoka in return for continued interest (which ultimately failed) it is very difficult to understand why this was included.
77. The secondment of staff in this way also 'fixed' the staffing budget for APTL and the Trust. Given the warning of poor trading and potential loss, one option available to the Directors and the Trustees would have been to consider reducing staffing costs and staffing levels in response to those trading conditions. The secondment prevented this potential benefit to the financial structure of those organisations.

### **Novation of contracts**

78. Novation of contracts basically means that those contracts which were already contractual to the APTL needed to be transferred to Firoka (Alexandra Palace) Ltd in such a way that any income already deposited

would be paid over to Firoka and any other monies subsequently due would again fall to Firoka.

79. The argument that is presented in favour of novation is that the contracts were financially risky and the additional costs at trading or, so called part 3 costs (bus transfers, etc) would push the contract into loss. In interview, Keith holder maintains that a) the contracts may still not have been profitable as the previous sales manager may have entered into loss making contracts and b) the then company secretary was warning him of insolvency and the potential failure of these contracts to make a profit.
80. On reflection this is disputed. Firstly, the contracts are set from a rate card which should, surely, ensure a degree of profit. The rate card provides additional sums to be added in the case of part 3 services required. If the sales manager was entering into contracts that deliberately incurred a loss then surely there should be evidence of this being a strategic decision by the directors or condemnation of this practice from the General Manager.
81. Secondly, the income from the contract represents pure contribution to largely fixed costs. Essentially, the contracts are for hall hire. The cost of the premises remains whether the hire takes place or not. As those fixed costs remain with the Trust under the licence and the staffing for the contracts is largely already 'awarded' to Firoka it must be assumed that, in large part, the income from those novated contracts represents a further gain to Firoka. Beyond this, the novation of the contract drives not only its own income but generates substantial further trading income in the provision of catering, drinks & beverages, etc. The ratio between hire income and this trading income is roughly <exempt 4>. Accordingly, the novation of the contracts represents a figure of up to £450,000 in total.
82. The major additional cost over and above those already met tends to be agency casual wages. At most, on average, they represent about <exempt 5> and, on the assumption that this higher percentage applies, would result in costs of around £75,000.
83. Again, beyond the benefit of compensating Firoka for retaining interest, I fail to understand why a licence agreeing to these terms was proposed. The view presented in interviews was that it transferred risk. I fail to understand what risk. Surely, it cannot get much worse than having no income, no income from catering trading and having to pay all the staff, other than casuals, which was the position that the Trust achieved by the licence. Indeed, given the nature of Keith Holder's briefing note of 16.4.07 it must be

asked whether an objective observer would see the licence, as signed, as representing value for money to the Trustees.

### **Contravention of the licence agreement**

84. The trustees approved the assigning of the APTL licence. It did not agree to a variation on those terms and accordingly any additional costs or lost income must represent a loss to the Trust because the Trust did not sanction it.
85. Within this context must be considered the issue of the Ice Rink. It is a matter of interpretation whether the Ice Rink should be included in this section (contravention) or whether it should be in the first section, (items approved by the Board). The trustees authorised reaching a management agreement on this issue. The first report comments on the ambiguity of this statement and this ambiguity remains. It is my view that as the Ice Rink was singled out by the author of the Report and by the Trustees in their decision, it could be concluded that they did not anticipate that it would simply be rolled into the licence decision.

### **The Ice Rink**

86. The Ice Rink is a major source of income for the Trust. Celebrity ice skating programmes and associated sporting programmes have considerably increased popularity over the last few years and this has reflected in the takings of the Rink which have risen year on year. The costs of the Ice Rink are, primarily, staffing, utilities and infrastructure.
87. The income derives from three associated sources. Public takings both for entrance onto the rink, catering from the sale of beverages and food, and, private and club hire. The actual income from public takings during the Firoka period is known as the income records have been retained at the Palace. These indicate that the first two elements, public takings and income from catering amount to approximately £550,000 during that period. To this must be added a proportion of the anticipated club hire and private hire which amounts to £240,000 for the year or approximately £160,000 for the period of the Firoka control. It should be noted that this is an allocation not a precise figure and the actual figure may vary slightly from this.
88. Deducted from this sum would be the cost of catering stocks used. This is an unknown but is estimated at a generous £35,000. As stated earlier, infrastructure costs and payroll costs had already been 'awarded' to Firoka.
89. Utility costs are a significant item. The Ice Rink is a major user of such services and so I would conclude that an estimate of £260,000 for the whole site

during the Firoka occupation would be appropriate with two thirds being allocated to the Ice Rink or £175,000. This is an estimate.

