

London Borough of Haringey

Report of an investigation under section 59 of the Local Government Act 2000 by Martin Walklate, appointed by the Monitoring Officer for the London Borough of Haringey, into an allegation by Mr. Clive Carter that Councillor Charles Adje breached the Member's code of conduct in regard to the creation, approval and signing of a licence to operate at Alexandra Palace.

Martin Walklate

September 2010

Summary

Following a complaint by Mr. Clive Carter that Councilor Charles Adje had, in a range of matters, breached the Member's code of conduct, I have completed an investigation into that complaint and I find that in the majority of cases the complaint either has no substance or, more often, does not raise matters that are within the purview of the Member's Code of Conduct.

In one case, related to bringing the Authority into disrepute, I do believe that there is a case to answer and have concluded that the complaint is upheld. In one other case, relating to the impartiality of the key officer involved, I do believe that the complaint has substance but the conflicting testimonies are such that I cannot find that there was a failure to comply with the code

INTRODUCTION

1. In October 2009 a complaint¹ was received from Mr. Clive Carter, a resident. That complaint alleged a series of breaches of the Member's code of conduct. The full copy of that complaint follows.

The complaint

Mr. Carter's complaint states:

- As Chair of the Alexandra Palace Charitable Trust Board (May 2006 to May 2007) and as Chair of its trading company, the Member breached the model code of conduct (below). In those capacities, he also betrayed the Principles of Public Life where he did not meet the standard of conduct expected of a Member.
- The Member incautiously promoted the grant of a Licence to a property developer. The Licence allowed the developer occupation of our Charity's premises prematurely. The Licence deprived the Trust of all income and led to a huge deficit for our Charity, a loss met by council taxpayers. The Licence is likely to be unlawful. The Member had un-recorded and un-witnessed contact with the developer.
- The complainants' assessment of the breaches of the Member's code of conduct is as follows:
- 'MEMBERS must comply with the code whenever they:
 - 2(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed) ... and references to your official capacity are construed

accordingly. This would include the Chairman of the Trustees of the Alexandra Palace Board, which is a committee of the Council.

- 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. The Member had meetings and phone calls with a property developer that were un-witnessed and/or unrecorded. This has at least the appearance of impropriety. [see section 18]
 - 6. (a) You – must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage. The Member secured financial advantage for Firoka by the promotion of extra, unnecessary and specifically-warned- about inducements comprising the Licence. Profits of Firoka's occupation can be seen in that company's accounts. [section 20]. By the same token and as a consequence, disadvantage was conferred to our Charity. [S.26; AP accounts 2007/08]
 - 6 (b)(ii) must, when using or authoring the use by others of the resources of your authority – ... ii. ensure that such resources are not used improperly for political purposes (including party political purposes). The Member wanted Firoka locked-in by 15 May, 2007, the date of a scheduled majority group meeting, in order that the Member could make an announcement to that effect on that date. The Licence was rushed recklessly for party political purposes, frustrating careful consideration. [section 19]
 - 7. – (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by – your authority's chief finance officer; or by your authority's monitoring officer where that officer is acting pursuant to his or her statutory duties. The Member did not seek the advice of either of these two officers about the Licence; the advice he did seek or receive (the Briefing Note, q.v.) from a senior officer – the General Manager – he then disregarded, to huge cost. [16, 17]
 - 7. – (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority. The Member changed his account between the two Walklate investigations. The Member has provided reasons and answers to investigator Martin Walklate that were inadequate, unsatisfactory and contradicted the account of the general manager. [Sections 17, 27, 28]
2. This complaint has been referred to the Standards Committee of the London Borough of Haringey who responded to the Complainant to agree that the complaint would be investigated and Councillor Adje was informed in the following format²

'You will be aware that On Thursday 1st October 2009, the Standards Assessment Sub-Committee considered a complaint from Clive Carter concerning the alleged conduct by you as a member of Haringey Council. The sub-committee also considered the two reports written by myself following my investigations into the same matters as referred to in the complaint. The sub-committee also took into account that there remained unanswered questions on this matter of great significance for the borough and on the basis that it considered there were sufficient grounds to show that the alleged conduct, if proven, could amount to a failure to comply with the Members' Code of Conduct, decided that the complaint should be investigated by the Monitoring Officer.'

3. In accordance with the prescribed procedure, I have completed my investigation and submitted a draft copy of this report to the Subject Member and to the Complainant to identify mistakes of fact. Both have responded but only one minor factual mistake has been identified, that of Mr. Carter's status in regard to the Board. Both have responded in fuller terms relating to wider issues. I have attached their comments in full⁴⁵ in the appendix together with my own response to their commentary⁴⁶.
4. A redacted copy of the report had also been sent to Mr. Holder as the principal witness in much of this investigation. He has not responded as requested but has, instead, sought more time to seek legal advice and has sought approval for the borough to meet any legal costs he may incur. Both the extension of time and any approval to costs have been denied. The reasons for this are explained more fully in my response document⁴⁶.
5. Finally, to assist Members of the Committee a timeline has been generated to show the main events surrounding the production of the licence. This is contained within the appendix⁴⁷.

Further Assessment of the Complaint

6. The complaint from Mr. Carter is his assessment of the likely breaches of the code. It is an overt requirement of the code that the investigating officer should not rely on the complainants' assessment but should form their own conclusions about the likelihood of breaches.
7. Accordingly, following a detailed assessment of both the code and the source material³ I have determined that the initial areas for investigations should be:
 - compromising the impartiality of those who work for, or on behalf of, the authority
 - bringing an office or authority into disrepute
 - using your position as a member improperly to confer or secure an advantage or disadvantage

- not using the resources of the authority in accordance with their requirements
 - disregarding advice when reaching decisions
 - failing to give reasons for decisions
 - failing to register interests
8. I have met with Mr. Carter, the complainant, and informed him of my assessment. I have then worked with him at that interview⁴ to investigate a number of the complaint areas in more detail and it is clear that a number of the complaints originally made do not recognise the very precise nature of the code and what constitutes a breach. However, in order to ensure that the investigation of the complaint is transparent and can be viewed by the complainant as thorough, I will deal with these failures to constitute a breach as part of the evidence collection element of this report.

BACKGROUND

9. The complaint relates primarily to the authorisation and production of a licence to operate granted by the APPT in April 2007. This has been the subject of two investigations that I was appointed to investigate and it is against this background that the Complaint is made. The first report, known as Walklate 1⁵ was a general investigation into the governance arrangements for the inception and provision of the licence whereas Walklate 2⁶ was a specific investigation into the culpability of Keith Holder, the then General Manager, in these matters. Mr. Carter's complaint relies heavily upon two reports produced by me during 2008 and 2009. To ensure that the Standards Committee has a full background the following information is included.

10. Walklate 1 reached the following conclusions"

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 but given the provision of buildings, staff, etc. they were placed in a highly advantageous trading position.

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.

11. Walklate 2 was a specific investigation into the possibility of recovery of lost funds from the former General Manager, Keith Holder, but also covered a range of matters relating to governance and behaviour. The summary of that report concluded:

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 that 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.

This investigation relies heavily on the material collated for those reports. However, the judgements made are dependent upon an evaluation of the honesty and credibility of the two major individuals who feature throughout the complaint and the subsequent investigation. This is the Subject Member, Councillor Charles Adje and the General Manager of the Alexandra Palace and Park Trust until May 2007, Mr. Keith Holder.

Councillor Charles Adje

12. Charles Ochuko Adje became a Councillor for the London Borough of Haringey in 1998 and he has continued to represent the White Hart Lane ward since that time. He has never held office with any other local authority as either a member or an officer but the London Fire Brigade currently employs him within the public sector.
13. Councillor Adje⁷ accepts that he is generally well aware of the Member's code of conduct and believes that all members of the London Borough of Haringey are provided with a copy of the code. He is uncertain as to whether he has ever received any training in relation to the code. Councillor Adje agrees that he has been subject to investigation under the code on a previous occasion⁸. Councillor Adje, when asked if he believed that it is an important element of local democracy that those involved in decisions are made aware of all salient facts before making those decisions replied:

'In an ideal situation, yes'⁹.

Martin Walklate invited Councillor Adje to expand on this. Councillor Adje said:

if provided with written or verbal communication you can only go by what is provided.'

14. Councillor Adje was Leader of the Council for 2 years during which time the Council went from rated weak to good. He has held other cabinet positions.
15. In May 2006 he was appointed to the Chair of the Alexandra Palace Park Trust and Chair of the trading company. He resigned the position of Chair of the Trust in May 2007 but retained the position of Chair of the trading company for a few more months to, as was expected, facilitate the closure of the company at the transfer of the operations to Firoka (Alexandra Palace) Ltd.
16. Councillor Adje was not prepared to confirm whether he knew these positions to be subject to the Member's code of conduct. He did not dispute this, particularly when advised so by Terence Mitchison, but he had received no such guidance from either the previous general manager or the legal advisor to the Trust. Councillor Adje was similarly uncertain as to the employment position of the key employees with whom he worked. He again was prepared to accept that they were employees of the London Borough of Haringey¹⁰.

The response from Councillor Adje

17. In context of the foregoing complaints, I interviewed Councillor Charles Adje on the 12th March 2010. A full copy of his interview note is attached¹¹. The interview took place in the presence of Terence Mitchison who attended as legal adviser on behalf of the monitoring officer at the interview. A note taker was used to produce a record of the interview. This record was subsequently provided to Councillor Adje who made a number of small amendments and this has led to an agreed copy of the interview note attached.
18. I would wish to record that Councillor Adje has cooperated fully with my investigation and has approached all correspondence, requests for information and the interview process willingly and with good grace.
19. However, it must be said that his record of events throughout the three investigations (Walklate1, Walklate 2 and this code of conduct review) demonstrate a number of inconsistencies which are hard to reconcile with other stated versions of events. Notable are his failures in the first report to inform the investigation of the briefing note produced by Mr. Holder and the discussions with Firoka that led to its production. A number of elements of his account are, if correct, very illogical. Whilst to some extent some of the inconsistency can be attributed to having to recall events of three years ago these are matters of importance and his recall appears sharp once new evidence or opinion is provided.

Keith Holder

20. Keith Holder is an experienced Local Government Officer at Senior Level and an experienced General Manager well used to the pressures of working in highly charged political environments.
21. Much of his career has been devoted to the management of the Alexandra Palace and the latter part of that career has been focused on engaging a developer to resolve the many problems that are associated with that building.
22. Whilst I would not extend the compliment paid to Councillor Adje that he has dealt with the investigations with good grace, I have to say that he has continued to be cooperative and has responded to my investigations and subsequent questions despite their being no contractual necessity for him to do so. However, his actions are constantly difficult to pin down and his responses are often vague and limited. Questions can be posed which return a partial answer. Subsequent follow up brings a little more information and yet further questions produce slightly more. One has a constant feeling that he is drip-feeding his information and does not have the confidence in his situation to be honest and open at the outset.
23. A good example is his failure to disclose the briefing note in Walklate 1 but to readily produce it as his major defence in Walklate 2. Having presented himself, when under direct investigation, in Walklate 2 as a very unwilling participant to the events he then utterly contradicts this in his evidence to this enquiry¹² by making an unusual and ambiguous response to my question which implied that his integrity might have been compromised but he did not realise it at the time (see paragraph 114 below)

Context.

24. The following section analyses the information to support or deny the complaint by Mr. Carter. It is important to me that the Standards Committee, in considering this information, recognises that this investigation is, similarly to the Walklate 1 and Walklate 2 investigations, characterised by anomaly, dispute, inconsistency and clear withholding of information until it suits the participants to release it. This clearly has an impact upon the ability to reach any sound conclusion as to the efficacy of the information or any judgements or conclusions that can be drawn from it.
25. In this regard it appears likely that rather than being able to base my conclusions on whose version of events is most probable, I will be forced into considering which of the versions of events is the least implausible.
26. As stated earlier, I have assessed the complaint to contain the following elements. I have also sub divided these elements of the complaint into further areas where necessary.
 - Compromising the impartiality of those who work for, or on behalf of, the authority (paragraph 3 (2) (d))

- (1a) Compromise to the impartiality of Keith Holder
 - (1b) Compromise to the impartiality of David Loudfoot
 - (1c) That an incentive or reward was offered.
- Bringing an office or authority into disrepute (paragraph 5)
 - Using your position as a member improperly to confer or secure an advantage or disadvantage paragraph 6 (a)
 - i. For yourself
 - ii. For Firoka
 - Not using the resources of the authority in accordance with their requirements or using them improperly for political purposes (paragraph 6 (b))
 - Disregarding advice when reaching decisions paragraph 7 (1))
 - Failing to give reasons for decisions (paragraph 7 (2))
 - Failing to register interests (paragraph 13)

27. I have been provided with detailed guidance approved by the Monitoring Officer of the London Borough Of Haringey¹³ that provides both a context and specific tests within which to judge whether the circumstances outlined represent a breach of the code. In each section I shall reproduce this guidance, present the evidence I have collated and then summarise whether, in my judgement, the evidence or information that I have outlined demonstrates a breach of the code.

28. This section analyses the information contained within the Walklate 1 and Walklate 2 reports and all the accompanying appendices, interviews and correspondence as well as those carried out specifically in this phase of the investigation to ascertain what material exists to either support the complaint, deny the complaint or mitigate against it.

29. To simplify matters, I have first listed those elements of the complaint that I can find no evidence to substantiate or, where on the balance of probability I believe no breach of the code to have taken place.

Complaint of breach of impartiality in regard to David Loudfoot

30. Complaint of a breach of the code paragraph 3 (2) (d) compromising the impartiality of those who work for, or on behalf of, the authority in that David Loudfoot and Ken Harrington had been compromised into signing the licence on the 4th May.

31. The relevant advice provided by the London Borough of Haringey is as follows:

PARAGRAPH 3 (2) (d)

This states that "You must not....do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, your authority."

The Guidance says – "You should not approach or pressure anyone who works for.... the Council to carry out their duties in a biased or partisan way..... You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision. **Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.**"

The tests that would determine whether there had been a breach of this sub-paragraph of the MCC are:

- (i) Was David Loudfoot or Kenneth Harington required to act in a particular way that was contrary to the course of action they would have taken anyway.
- (ii) Did any direct intervention by Councillor Adje take place and, if so, did that intervention lead to any alteration in the way they conducted their responsibilities.
- (iii) Is there sufficient evidence that the subject Member did anything to compromise the officer i.e. did the subject Member apply pressure to Ken Harrington or David Loudfoot to achieve a different outcome?

Note:

Kenneth Harington was the Company Secretary of Alexandra Palace Trading Limited, a trading subsidiary company wholly owned by Haringey Council as trustee of the AP charity.