90. I can find no record either in existing financial records or in any matters relating to Firoka that there was any substantial reliance upon agency provided staff. This situation cannot be guaranteed without access to Firoka's accounts. However the sum is likely to be relatively low.
91. A sum, therefore, of £500,000 was Firoka's benefit from the 'management agreement' that in fact turned out to be a simple benefit in the licence agreement without costs. It is my view that this figure of circa £500,000 represents a loss to the Trust. Again, I fail to understand why this sum was necessary other than to purchase Firoka's support.

### **The licence fee**

92. The second element of contravention is more straightforward in that the variations to the licence are clearly at variance to the formal permission of the Board on the 24<sup>th</sup> April 2007. That is: to assign the APTL licence. (It should be noted, however, that Cllr. Egan in his response does recall that the licence was to be provided at a nominal charge)
93. Many of the variations do not have a direct financial consequence but do impact on the facilities and conditions of trade. So many assumptions and allocations would have to take place to put a value on what are relatively small sums that this exercise is not considered to have any validity in the overall scheme of this review. However, the major issue in this category surrounds the licence fee.
94. Under the APTL licence an annual sum of <exempt 6> was quoted as the annual licence fee. At some time after 2002 this was increased to <exempt 6> and this has been the level of paid licence fee since that time.
95. <exempt 7> (In fact, the Trust received no benefit in 2007/08 from the licence once APTL regained control in January 2008. However, this was a considered decision of the Trust and so should not count against any calculation of loss.)
96. In regard to culpability the Trustees should have regard to two issues. Firstly, Keith Holder maintains that the licence was a short term expedient pending the transfer. Had the transfer taken place around the midsummer as expected it is unlikely that APTL would have been able to settle the proportion of the licence fee due given poor trading and the costs associated with dissolution.

97. Secondly, it must now be taken into account that he claims he was operating under instruction and, indeed, even in the first interviews, Cllr. Adje accepts that he was informed over issues such as the licence fee.

**Income lost through trading**

98. This element provides even more challenges. Had the licence not been in place then Alexandra Palace Trust would have obtained the profits or losses from the novated contracts. This is dealt with under the first element. One of the key justifications for the licence was the poor trading position and the assumption presented that no other contracts would have been forthcoming. This view is predicated on the basis that the licence period would have been short.
99. In fact, over the whole period of the Firoka occupation contracts were serviced which amounted in excess of £1.25m. This would have led to contributions to costs of the Trust. I have approached the calculation of this amount from a number of directions. I have also taken the opportunity to have these figures verified by the finance staff at the London Borough of Haringey. This has led to a third, independent of me, method of calculation and apportionment based upon trends which has broadly confirmed the other figures.



**Method one – calculation of potential covenant**

100. Had APTL continued to trade during the whole year, it would have covenanted virtually its entire net profit over to the Trust under the gift aid arrangement and, indeed, the APTL did covenant such an amount arising from its trading in April 2007 and from 5<sup>th</sup> January 2008 to 31<sup>st</sup> March 2008. The sum covenanted was £713,000 of which £300,000 represented a working capital grant. The remaining sum of £413,000 for four months perhaps indicates the loss of covenant to the Trust that could have been expected during the Firoka occupation. This would extrapolate to a figure of approximately £825,000 (2/3rds of year) although variations in trading patterns would need to be allowed for which may reduce this sum.
101. This figure probably understates the likely loss of contribution. Based as it is on assumed level of costs of trading it will take account of items of expenditure that were, in fact, retained by the trust such as management salaries and other contributions to overheads. It does, however, indicate the potential level of loss.

**Method two – attempt at calculating gross profit achieved by Firoka**

102. Taken from a different direction, it would appear from figures produced by the Alexandra Palace that Firoka (Alexandra Palace) Ltd entered into and serviced contracts totalling £1,268,000. These events would have led to considerable profit arising from beverages and food sales and these have been estimated by the Alexandra Palace finance staff at £1,000,000. In addition, Firoka would have benefitted from the profit on sales at the Phoenix Bar which, approximates to £230,000. In total, therefore Firoka would have received an income of approximately £2,498,000.
103. From this would have to be deducted the costs of sales associated with running this programme. Agency staff is the major consideration and past experience demonstrates that the relationship between contracts and casual hire is approximately <exempt 8>. On this basis a deduction of £400,000 for such staff would be appropriate.
104. Similarly, Firoka would have engaged additional management and other administrative staff. They may have been involved in marketing costs and other associated matters. Some items, such as equipment hire and servicing part three costs are difficult to establish. This is a complete unknown but an estimate of £500,000 can be allowed for this.
105. The only other area of cost that Firoka would have to meet is any variable overheads arising any infrastructure costs of which the only one identifiable is the utilities payment of, say £75,000. Overall this equates to a loss of contribution on this basis of around £1.623m

106. To avoid double counting, from this must be deducted the loss of income arising from the non payment of the licence fee. This amounts to £162,000

107. This is summarised in the following table:

Item	£000	£000
Income from Contract Hire	1,268	
Likely income from associated catering	1,000	
Profit on sales from Phoenix Bar	230	
Likely expectation of total income		2,498
Less		
Casual Staff	400	
Additional Management costs	500	
Balance of utilities costs	75	
Licence fee	162	
Total expectation of expenditure		1,137
Potential loss		1,361

108. This presents a potential for loss of even allowing for considerable variation in the assumptions made and the costs considered it is difficult to see how the total lost by the Trust could be under £1.4m. In summary therefore I believe the key losses to the Trust can be considered to be:

Heading	Method One £	Method Two £
Loss of Ice rink income	500,000	500,000
Loss of licence income	162,000	162,000
Loss of covenant income by simple approximation	825,000	
Loss of covenant by attempt at calculating gross profit		1,361,000

Total	1,487,000	2,023,000
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109. Depending on the method employed and the accuracy of the allocation this would suggest that the loss to the Trust is somewhere between £1,487,000 and £2,023,000. This is the figure that needs to be considered as arising from the decision of the Trustees on the 24<sup>th</sup> April 2007
110. This is a considerable sum and Trustees would be correct to be concerned about the accuracy of the calculation. As stated earlier, in this exercise I have been fortunate in having the support of finance officers from the London Borough of Haringey and one of those has arrived at the potential loss figure by reconstructing the statutory accounts and comparing these with the known figures from Firoka's activities. His figure is sufficiently similar to mine for me to feel certain that the Trust, can, with some confidence, assume that a loss in the region of £1.5m has been made. Many of the figures used in this calculation are assumptions and allocations. This must reduce the level of certainty that can be put on the actual figures themselves. However, as Trustees will have seen from the calculations, the levels of income assumed are prudent and the levels of expenditure taken into account generous.
111. In conclusion, in attempting to assess whether a loss to the Trust has taken place they will need to give consideration to whether the likelihood of Firoka withdrawing was such that it warranted expenditure in the general region of £1.5m to protect it.

**How far was KH responsible for any losses by breach of his duties as an employee before May 2007?**

112. This section of the terms of reference attempts to assess whether any responsibility for loss can be attributed to Keith Holder by a failure to act properly as an employee.
113. It is my understanding, to be confirmed by the legal advisors to the Trust, that the general position is that if an employer suffers loss caused by the breach of the implied duty of care by an employee then that employer is entitled to seek damages from that employee, including losses where the employer may be vicariously liable for the actions of the employee. However, normally this does not occur on the basis that the employee concerned is not seen as an effective target for actions for damages by an employer due to their lack of resources.

Any legal action would have to be taken by the Council wearing its "trustee" hat i.e. a decision taken by the APPB instructing its Solicitor to take proceedings for damages.

Keith Holder, whilst an employee of the Council is covered by an indemnity against action. At Para 13 of the conditions of employment, the Council promises not to sue an employee for any neglect error or omission subject to the limits of the indemnity. Para 14 provides an indemnity for acts "subsequently found to be beyond the powers of the employee" but only to the extent of his/her reasonable belief that the act/omission was within his /her powers at the time.