Background

32. On the 4th May 2007, David Loudfoot, the newly appointed General Manager of the Alexandra Palace and Park Trust, signs the licence on behalf of the trust. He had been in post for four days. In his first interview with me, David was asked about his willingness to sign the licence and indicated that he felt he had little choice. In this interview for Walklate 1 he comments¹⁴:

33. *'David became aware of the strategy to develop a licence just before the board meeting in April 2007 and was involved in contributing in small ways to*

that licence development. This was primarily working on two issues, TUPE and Insurance Indemnities. David recalls being at a meeting toward the very end of April with Keith Holder and Cllr. Charles Adje where it was made clear that he would have the responsibility of signing the licence once the Charity Commission Order was through.'

34. He later adds¹⁵:

35. *'David recognises that the final licence with Firoka differed in many respects to the company operating licence. However, it was his understanding that the Members of the Trust had been briefed on the strategy and that in signing the changed licence he was fulfilling their decision.'*

36. In his second interview on the 22nd October 2008, Keith Holder is asked¹⁶:

David Loudfoot in his original interview commented that he was called into a meeting between yourself (Keith Holder) and Councillor Adje. At that meeting he was told that he would be required to sign the licence as he would be general manager at that time. Do you recall this meeting and can you provide any more information on the context of this discussion? He responds:

'Keith recalled such a discussion but not necessarily exactly when it took place in the process. His view is that David can have been left in no doubt of the political importance of the signing of this licence and the imperative that everything should be done to encourage the signing of the final agreement with Firoka.'

37. Again, similarly when questioned about the authority to sign the contract and whether this was outside of the authority given by the board he responds¹⁷:

'Keith only wishes to once again refer to the context of this within the political process.'

38. When taken together these comments appear to imply that Councillor Adje, perhaps aided by Keith Holder, sought to ensure that David Loudfoot signed the licence whether or not this was against his better judgement.

39. It would have to be said, however, that at no stage did David Loudfoot ever make any statement that he would not have signed the licence in any case.

40. Councillor Adje's response to this is to contradict the events as stated. When asked 'Did you instruct David Loudfoot and Ken Harington to sign the licence' he responded¹⁸:

'No, I did not. In fact, following the Board meeting on 24th April, I cannot recall having any further discussions with officers at the Palace regarding any change/s to the licence or progress. (I was not aware of who signed it or when it was signed as I thought KH was dealing with all matters).'

41. When subsequently told that Keith Holder asserts that he (Cllr Adje) is at that meeting he states that he cannot comment as he was not present. He appears to maintain that both officers are wrong as to his presence at any such meeting.

The responsibility for signing the contract must rest with the General Manager to the Trust and the Company Secretary to the Company. 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. Where matters become difficult is whether a newly appointed officer is, potentially, bullied into signing a document of considerable importance.

42. David Loudfoot has been provided with the opportunity to comment on the situation and has declined to place any matters in writing. His unwillingness to provide direct evidence substantiating the complaint reduces the weight I can give to any circumstantial assumption.
43. Whilst again clear inconsistencies exist in the views of those involved, it does not appear to me that there is any real evidence or circumstance that would indicate that David Loudfoot was being required to sign the licence against his better judgment. It is more probable that the conversations which allegedly involved Councillor Adje were matters of administration to ensure that David Loudfoot understood that he was the responsible officer.
44. In assessing this element of the complaint against the tests quoted above I cannot find any real evidence to support the complaint either in relation to David Loudfoot or Ken Harrington and consequently I do not find this element of the complaint to have substance.

Complaint of incentive

Complaint of a breach of the code under paragraph 3 (2) (d) that is compromising the impartiality of those who work for, or on behalf of, the authority in that an incentive or reward may have been offered for these actions.

The same advice from the Monitoring Officer applies:

The Guidance says – “You should not approach or pressure anyone who works for.... the Council to carry out their duties in a biased or partisan way..... **You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision.** Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.”

The tests which would apply to this area of the code would be:-

- (i) Was an incentive or reward provided
- (ii) If so, did it lead to a change in the way these officers acted

Background

45. As part of the discussion that took place at the interview with the complainant it was suggested that either Mr. Holder's consultancy contract or Mr. Loudfoot's appointment could be considered under this heading, that is as a possible incentive or reward. It should be noted that this was not a specific complaint but an aside. However, I have taken the view that once raised it should be investigated to ensure that there are no unresolved issues that might involve a breach of the Code.
46. David Loudfoot was appointed to the post of General Manager following interview. His post was formally confirmed at the meeting on the 24th April 2007, the same night as the board received the report from the general manager seeking approval to implement the licence with Firoka.
47. The Local Authority monitored the original interview and appointment and their personnel manager was present both at the interview and the appointment. Having regard to his evidence (set out below) I do not accept that this process could have been interfered with for nefarious purpose.
48. At no stage during any of the investigations has there been any mention by any of the parties involved that this might have been the case.
49. I conclude that any accusation of this nature relating to David Loudfoot is without any substance.
50. Similarly, Keith Holder's appointment as a consultant took place in the general timeline of the licence development matters but the appointment followed considerable consideration by the Board, officers of the borough and other parties. Had Mr. Holder not been appointed, the Board would have been left in the invidious position of trying to move toward a contract with Firoka having lost its main architect, driver and advisor. I believe it is clear that the Board's decision to offer him such an appointment was driven by these considerations.
51. Whilst there may be some coincidence in timing there was no evidence to support this accusation. To be certain, however, I wrote to Stuart Young the Chief Personnel Officer at the relevant time to ask his view of the appointment process. His response is as follows¹⁹:

I have re-read the appointment documentation and thought about the process that was followed.

I recall that David Loudfoot undertook a comprehensive set of assessment exercises arranged by me using the services of Reed. The results of the assessment were fed to the interview panel with areas for them to probe. I recall that they used this information to supplement a dozen or so

questions. The panels' recommendation having determined Mr. Loudfoot as their preferred candidate was considered by the full Board. In this respect Mr. Loudfoot's appointment was in the hands of a number of Members and ultimately at the discretion of the entire Board. For a single Member to have exerted undue influence would have been challenging & Mr. Loudfoot would have been fully aware of this. In addition, I did not at any time see or sense any indication of any assessment or determination in regard to Mr. Loudfoot's appointment that was not merited by the information in front of the appointment panel.

Keith Holder was the subject of a contract termination and subsequent re-engagement under a contract for services. The reasons for the change in engagement was made clear in the exempt report to the Board. The Board received advice from the Council's legal advisers in the report and heard from their own adviser at the meeting. The Council's section 151 officer provided comments also. I was clear at the time that the desire of the Board to retain Mr. Holder's services after his post became redundancy was motivated by a wish to make use of his knowledge of the Palace and its business during a period of potential change. My overall view of their decision was that they had valued his advice and experience and wished to retain access for a period whilst the business model of the Palace developed. I recall that this was the view of a number of Members of the Board. I cannot see how any single Member would have been able to overly influence this position.

So in conclusion I can see no reason to assert that Cllr Adje either did or would have had the ability to motivate either person to act in a particular manner on the subject of the License to Operate granted to Firoka by using their employment status.

52. It is my view that no evidence exists of any incentive being offered or intimated and therefore it is my conclusion that this element of the complaint is not found.

Complaint of securing an advantage for himself

53. **This relates to a complaint of a breach of the code under paragraph 6 (a) Using your position as a member improperly to confer or secure an advantage or disadvantage – for yourself.** This complaint alleges that in securing the licence Councillor Adje, had gained a political advantage for himself within his Group leadership.

The advice from the Monitoring Officer is as follows.²⁰-

The Guidance says – “You should not use, or attempt to use, your public office either for your own or anybody else’s personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.”