114. Keith Holder was an employee of the Council until 30th April 2007. He was therefore an employee of the Council during the month of April when the licence was envisaged, conceived, approved and developed.
115. The issues under consideration must be:
- Did he act properly in the preparation and consideration of the report to Trustees of the 24<sup>th</sup> April 2007?
  - Was he exceeding his authority in preparing the licence and giving encouragement to others to sign it?
116. As a chief officer of the Council he is bound by two important matters. The extent of his delegation and the protocols surrounding decision making.
117. Chief Officers at the London Borough of Haringey have general delegated powers to:
- Take management and operational decisions on behalf of the council
  - Secure the effective management of their services including the authorisation of any procedures or contracts within the framework of Financial Regulations and Contract Procedure Rules
  - To implement and develop initiatives within the strategic policy framework and other council plans and policy documents
118. The test as to whether they have worked within these delegated powers is largely a matter of whether they were acting in good faith when so doing.
119. In preparing the licence Keith Holder maintains that he was working within these constraints. It was his view that his actions should be considered within

the short term nature of a licence which, he believed at that time, would have, on balance, limited financial effects. He also believed it secured the aims of reducing the threat of insolvency and reducing the threat of withdrawal. He was also working within what he alleges to be the express permission of the majority party. It is difficult to counter this view although the extent to which the handing over of 'profits' was agreed and understood is a matter of dispute.

120. In reporting to the Trust in the way that transpired is a more difficult situation. Trustees could expect that officers produce balanced reports which allow decision makers all salient facts. Clearly, Keith Holder prepared a report in his own name which failed to offer Trustees a realistic view of the extent of the risk that was presented by Firoka's withdrawal. His view, as expressed in his briefing paper included as part of his submission makes it clear that his view was that this risk was very small and various remedies were available to the Trust if withdrawal were proposed. This is not the approach taken in the report.
121. Officers can find themselves in difficult situations when their professional advice runs contrary to a political will whether expressed by a whole group or by a responsible political individual. However, this does not usually excuse a failure to present a balanced picture and his duty was to all Trustees. It would not have been difficult to prepare a report which presented all facts, including the political risks, and to recommend courses of action that accorded with his advice.
122. The first report makes reference to the tensions that appeared to exist between the Trust and the Local Authority and this may have complicated matters. However, as a Chief Officer of the Council, Keith Holder would have had the opportunity to discuss his quandary with both the Monitoring Officer of the council and the Chief Executive as Head of Paid Service. Both could have advised on an appropriate way forward and conciliated between Keith Holder and the council members involved should this have proven necessary.
123. The second issue of consideration is Keith's accordance with the council protocol on decision making. The London Borough of Haringey has specific agreed protocols for decision making. In fact the last update took place a few weeks before the report was prepared and presented.
124. The protocols on decision making include the following points
  - o *No decision shall be taken except upon a written report in accordance with this protocol*

- *A director, or other senior manager of the authority shall, prepare a written report which shall be the subject of consultation with*
  - *The chief financial officer and the monitoring officer (except to the extent that they agree otherwise in respect of certain clauses of the report.*
  - *other professional chief officers as appropriate*
  - *service directors whose service may be affected by this proposal*

*The protocol also states that unless the Head of Members and democratic services agrees any exceptions, the written report shall set out*

- *The facts upon which the decision is based*
- *The head of legal services comments on any legal implications or legislative requirements including any HRA issues*
- *Any policy of the authority relating to this issue*
  - *any relevant national or regional guidance*
  - *the options available to the decision making body*
  - *the staffing implications of the issue*
  - *the chief financial officers comments on the financial implications*
  - *any consultation undertaken, the views of any consultees and a summary of any other representations received*
  - *any implications for any other areas of the authorities' activities*
  - *the comments of any other professional officer or service director where appropriate*
  - *a list of any background papers*

*at least five days before the proposed date and time for taking the final decision the committee secretariat shall send a copy of the report or arrange for a copy of the report to be sent to all members of the decision making body.*

No exemption was obtained from the Head of Member and Democratic Services and, as was considered extensively in the first report, many of the requirements of the protocol were not met.

125. Additionally, the report was tabled at the meeting. The protocol is clear on what constitutes an urgent item.

126. The protocol states that:

*Obviously not all the above can apply when a matter is considered urgent.*

*If urgency is warranted, the director shall use his best endeavors to consult those persons whom he/she would have been required to consult had the full cabinet decision making process been followed.*

*The protocol is clear that these procedures should only be used in cases of genuine urgency and should not be abused.*

127. The only urgent reason which I am aware of is the need for this to be reported to a meeting on the 15<sup>th</sup> May. This was fully three weeks after the actual meeting and 10 days or so after the actual signature. Plenty of time existed to call a special meeting and fulfill the requirements of the protocol. Indeed, Cllr. Adje in his submission makes it clear that the deadline of the meeting was not that important.