The test in this case is straightforward:

Did Councillor Adje use, or attempt to use, his public office for personal gain

Background

54. At the Labour Group meeting on the 15th May 2007, Councillor Adje was appointed to the cabinet position as lead member for Finance and Resources. This is a key position within the Council.

55. The allegation is that Councillor Adje was keen to secure the grant of the licence in time for this meeting.

56. Keith Holder in his original interview comments²¹:

'A group meeting of the Labour Group was to take place around this date and the Chair wished to confirm to his fellow members that the matter had been settled by this date.'

57. Similarly, when asked why this was considered a matter of urgency he responded²²:

As stated in his provided paper, Keith did not see this as a matter of urgency. The urgency was occasioned by Cllr Adje's requirements both to settle the matter prior to the 15th May and to 'lock Kassam in'.

58. Councillor Adje, when asked about the date gives a conflicting view of reasons, on one hand he denies that the date has any substance, saying²³:

'I cannot fathom why Keith would suggest that he was instructed or pressurised to complete the Licence by 4th or 5th May when as you both know deadlines can and are often missed.'

59. In an earlier submission his reasons for the deadline are given as²⁴:

'Councillor Adje believes the significance of this date is that it was the Group AGM and subsequent of the Council. It was potentially possible that he would change office at this time and this would have led to a lack of continuity at a particularly sensitive time if the licence arrangements had not been finalised. It was a cut off point.'

60. I have contacted Councillor Meehan who was the, then, leader of the Council. Councillor Meehan has informed me that the election to posts on cabinet were a matter for the group meeting. To stand for election for a cabinet post, candidates were required to produce a short note explaining their qualities and attributes for such a post. Councillor Meehan has located Councillor Adje's submission and confirms that no reference is made to his position as Chair of the Board nor does his submission make any reference to his success, or otherwise, in achieving success in the transfer of Alexandra Palace to Firoka. Councillor Adje has agreed that this is the case and has agreed to Councillor Meehan making the note available to the Standards

Committee if necessary. At this stage it is not felt necessary to secure that specific evidence²⁵.

61. In the absence of any contrary material evidence that either his elevation to a higher office or simply his status within the group would be enhanced or dependant upon this achievement it can only be conjecture that he was utilising the licence for Firoka for his personal advantage and there is no real proof. I believe the primary test in this issue is not met and this area of the complaint is not substantiated.

Complaint of inappropriate use of resources

Complaint of a breach of the code under paragraph 6, that is not using the resources of the authority in accordance with its reasonable requirements, or using them for political purposes, in that the services of Ken Harrington and David Loudfoot could be considered to have been improperly utilised in the commissioning of the licence leading to Councillor Adje's 'promotion' within the political hierarchy.

62. For this area of complaint to have merit the matters raised in the complaint under paragraph 6 3(a) would need to be proven. In other words it would have to be shown that he sought the completion of the licence in order to improve his political position or for self-engrandisement. It is my conclusion that any such view can only be conjecture and without clear evidence that this was his motive, this area of the complaint cannot stand.

Complaint of disregarding of advice

63. Complaint of a breach of the code under paragraph 7. That is disregarding advice when reaching decisions. The complainant utilises the findings in Walklate 1 and Walklate 2 that clearly show that the Board took decisions without the opportunity for expert officers from the Borough contributing and, indeed, utilising a methodology that prevented such advice.
64. This may well be true but this is not a matter for the code of conduct. The Code does require Members not to disregard advice but this is in the narrow context of situations where there is a proposal for (i) unlawful expenditure or action leading to an unlawful loss, or (ii) any other unlawful proposal, decision or action or (iii) action likely to give rise to maladministration. The Section 151 Officer and the Monitoring Officer must be given the opportunity to report to Council or Cabinet on such matters and Council Members must give proper regard to their advice or contravene this paragraph of the code.
65. Whilst the award of the licence may well have been unnecessary and may have been borne out of deceit or confusion its award was not illegal, or outside the powers of the council as trustee of Alexandra Palace and whilst many aspects of this situation are obscure I have seen no evidence to suggest that any criminal activity has taken place. In particular, this was not a situation where legal or financial advice from the statutory officers was

provided and then disregarded by any Member. Disregarding advice from the General Manager of the trust cannot fall under this paragraph.

66. I do not find this element of the complaint to have any substance.

Complaint of a failure to give reasons

67. Complaint of a breach of the code under paragraph 7 (b) that is failing to give reasons for decision in that the failure of Councillor Adje to give reasons for his actions to Mr. Walklate during the earlier investigations was considered by the complainant to be a breach of the code.

68. This area of the code is specifically about a failure to give reasons in areas of statutory requirement, which are to do with matters of regulation such as Planning and Licensing or in relation to recording decisions by the Cabinet or individual Cabinet Members. None of this is applicable to the Alexandra Palace & Park Board which is a non-executive Committee administering a charity and there are no extra requirements imposed by the Council on this body that are relevant here. Councillor Adje is not required to give any reasons for the decisions of his committee beyond the requirement to keep a record of those decisions in the minutes of the meetings which has, of course, been done.

69. The Complainants concerns stem from inconsistencies between the testimonies of Councillor Adje both within and between the various review reports. On occasion, it may be considered that Councillor Adje has not answered the questions put to him either fully, frankly, or, on some occasions, at all. However, this is not a matter for the code of conduct.

70. In consequence, I do not find any element of this part of the complaint substantiated.

Complaint 5 – Failure to register interest

71. In the various investigations I have had side comments made which suggest that Councillor Adje may have benefited from hospitality or other benefits as part of the deal. These have been unspecific and anonymous. I can categorically state that full checks have been made on his register of interests and expenses and these show no evidence that he has, in any way, failed to register appropriate interests.

Potential breaches requiring further consideration

72. This leaves three areas of the complaint which, I believe, require more detailed examination:

- That Keith Holder, as an officer of the Council, was compromised in his impartiality by Councillor Adje in the matter of the licence
- That, in not bringing the content of the briefing note to the attention of his fellow board members at the time they made the decision to award the licence, he was deceitful in withholding such information which may have had a material impact upon their decision
- That, in allowing the licence to be agreed in the absence of such discussion, Cllr. Adje conferred a benefit to Firoka that was unnecessary and led to material benefit to Firoka that they would not have been otherwise entitled to.

73. Whilst these three areas of the complaint must be seen as three potential breaches of the code there is a common thread, which runs through each of them and upon which the complaints either stand or fall.

74. For the complaints to have substance, it must be proven, or seen as on the balance of probability, that Councillor Adje pursued the provision of an instrument (the licence) against the advice of officers, without the knowledge of his group, without the knowledge of his Board Members and contrary to both good governance and necessity.

75. I would wish to stress that I have no evidence whatsoever to suggest that any alleged motivation that Councillor Adje may, or may not, have had in this matter was founded upon any personal material gain either sought or actual. If it is eventually concluded that his pursuance of such an instrument was the probable situation, then it is my belief that this was founded upon the need to secure the contract in the interests of the charity and the Borough.

Did any compromise to Keith Holder's impartiality take place?

76. The guidance provided by the Monitoring Officer in regard to this area of the complaint is as follows.²⁶

PARAGRAPH 3 (2) (d)

This states that "You must not....do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, your authority."

The Guidance says – "You should not approach or pressure anyone who works for.... the Council to carry out their duties in a biased or partisan way..... You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision. Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity."

The tests that would determine whether there had been a breach of this sub-paragraph of the MCC are:

(i) Was the initial briefing note sent to the Chair incompatible with the subsequent paper/report tabled by KH at the APPB ? This will require detailed examination of both documents to ascertain precisely what is being stated, suggested and recommended in each case.

(ii) Is there sufficient evidence that the subject Member did anything to compromise the officer i.e. did the subject Member apply pressure to KH to achieve a different outcome ?

(iii) Is there sufficient evidence that the officer's "impartiality" has been compromised ? This is not simply party political impartiality but the wider concept of the officer's professional integrity i.e. was KH being pressured to do something against his professional judgement as Chief Officer for the AP&P trust ? The professional judgement here being that of a senior officer with a detailed understanding of the commercial/legal/organisational issues affecting a major, complex and controversial transaction ?

77. In summary to determine whether a breach of the code has taken place it needs to be proven:

- Are the briefing note and the report to the committee incompatible
- Was pressure applied by Councillor Adje. It is important to distinguish between pressure applied by Councillor Adje rather than political pressure from the ruling group.
- Was the officers impartiality compromised.
-

78. In regard to the first point the briefing note provided by Mr. Holder to Councillor Adje on 17th April 2007 can be summarised as an unequivocal denial of any need for action. Its principal points being²⁷:

- a. Kassam' had 'no easy escape' from the transfer arrangement
- b. That 'Kassam' would be challengeable for non performance if he did withdraw
- c. That no 'methodology' was available to 'Kassam' which would allow him to 'get out'
- d. That a possibility existed that the whole 'I want out' scenario might simply be a mechanism to launch an inducement argument
- e. Caution should be exercised
- f. That there do not appear to be any grounds for a 'rushed decision'
- g. 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.

79. Mr. Holder concludes 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'²⁸. 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.

80. In his letter to me of the 2nd March 2010²⁹, Mr. Holder confirms that he did not withdraw the advice given in the briefing note. Indeed in his letter of the 12th February 2010 he states that *'the circumstances surrounding the relationships and the proposed lease had not changed between the writing of my briefing note and the meeting of the trustee board a few days later and there can therefore be no basis upon which a change of that advice could be founded'*.

81. This advice contrasts markedly from the content of the report to the APPT Board on the 24th April 2007³⁰ where a clear indication is given that the project is at risk, that actions need to be followed through to protect the staff, the trust and the trading company and the creation of the licence should be authorized. There is no mention of any of the contrary advice provided in the briefing note.

82. I believe that the first test set out in the Monitoring Officers advice is proven.

83. The second issue relates to whether pressure was applied.

84. Myself and a representative of the Legal Services Division interviewed Keith Holder as part of Walklate 2³¹. At that interview it was put to him that 'they (his statements) appeared to show that he had advised Cllr Adje that there was at that stage no need for any intervention by the Trust to maintain Firoka's interest. The initial briefing note outlined the legal position and from this it was clear that Firoka had little opportunity for withdrawal without penalty. Keith concurred with this assessment.'

85. In his letter to me of the 22nd October 2009 he states³²:

'The briefing note sets out the position as it is then known together with my assessment. It is clear from that note that I do not consider it necessary to take any action at that time nor do I recommend any action.'

86. I then put it to Keith that his actions in submitting the tabled report and the subsequent licence development flowed from this 'instruction' and that any issues of failure of governance needed to be seen within the context of the political will that Keith was subject to. Keith agreed that this was the case.

87. In response to questions Keith said that throughout his career as General Manager the Chair of the Board had always been the source of political direction. There would have been no point in resisting the will of a Chair backed by a majority of Board Members, as was evidently the case, unless Keith had been ready to resign.

88. In his letter of the 2nd March 2010 he states³³:

It was made clear in the telephone call referred to in 1 (Adje to Holder) above that the political priority was to keep Firoka engaged until such time that the 125 year lease could be formally executed and the significant revenue and capital risks arising from the Alexandra Palace were transferred. The Chair was adamant that Firoka should be in a position that mirrored the proposed lease arrangement and the report I had to prepare for the Board was the vehicle for achieving that aim. The assertion that I should have presented the report as directed and then refer to advice that diametrically opposes the report as given a few days earlier is preposterous in the extreme.

89. In a separate response on the 12th February 2010³⁴ he states 'you previously confirmed after the first round of interviews that David and I both received the same instruction from the Chair that everything should be done to ensure Firoka's continued engagement.

90. The above would appear to confirm that a breach of the code of conduct for Member's has taken place in that Mr. Holder, whilst in possession of material that would clearly have contradicted the position that Councillor Adje wished to take was required to suppress that information in order to allow the licence to be prepared.

91. When Councillor Adje was asked³⁵ 'Can you confirm that, following the briefing note, you contacted Keith Holder and 'made it clear' that the arrangements with Firoka were not to be jeopardised?' he responded;

92. *I did not contact Keith Holder to 'make it clear' to him as stated. Keith later informed me that the licence could be novated along with the staff on secondment for a limited period Given APTL's financial position. See his appendix 2 dated 1August2007. (I attach a copy of the Written Resolution of the Directors). I wondered at the time why he felt it could now be done. He asked when it should be done by and whether it should be done prior to the Group AGM and I remember saying 'if it can be achieved'. He did not however explain why he changed his mind though.*

93. Similarly, when asked: 'Keith Holder implies that he was instructed to produce the report that went to the Board on 24th April 2007. Did you see your discussions with him as an instruction? If not, how would you describe them?' he responded³⁶:

'Certainly not. KH advised that it would not be prudent to prepare a full report and that what was needed to progress the secondment and licence was to have a brief outline to the meeting for approval as he felt that the information (within a report) could be leaked as has often been the case.'

94. This contrasts directly with Mr. Holder's position. In our most recent correspondence I ask him the question³⁷:

'Did Councillor Adje ever instruct you, or imply to you, that your findings as expressed in the briefing note or its contents or conclusions were not to be

communicated to any other party or not to be included in the report to the Board of 24th April 2007 or, not to express those views at the meeting itself or in any other briefing?

He responds

Yes, as previously state(d) the intent was to ensure as far as was practicable the Firoka did not walk and the transfer of the risk arising from the building and business was completed. It was stated that a contrary view would not be helpful and would not support the aim of preventing Firoka from walking.'

95. It is important to establish whether any pressure placed upon Keith Holder stems directly from Councillor Adje or whether Councillor Adje is simply a mouthpiece for the controlling labour group.
96. According to Keith Holder's testimony (letter 22nd October 2008)³⁸ *'a few days after reading and considering the briefing note the Chair (Adje) came back making it clear that the arrangements with Firoka were not to be jeopardised. Further he had discussions with other senior politicians who had agreed that Firoka could operate the business on the same basis as if the lease had been completed with the staff being seconded because the TUPE regulations would not apply in these particular circumstances.*
97. Councillor Adje agrees that such a meeting with the Leader did take place but is unsure whether the briefing note was discussed. The fact that a meeting takes place is supported by correspondence with Councillor Meehan who generally recalls such a meeting taking place but that he states that at no stage was he aware or had sight of the briefing note.
98. Given that Councillor Adje gives no credence to the briefing note as, in his view, Mr. Holder then goes on to act in a contrary fashion, the question was put to Councillor Adje why a meeting took place. He responds *that he had a duty to keep the Leader informed*³⁹.
99. Councillor Adje then goes on to describe his meeting with the Leader as one where he made a 'complaint' (which seems to have meant that he discussed the situation with the Leader) . The Chief Executive is involved (although this is not recalled by the then Chief Executive, Dr. Ita O'Donovan, who also does not recall ever seeing the briefing note) and an agreed instruction is to be communicated by her to Keith Holder. This appears a strange reaction to the sequence of events as described by Councillor Adje.
100. In Councillor Adje's scenario, he only learns of the need for a request for an instrument from Keith Holder and he then requests a briefing note from Keith Holder. He gives little credence to the note and yet meets with the Leader of the Council. It appears that he does not share the briefing note with anyone and an instruction is then given to Keith Holder to continue with the instrument. This is in complete contradiction to Keith Holder's testimony .