128. The consequence of this failure was to exclude any external comment about the licence and to prevent any advice being given on its financial consequences or the need for safeguards.

129. It is for the legal advisors to the Trust to comment on whether these failures, when taken together, constitute more than an inadequate response in a difficult politically charged situation or whether they go beyond the officer acting in good faith.

130. The major issue for this report, however, is the connection between these failures and financial loss. Keith Holder maintains that the licence development was a short term expediency. He claims that the potential for loss that could have arisen from insolvency, withdrawal and poor contracts could be offset against the losses incurred from the gifting of the Ice Rink income and the failure to pay the licence fee. The earlier section on financial loss would counter this to some degree but it should be remembered that the three months when the licence was extant was a traditional time of poor

trading and that the whole decision was taken in the context of a transfer in midsummer 2007 when issues such as the dissolution costs would have become relevant.

131. Whilst the losses incurred by the Trustees must, to some extent, have flowed from the failures identified earlier it is difficult to see how Keith Holder can be held civilly liable for them. This is for the following reasons:

- What KH "reasonably believed to be within his powers/authority" is central to the issue of exceeding his authority from the APPB's decision on the licence on 24/04/07. It has already been demonstrated that he believed he was operating within his powers and meeting political aspirations
- The minute of the APPB on that date/item is very vague. The resolution refers to the General Manager (i.e. DL) being authorised to begin the process of a phased transfer of the Trust business, staff and contracts to Firoka following the approval of the lease and "after taking appropriate legal advice" which seems to have been provided in some shape or form by Berwin Leighton. The resolution contains no limitations on the scale of what was to be transferred or the terms of the licence apart from the two pre-conditions just mentioned. There is some more detail in the "narrative" part of the minute but again this is not cast in specific and definite terms (e.g. "a management agreement for the operation of the ice rink could be concluded"). It has already been proposed that, in governance terms, this does not provide sufficient authority to proceed. However, it similarly, in legal terms, does not constrain him either.
- As stated earlier, Keith Holder, whilst an employee of the Council is covered by an indemnity against action. At para 13 of the conditions of employment, the Council promises not to sue an employee for any neglect error or omission subject to the limits of the indemnity. Para 14 provides an indemnity for acts "subsequently found to be beyond the powers of the employee" but only to the extent of his/her reasonable belief that the act/omission was within his /her powers at the time. This could be very problematic in that many of the factors relevant to what was objectively "reasonable" are only known to Keith Holder.
- Another serious complicating factor in the "employee" case is that nothing substantive was actually done before the end of April when Keith Holder ceased to be an employee unless the fact of submitting an urgent report without proper financial/legal comment is taken to be the breach in itself (which would be hard to sustain as an argument). The licence was signed on 4 May 07 but not by Keith Holder. It could be presumed that



David Loudfoot effectively signed under Keith Holder's influence and assurance as the consultant but this is outside the scope of the "employment" breach.

**How far was KH responsible for any losses by breach of his consultancy agreement with the Council after April 2007**

132. Keith Holder was employed as a consultant to the Trust with effect from 1<sup>st</sup> May 2007 and December 2008. This period covers the events from the signing of the licence until its revocation in January 2008. It includes the period of Firoka occupancy, the originally conceived end date of the licence on 1<sup>st</sup> August 2007 and the finding of the Judicial Review on 5<sup>th</sup> October 2007. All these milestones are pertinent to the loss of contribution incurred by the Trust.
133. The consultancy contract can be seen in two parts. The first part relates to the contract itself and sets out various provisions relating to how the consultant will operate during his period of employment. The second describes what the duties and functions of the consultant will be during the period of the contract.
134. The contract required that Keith Holder hold professional indemnity insurance to £1m. It is understood that this has been complied with.
135. Whilst the consultancy document is extensive and requires a range of requirements both to actions and subsequent remedies in case of failure it is relatively short on what happens in circumstances such as those encountered in this situation.
136. The only reference that I can find relates to paragraph 13.1 which states