101. I find it hard to understand why Councillor Adje fights so hard for the development of an instrument. According to Cllr. Adje he only is aware of the need from Keith Holder and yet, when Keith Holder writes a briefing note categorically denying the need for any instrument, he 'overlooks' this, does not see any need to share it with his Leader or the Chief Executive and yet comes away with an 'instruction' to Keith Holder to pursue an instrument.
102. 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.
103. 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 presented to the Alexandra Palace and Park Board on 24th April 2007.
104. Councillor Adje and Keith Holder present two opposing views of what happened. The only evidence each has is their own testimony each using the very limited evidential base to explain their own situation.
105. It is therefore necessary to determine whether a breach has occurred on the basis of a balance of probability. The only way I can resolve this is by looking at the two versions of events to see which is the most plausible.
106. Councillor Adje sees the events in this way (my summary):
- He attends no meeting with Firoka to discuss the need for a financial benefit (Licence) He is informed of the need for this by Keith Holder. Upon hearing of this need he requests a briefing note from Keith Holder who produces one a day or so later (17th April). Councillor Adje does nothing with the briefing note but informs the Leader of the request from Holder for a benefit/licence for the purposes of keeping him informed. Holder proceeds with the request for a report to go to the Board and, because he does so, Councillor Adje assumes that any reticence Holder may have had is now resolved. The report is received and agreed (24th April) and the matter, as far as Councillor Adje is concerned is left with the officers to conclude.
107. Keith Holder's version (my summary) is:
- Keith Holder was present when the need for an instrument of benefit was first raised (11th April) and he states that Councillor Adje was present. He produces the briefing note which clearly opposes any further financial benefit. He sends this to Councillor Adje who subsequently informs him that the

financial benefit will go ahead despite the note. He is told to produce the report to the Board. He is clearly certain that not to do so would be damaging to his own situation. He is clear that he at no stage withdrew his advice contained in the briefing note.

108. Both, though contradictory, are plausible. However, inconsistencies are present in both versions.
109. If the meetings that Councillor Adje attended were not related to the need for a financial benefit why is he unable to remember what they were about. Given the importance of this matter for the charity generally, it is surprising that Cllr Adje can remember so little detail. It is strongly coincidental that they take place at exactly the time this matter begins. If he did not attend the meeting, how did he request the briefing note following the meeting?
110. Why, if Keith Holder was recommending a financial benefit did he then produce a very thorough and detailed briefing note opposing such a benefit.
111. Why, if Councillor Adje thought that Keith Holder no longer held the view expressed in his briefing note did he a) meet with the leader to consider a 'complaint' b) Why was there a need for an instruction to be given by the Chief Executive and c) why didn't he share the briefing note with the Leader of the Council.
112. Why, if he had no involvement, did Councillor Adje not question the shortcomings in the report that went to the Board on the 24th April 2007 and question why the material provided in the briefing note was not also contained in that report to ensure that Member's had a balanced view before taking such a major decision.
113. Conversely, why, if Keith Holder felt his impartiality was being compromised did he not raise the matter with the Chief Executive. This, to some extent, can be explained given the very independent position that Keith Holder sought as General Manager of the Trust.
114. There is certainly evidence to support the view that Keith Holder did have his views, as expressed in his briefing note, suppressed and therefore, his impartiality was compromised. It could be that the instruction he was given resulted from due consideration by the leadership, rather than by Councillor Adje alone. However, the key issue here is that the briefing note was not shared with the Leader of the Council, or, as far as can be ascertained, any other Member including the other Trustees. The consideration of this key document may have placed matters in an entirely different light and it must be possible that its withholding was material in the decision by the trustees to proceed with a licence despite its apparent lack of necessity.

Was Keith Holder's integrity damaged

115. Given all that has gone before, it is extremely difficult to see how the events surrounding the submission of the detailed briefing note (upon which he had received legal advice) its impact upon Councillor Adje and the subsequent instructions both to produce the report and to suppress any specific information to the contrary can be seen as anything other than a damaging attack on Mr. Holder's professional integrity. On this basis, and in the absence of other evidence, I would conclude that this clearly indicates that the required tests for this breach of the code had been met.

116. However, this position is totally contradicted by Mr. Holder himself in his final correspondence with me where he is asked the question⁴⁰:

Did you believe that your integrity or required impartiality as a Council Officer of the Board was compromised.....

He responds

Not at the time. I had spent since September 1995 working on this project with support from the Members and Officers. Differences of opinion did arise because of the differing regulatory regimes and the weight to be given to each but nevertheless the key objective of risk transfer away from the local council taxpayer gave impetus to finding solutions.

117. This last statement, like many by Mr. Holder, avoids any direct apportionment of blame. Were he found to have been compliant in the decision to withhold important information from the Board (and potentially the Leader of the Council and the Chief Executive) then he would be open to serious criticism. So in the context of Walklate 2 Mr. Holder clearly presents his situation as one where he was forced to undertake the actions that he did. But now, for whatever reason, he significantly qualifies his previous evidence so far as his perception of Member "pressure" is concerned.

118. However, it must be accepted that this statement gives Councillor Adje the opportunity to argue that if Mr. Holder was not aware at the time of any damage to his integrity then Councillor Adje could not, equally, have been made so aware. His defense to the failure to take on board the points raised in the briefing note stem from his view that Keith Holder continued to develop the licence without complaint and made no further reference to the material. If Keith Holder was not challenging the use, or misuse of the material then Councillor Adje could not be expected to perceive that any action of his was compromising the officer's impartiality.

119. Whilst I may find Mr. Holder's comment both illogical and unlikely, it is, nonetheless, his stated position and whilst from all other aspects I would have concluded that his impartiality and professional integrity must have been damaged, I see the key test as being his own reaction. Unless the officer

concerned is conscious of his/her own professional integrity and impartiality being undermined in a case of this kind, it is hard to see how the breach can be shown convincingly. Were the Standards Committee to hold a hearing on there must be a real possibility of the complaint failing under paragraph 3 (2) (d) because of the "not at the time" comment.

120. Whilst I feel strongly that the first tests relating to the difference between Mr. Holder's stated position and the report are met, I have, with reluctance, to accept that I cannot prove damage to integrity if Mr. Holder did not feel it 'at the time'. In consequence, I find that this element of the complaint, surprisingly, is not met.

Was the Authority brought into disrepute (Paragraph 5 of the code)

121. This is a complex area where not only must the action be proven but an assessment made of whether the action, in itself, was of sufficient degree to lead to bringing the office held by Councillor Adje into disrepute.

The advice tendered by the Monitoring officer is as follows⁴¹:

This states that "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

The Guidance says – "You should be aware that your actions in both your public and private life might have an adverse impact on your office or your authority. Dishonest and deceitful behaviour in your role as a member may bring your authority into disrepute, as may conduct in your private life which results in a criminal conviction such as dishonest threatening or violent behaviour."

Factual background – As noted above, KH had sent the subject Member a briefing note which opposed any "inducement" being granted to Firoka. Subsequently KH prepared and tabled a short paper/report to the APPB meeting on 24 April 2007 which made no mention of the briefing note, or the views/arguments expressed in it, but recommended a course of action very different to the "no action" course previously recommended in the briefing note. Nothing was said at the APPB meeting about KH's previous advice either by KH or by the subject Member. None of the other Councillor/trustees present or their officers/advisers are likely to have been aware of the briefing note. There is no evidence that KH ever formally withdrew his original briefing note.

When asked by MW what steps the subject Member had taken to ensure that his fellow Councillors/trustees had all the salient facts before them when they considered KH's tabled paper/report (given the contrasting advice in the previous briefing note), the subject Member could not recollect – but he seems to have done nothing to draw attention to the previous advice. The subject Member's view was that KH was driving the "project" and that it was he (KH) who advised the APPB what to do.

The tests that would determine whether there had been a breach of this paragraph of the MCC are:

Did the subject Member's action or omission take place in his/her public or private life? There is a higher "threshold" for misconduct in private life to amount to a breach.

The test under paragraph 5 is an "objective" one i.e. would an objective observer reasonably regard the conduct as bringing the office or the Council into disrepute having regard to the current generally accepted standards in public life. It may not matter that the subject Member subjectively regarded his/her own conduct as perfectly proper.

Bringing the "office" into disrepute refers to the office held by the subject Member (here, being Chair of the APPB) and the "authority" means the Council itself. This is likely to require more serious misconduct than simply harm to the individual's personal reputation.

"Disrepute" is a strong word with a meaning similar to "disgrace" i.e. conduct that would generally be regarded as clearly deplorable - rather than conduct about which there might be conflicting views depending on political or social standpoint.

The references in the Guidance to "dishonest and deceitful behaviour" are simply examples and not requirements, in themselves, for a breach - since other forms of misconduct (e.g. personal violence not involving dishonesty) could also be disreputable.

It will be necessary to consider the scope of the duties expected of the Chair of a non-executive Committee that fulfils the Council's duties as charity trustee.

If it is accepted that Councillor Adje did suppress the briefing note for the purposes of protecting the master agreement and he did this without his Leader or his Board Members being aware both of the full aspects of the briefing note and the financial consequences of the licence then it follows that the second complaint, that of deceit, must have some weight.

My findings are as follows:

Disrepute

122. The Monitoring Officer's advice offers the test that matter here relates to the Authority (i.e. the Council) or the Member's own office, in this case as Chair of the AP&P, being brought into disrepute and that it must be extensive and damaging.
123. Clearly, this is a matter that can only be measured historically and in terms of impact and outcomes.

124. The actions led to two outcomes that can be considered serious consequences for the Council and the Board. Firstly, damage to its reputation and secondly, financial damage. These two are related.
125. In regard to the first, there is no doubt that the acknowledgement of the governance failures brought to light in Walklate 1 and Walklate 2 led to considerable adverse press coverage and public condemnation. For some weeks this issue made headline news in local papers and many letters of concern were written to the local paper. Indeed, references to Alexandra Palace are still coupled with this situation in local newspapers.
126. Secondly, it must be accepted that these actions led to considerable cost both internally and in the commissioning of the various reports and subsequent actions arising from the publication of the first report. The cost to the council is estimated in the region of £1.5m. This financial loss was, itself, the subject of press coverage and public criticism.

Deceit.

127. The dictionary definition of 'deceitful' is: An attempt or disposition to deceive or lead into error; any declaration, artifice, or practice, which misleads another, or causes him to believe what is false; a contrivance to entrap; deception; a wily device; fraud.
128. Councillor Adje accepts that he knew of the briefing note. He did not make any attempt to bring this to the knowledge of those making the decision at the Board and they, in Walklate 2, confirm that they were not aware of that note.
129. The note, as has been said before, is unequivocal on the lack of value of any instrument and the lack of any necessity for it. It is inconceivable to think that had the note been made available to the trustees (as is their right) the decision would have proceeded on exactly the lines as occurred. The trustees as a body were entitled to the full and undistorted professional view of their officers. Mr. Holder is clear that he never withdrew that advice.
130. The responsibility to produce the note would, in my opinion, lie with the General Manager (Keith Holder) but he maintains that he was suppressed from so doing. It is the failure of Councillor Adje to make either Councillor Meehan aware of the content of the note, the Board Members aware of its content when making a decision and the corresponding suppression of Keith Holder's professional view which led to the licence being approved in its known form.
131. Indeed, in his final correspondence Keith Holder is asked the direct question⁴²:

Did Councillor Adje ever instruct you, or imply to you, that your findings as expressed in the briefing note or its contents or conclusions were not to be communicated to any other party or not to be included in the report to the

Board of 24th April 2007 or, not to express those views at the meeting itself or, in any other briefing?

Keith Holder states as his reply:

Yes. As previously state(d) the intent was to ensure as far as was practicable the Firoka did not walk and the transfer of the risk arising from the building and business was completed. It was stated that a contrary view would not be helpful and would not support the aim of preventing Firoka from walking.

132. Whilst, as ever, there is some ambiguity in this statement, it does, at the very least, demonstrate that Councillor Adje either gave such an instruction of was complicit in withholding this important information from the Board (and perhaps others) and that the consequence of declaring the information would have been to weaken the desired position.

133. I can only determine that, on the basis of undisputed evidence, Councillor Adje did withhold the knowledge contained in the briefing note and that the complaint under this paragraph must be upheld. That is to say, Councillor Adje, in deliberately not informing his Trust colleagues of the briefing note submitted by Keith Holder, failed to allow them to make a balanced decision and instead they accepted a recommendation to pursue a licence they might well not have agreed had they been in possession of the full facts.

134. It is clear that in his capacity as Chair of the Alexandra Palace & Park Board Cllr Adje was aware of important information (the briefing note) which had not been made available to his fellow trustees. It is the generally accepted duty of a Local Authority Committee Chair to oversee the proper conduct of the Committee's business including the consideration of senior officers' professional advice. In my view, the withholding of Mr. Holder's advice in these circumstances was a disgraceful action on the part of Cllr Adje and it did bring his office as Chair of the Board, and the Council as a whole, into disrepute as witnessed by the subsequent investigations, adverse publicity and adverse public comment. Accordingly, I find that he failed to comply with paragraph 5 of the Code in this respect.

Advantage

135. The final area of the complaint relates to a breach of the code under paragraph 6a that is using your position as a member improperly to confer or secure an advantage or disadvantage – for Firoka.

136. This is considered under paragraph 6 (a) of the code. The advice from the monitoring officer is:⁴³–

This states that “You....must not use, or attempt to use, your position as a member improperly to confer on, or secure for, yourself or any other person, an advantage or disadvantage...”

The Guidance says – “You should not use, or attempt to use, your public office either for your own or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.”

The tests that would determine whether there had been a breach of this subparagraph of the MCC are:

Did the subject Member intend that he/she, or any other person, should gain or lose as a result of the subject Member's use of their official position

This will involve considering the issue of gain and loss overall in the chain of events.

Was the subject Member's action “improper” in the sense of being prompted by an ulterior motive separate from the interests of the Council/public ? This could be a matter of personal private interest or personal political gain separate from the best interests of the Council/trust. “Improperly” needs to be interpreted in this sense rather than in the sense of action, subjectively intended to be in the public interest in terms of its results, but progressed by irregular means e.g. in breach of established procedures for decision-making.