**13.1 The Consultant shall indemnify the Trust against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or arising out of, the provision of the Services in relation to the injury to or death of any person, or loss of or damage to any property including property belonging to the Trust or financial loss**

**Did KH commit a breach (under clause 29.2) of his consultancy agreement with the Council?**

137. The consultancy contract with Keith Holder was drawn up in expectation of the transfer to Firoka taking place within a few months. It makes no direct

reference to the licence which is surprising given that the licence was presumably drawn up at very much the same time as the consultancy contract. The absence of any licence related duties is confirmed by the fact that it was only when the licence was revoked did Keith Holder have any duties specific to the licence added into his agreement. This was to allow him to assist on a short term basis to facilitate the return transfer.

138. The contract, in its appendices describing the duties etc. does make reference to acting in support of the General Manager but it makes no direct reference as to what these duties are and the extent to which any initiative should be shown over and above the prescribed terms.
139. In his interview, Keith Holder makes it clear that he was not invited to take any action in regard to the licence and, indeed, was progressively excluded from any discussion with regard to strategy or consideration of the relationship with Firoka. However, like in so many aspects of this review, there are contradictory views which do not fully support this position.
140. In my view as an experienced investigator, but subject to legal advice, it is difficult to identify any breaches of the consultancy agreement on the part of Keith Holder.

**What action was taken by KH to monitor the financial and other effects of the Firoka licence on the Trust and APTL**

141. There is no evidence of any monitoring whatsoever and Keith Holder confirms in his interview that he did not see this as part of his responsibilities. This can be confirmed by reference to his contract agreement.
142. Keith Holder believed this was a duty to be undertaken by the General Manager (who had the responsibility for monitoring specifically highlighted in his contract when agreed by the Trust in April 2007) and by the finance officer, Ken Harrington.

**What action was taken by KH to monitor Firoka's compliance with the licence terms?**

143. Other than dealing with specific issues arising, including staffing difficulties, Keith Holder only dealt with such matters when asked to do so by the General Manager.

**Why was there delay on the part of DL and KH after the judicial review on 05/10/07 in considering the case for termination of the licence and reporting to the Board to secure this decision?**

144. I believe it is appropriate to extend the given terms of reference to review issues of termination from the 1<sup>st</sup> August 2007.
145. The original licence was for a period of three months. It commences legally on the 4<sup>th</sup> May 2007 with an actual transfer etc. a few days following this date. The licence is said to expire on the 1<sup>st</sup> August 2007 which is a few days within the three month period.
146. The approach of this date should, in my view, have had two consequences. Firstly, the Trust, not the Company, should, in my opinion, have been invited to consider the licence position in good time to allow any negotiation on a continued licence or to allow the licence to expire. This was particularly important given that at this stage many of the legal protections relating to the master lease referred to in Mr. Holder's April briefing note expired. Equally, this would have been a good time to consider the impact of the licence, whether it was achieving its original objectives, and, most importantly, whether it was a financially successful model. Such a review would have offered the opportunity to reconsider the solvency issue of APTL in the light of continued delay to achieve transfer and to examine the profitability in relative terms of the forthcoming period of trade.
147. Consideration was given by officers to the renewal of the licence and a meeting of the APTL took place at which the licence was mentioned, but in my considered view, these were not the forums necessary to consider a decision of such strategic importance. The meeting of the APTL does consider the issue of the licence but only in the context of action being taken by Firoka to withdraw. It at no stage is given the opportunity to consider the validity or financial impact of the ongoing licence.
148. Secondly, it is assumed that the various indemnities and insurance requirements that would have been needed to satisfy the Trust would have been presented and considered at the commencement of the licence and would have given surety for the period of the licence. I am not aware of any failure on the part of Firoka to have such protections in place beyond this but the issue is that no one at the Alexandra Palace sought to check that they were.
149. The review of the licence or its associated documentation simply did not happen at this time. There is no reference in any Trust report to the licence or its costs between the granting of the licence in April 2007 and the meeting

that decided to revoke the licence in December of that year. The licence was allowed to simply run on, without any formal Board consideration, for some four months beyond its legal life.

150. The reason for the failure to carry out such a review can be assumed to stem from the continued uncertainty over the potential for Judicial Review. There is some argument that can be accepted to suggest that revoking the licence at the expiry date may have been an unnecessary complication. Even was this to be the case, this again raises the question as to why the Trustees were not included in such consideration. However, this reasoning cannot be extended into the period when the outcome of the Judicial Review was known.
151. The result of the Judicial Review was announced on the 5<sup>th</sup> October 2007. The officers of the Trust correctly, in my opinion, recognised this as a matter of serious consequence and called a special meeting of the Trust to consider options and strategy and this duly took place.
152. However, despite its importance to the process, the financial costs which would have been incurred so far and the prospect of the licence continuing into the most profitable part of the trading year, not one word is said about the licence and no consideration is given to its revocation.
153. Keith Holder in his interview both for the initial investigation and this one is clear that he made representations to David Loudfoot immediately upon his return from Holiday on the 15<sup>th</sup> October 2007 that the issue of revocation was now a matter of considerable importance. He maintains that his view is predicated upon a future event involving a darts competition. His view was that this was a significant trading event not just in terms of its prestige with the consequent requirement to get things right but its income earning potential over a 12 day period was substantial. He did not put this view in writing.
154. David Loudfoot strongly refutes that any such representations were made. In his email to me of early February 2009 he states:

'I wish to be very clear about this, on his return from Holiday, KH did not give me advice that we should be acting to terminate the licence. Nor do I believe he gave this advice to anyone else at this time.

The emphasis at that point in time was on not allowing the project to die and considering how to meet Kassam's demands...Had Keith been advocating the termination then I would have been discussing this with the chair and board members as the path to be followed.'

155. It is not really until November when the Licence revocation becomes an issue. During October discussions were taking place between Trust officers on how to resolve the situation following the success of the Judicial Review. This culminates in a meeting between officers of the Alexandra Palace Trust and representatives of Firoka on the 25<sup>th</sup> October. From this meeting emerges the need to reconsider the terms under which Firoka remain in situ and Keith Holder recognises the need to bring this matter to the Borough. In the first week of November a meeting takes place at which Keith Holder is present. This meeting receives a verbal report from Keith Holder that Firoka are seeking compensatory terms resulting from the delays brought about by the Judicial Review. The licence revocation does not appear to have been mentioned. This is perhaps surprising given that Mr Holder had, according to his interview, been making representations as stated above about the need to revoke the licence as soon as possible.
156. It is in the days following this review that the officers of the Borough first become aware of a licence. This is possibly in preparation for a major strategic meeting on the 15<sup>th</sup> November. At this meeting the claim for compensation is presented in a briefing note <exempt>. Retention of the licence in its present form is seen by Firoka as an essential part of any continued relationship. The raising of the issue of compensatory payments by Mr. Holder both contradicts his statement that he was increasingly being excluded from issues about the arrangements and leaves open the question as to why the need for such compensation was made by him and not the General Manager.
157. Around the day of the meeting a request is made by the Director of Corporate Resources for a copy of the licence. It takes a series of increasingly firm requests and the elapse of nearly two weeks before the licence is produced. During this time a number of important strategic meetings take place to consider how to respond to Firoka and these can only be assumed to be inappropriately informed given the absence of the licence and the detailed knowledge of its contents. This delay in producing a copy of the licence is difficult to understand as Keith Holder makes a copy of the final licence available to the Legal Advisor to the Trust on the 7<sup>th</sup> November.
158. In his submission (letter to Martin Walklate 22<sup>nd</sup> October 2008) Keith Holder makes reference to the Chief Executive wanting to make contact with Firoka to establish the strength of their continuing interest. He blames this approach as causing the delay in issuing the notice of termination. This simply does not accord with the facts. The meeting between Firoka and the Chief Executive of the London Borough of Haringey takes place on the 26<sup>th</sup> November. The

council officers did not receive a copy of the licence from Mr. Holder until the 27<sup>th</sup> November. The Chief Executive would have been required to go ahead with the meeting without knowledge of the content of the licence and I can see no reason why such a meeting could have contributed to any delay.

159. It appears that it is the local authority actions in regard to the exposition of the licence and its importance to determining an appropriate strategy with Firoka that generates the eventual revocation of the licence. It is also at this time that a letter is received from Jacob O'Callaghan, via the District Auditor, questioning the potential breach of trust of the continued licence agreement which leads the Trust legal advisor to seek a better understanding of the licence and to advise the General Manager to work towards rapid revocation. Correspondence once again includes Keith Holder further contradicting his view of exclusion.