137. I do not imply or have any evidence to imply that Councillor Adje sought to provide Firoka with unnecessary financial gain for its own sake. I would contend that Councillor Adje was seeking to protect a huge investment and he became, or was caused to become, very nervous about its prospects. It is my contention that he was seeking to shore up what he saw as a dangerous situation and he did this despite the advice of his key officer and without sharing his true knowledge of the risks with others because he took a different view.
138. My estimates suggest that Firoka gained financially from the signing of the licence by about £1.5 million and this may be a conservative estimate. It is clear that, if Mr. Holder's note is to be accepted, there was no clear necessity. Again, if Mr. Holder's testimony is accepted then it took place as a result of the intervention from Councillor Adje and that proper processes were circumvented or avoided.
139. The primary purpose of the licence was to enable Firoka to gain and this was overtly referred to in the report to Trustees on the 24th April 2007. No attempt has ever been made to hide the fact that this was an inducement to maintain Firoka's interest in the main contract.
140. However, what is important is that Firoka's benefit arose from two failures of governance. The first being the award of the licence and the second being the continuation of the licence beyond its original three-month structure. The amounts concerned in the first stage are relatively small, took place at a time when trading was poor and were perceived to take place against a background of a supposed inevitable transfer of the Palace to Firoka. The

main area of cost arose from the failure to cancel the contract post August 2007. At this stage, Councillor Adje has no responsibility.

141. It is amazing that no party, at any stage, actually had costed out the effects of the licence. Certainly, Councillor Adje was completely unaware of its benefit. Cllr Meehan has said that it was his expectation that it would include losses as well as profits and the board were given no financial information.

142. Councillor Adje comments⁴⁴

'He was given a general awareness of the amounts involved in issues such as the staff secondment and recalled figures of the cost of the licence deal being around £400,000 although he was informed that most of these costs would have had to have been met by the Trust in any event'

143. To be a breach of the code would require that Councillor Adje had deliberately and with an improper ulterior motive knowingly entered into the licence knowing that it was unnecessary and knowing that it would financially benefit Firoka. An argument could be presented that this was, in fact the case, but it must also be considered that many factors point to the issue that Councillor Adje was focused on 'the big picture' of securing the major contract with Firoka leading to major development of Alexandra Palace, a release to the Borough of a major financial responsibility and the culmination of many years of hard and difficult work. His assent to the payment of an assumed price for the licence, was, I feel likely, measured against that issue in his own mind.

144. It is my judgement that, on the balance of probability, Cllr. Adje was aware that the clear officer advice was that the licence should not proceed. Despite this he championed its acceptance through a process which lacked balance and good governance and, as a result, a licence was produced which was not what Members felt they had agreed to and which gave considerable financial benefit to Firoka. I do not believe that the idea of the licence was necessarily wrong in principle but that its commission in its actual form resulted from a failed governance process and a circumvention of the democratic process.

145. I do not believe that Councillor Adje sought to provide the advantage to Firoka for any personal gain or because he had any ulterior personal motive against the wishes or best interests of the council or the trust. I have no evidence whatsoever to support any other conclusion. I do not find this element of the complaint substantiated nor do I find any failure to comply with the Code under this paragraph.

CONCLUSION

146. I wish to stress that my findings are based upon a judgment on the balance of probability that Councillor Adje was so convinced as to the need for an instrument to keep Firoka on board that he overrode the advice of his key officer, placed him in a position where he had to suppress that advice and

thereby prevented the members of his board from reaching a decision based upon the full facts.

147. It is only if this is accepted that any of the complaints has substance. I would wish to be clear that I think this judgment on the balance of probability is a fine one not a clear one and I am concerned that in making such a judgement I am inevitably leading the Authority to incur cost and for a number of individuals to have this matter hanging over their heads whilst hearings are planned, heard and determined. It is only the substantial nature of the sum lost and my belief that it is in the best interests of democracy and public accountability that this matter is fully resolved that leads me to continue with a finding that there has been a failure to comply with the Code.
148. It is therefore my formal conclusion and finding that Cllr Adje has failed to comply with the Code under paragraph 5, in that his failure to disclose Mr. Holder's briefing note to his fellow Board trustees before their decision on the licence to Firoka brought into disrepute both Haringey Council and his office as Chair of the Alexandra Palace & Park Board.
149. It is with reluctance that I find that the element of the complaint relating to the compromise of the impartiality an officer is not proven. In all other respects I find that the complaint is not substantiated and that there has been no other failure to comply with the Code.

Martin Walklate
September 2010

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- ¹ Complaint from Clive Carter page 1
 - ² Response from the Standards Committee page 267
 - ⁴⁵ Response to draft report from Mr Carter, Mr. Holder and Cllr. Adje pages 274 to 293 (Carter) and 294-5 (Cllr. Adje)
 - ⁴⁶ My response to the commentary on draft reports pages 268 to 273
 - ⁴⁶ Includes rebuttal of Keith Holder's request for time and legal costs – page 268
 - ⁴⁷ Timeline of Key known events. Page 296
 - ³ Letter to Councillor Adje listing areas of investigation
 - ⁴ Interview Note with Mr. Carter Page 27
 - ⁵ Walklate one page 31
 - ⁶ Walklate two page 97
 - ⁷ See interview note – Councillor Adje page 163
 - ⁸ see interview note – Councillor Adje page page 163
 - ⁹ see interview note – Councillor Adje page 164
 - ¹⁰ See Interview note – Councillor Adje page page 164/5
 - ¹¹ full Interview – Councillor Adje pages 160 to 188
 - ¹² Correspondence Holder 28th June 2010 pages 189 - 192
 - ¹³ Guidance on code of conduct 192 - 197
 - ¹⁴ David Loudfoot – Interview for Walklate 1 pages 197 to 206
 - ¹⁵ David Loudfoot Interview for Walklate 1 pages 197 to 206
 - ¹⁶ Keith Holder Interview for Walklate 2 page 208
 - ¹⁷ Keith Holder Interview fow Walklate 2 pge 209
 - ¹⁸ Letter Cllr Adje to Martin Walklate and Julie Parker 11th November 2008 page ~~220~~ 221
 - ¹⁹ Email Stuart Young 29th April 2010 page 223
 - ²⁰ Monitoring Officer Advice pages 192 to 197
 - ²¹ Interview with Keith Holder for Walklate 1 page 227
 - ²² Keith Holder Interview 22nd October 2010 page 252
 - ²³ Letter Councillor Adje to Martin Walklate and Julie Parker 11th November 2008 page 221
 - ²⁴ Original interview with Councillor Adje page 235
 - ²⁵ Email Councillor Meehan 14th Feb 10 page ~~222~~ 238
 - ²⁶ Monitoring officer advice pages 192 to 197
 - ²⁷ Briefing Note Holder to Adje 16th April 2007 pages ~~239 to 243~~ 137 to 140
 - ²⁸ as above
 - ²⁹ Letter Keith Holder to Martin Walklate 2nd March 2010 pages 243 to 245
 - ³⁰ report to the APPT Board April 2007 pages 264 - 266
 - ³¹ Interview with Keith Holder October 2008 page 207/8
 - ³² Letter Keith Holder to Martin Walklate October 2008 page 131
 - ³³ Letter Keith Holder to Martin Walklate 2nd March 2010 pages 243 to 245
 - ³⁴ Letter Keith Holder to Martin Walklate 12th February 2010 Pages 260 to 263

³⁵ Letter to Councillor Adje for Walklate 2 and response to M Walklate and Julie Parker page 219

³⁶ As above page 220

³⁷ Letter Holder to Walklate 28th June 2010 pages 189 to 192

³⁸ Letter 22nd October 2010 page 131

³⁹ Adje Interview for this investigation page 174

⁴⁰ Letter Holder to Walklate 28th June 2010 pages 189 192

⁴¹ Monitoring Officer Advice pages 192 to 197

⁴² Correspondence Holder to Walklate 28th June 2010 pages 189 to 192

⁴³ Advice from Monitoring Officer pages 192 to 197

⁴⁴ First Interview with Councillor Adje for Walklate 1 page 235