### **Conclusion on culpability**

160. I have already expressed the view that the Trust should consider the culture of its organisation and determine why its senior advisors, whether directly employed or through a consultancy or some other route, did not maintain the issue of the licence at the forefront of their thinking and take action whether it was in their job description or not. It is simply not acceptable that a matter which was costing the Trust so much and was so vital to its overall strategy was not considered, monitored or reported formally during the eight months of its tenure. It was known to be 'costing a fortune' in the early summer, however, I believe it is not until the activities of the Director of Corporate Resources at the London Borough of Haringey became involved and seconded staff to the task was the scale of this issue known.
161. It may be exceeding my brief but I personally believe that there is a moral imperative on any senior management team, particularly in the public sector, to take a collective responsibility for such matters and this simply did not happen. The legal advisor to the Trust comments in his interview that Keith Holder provided information to people 'in boxes'. Indicating perhaps a fragmented, titular approach to management existed at the Alexandra Palace. This report and its predecessor, contain many examples where it might be considered that information was inadequately shared or provided. It is for the Trustees to consider whether this constituted individualistic leadership or, perhaps a style that excluded support, comment, criticism and contribution.
162. My focus is predominantly on Keith Holder and my advice to the Trust must be based upon assisting them on considerations of evidence based facts not morality. My advice must be seen as that of a non legal investigator albeit one with experience in this area. The trustees must put first the advice of their own legal advisors when reaching a view as to whether they should initiate any kind of legal claim against Keith Holder.
163. It does appear that Keith Holder created the licence in the context of a complex political situation and, apparently, against his own professional advice. He, more than anyone, was fully aware of the content of the licence and his own experience would have allowed him to be closely familiar with the likely losses to the Trust that it occasioned. Having said this, it is exceptional that at no stage in the licence development, operation and subsequent revocation was any request for a valuation of the cost of the licence made or provided.

164. In all reasonable circumstances it should not be possible for Keith Holder to take a view that he 'changed roles' and that his past activities had no bearing upon his future responsibility and workload. Nor can he claim to have been sidelined during the latter part of the licence process. Indeed Keith Holder is clear that he did make representations relating to revocation of the licence, however, these cannot be evidenced and, if they were made, they were clearly ineffective. As stated earlier, Mr. Loudfoot strongly contradicts this. Keith Holder was clearly fully involved in the decisions to resolve the matters arising from the judicial review success and in the process originating, determining and agreeing the process for licence revocation.
165. My own view is that whilst his actions may have created conditions that contributed to the loss I can see no reason how he can legitimately be held financially accountable for that loss either under his contract of employment or his contract of consultancy. Even were it to be proven that his original actions were motivated incorrectly, the loss stems far more from the continuation of the licence than it does its original inception. It is the failure to revoke the licence, perhaps as early as August that creates the major loss of contribution. Responsibility at this time becomes shared and uncertain.
166. The strongest failure is the omission from the original report of the clear concerns he voices in his earlier briefing note to Councillor Adje. In so doing he may leave himself open to serious questions about the propriety of his conduct and good faith. However, the contradictory nature of the submissions received and the imprecise nature of much of the record keeping and reporting I would suspect leaves any legal situation weakened although your legal advisors will be able to advise you more properly on this.
167. It may well be that Keith Holder in proposing and continuing the licence believed that this was the only response to what he saw as an inevitable outcome to the political will as understood, or misunderstood, by him. He states in his interview that his only alternative was to do something brave and resign. An unbiased observer may have sympathy with him in this situation but would, no doubt, wonder why other options were not available and whether his actions stem more from wishing to maintain the delivery of the master agreement with only limited regard for the long term consequences of the licence.
168. It is a feature of this investigation and the one leading to the original report that little or no commonality of view about events exists between the significant parties with, in some cases, individuals having clear recollections about positions entirely contradictory to those equally clearly recalled by Keith Holder.



169. This investigation when taken with the first report received in September present, in my opinion, an exhaustive summary of the events surrounding the licence. It is my view that the absence of any real paper trail, allowing proper judgement of events to take place, stems from the poor governance procedures outlined in the first report to Trustees. I believe that remedying this situation should now remain the key focus for the Trustees and that any further allocation of resources to support any further investigation may be counterproductive.

Martin Walklate  
March 2009.

