

PRE-HEARING PROCESS SUMMARY

COMPLAINT BY MR CLIVE CARTER AGAINST COUNCILLOR CHARLES ADJE - LOCAL REFERENCE NO. SC002/0910

HARINGEY COUNCIL - STANDARDS COMMITTEE HEARING PANEL

MEMBERS OF HEARING PANEL - MS. ANNABEL LOYD (CHAIR), MS. R. HATCH, MR. P. SKINNER, CLLR. A. DEMIRCI AND CLLR. K. REECE

MONITORING OFFICER - JOHN SUDDABY

CLERK TO HEARING PANEL - CLIFFORD HART

DATES OF HEARING - WEDNESDAY 30 MARCH & THURSDAY 31 MARCH 2011

TIME OF HEARING - COMMENCING 10.00 A.M.

LOCATION OF THE HEARING - HARINGEY CIVIC CENTRE, HIGH ROAD, WOOD GREEN, LONDON N22 8LE

1. THE COMPLAINT

- 1.1 The complaint was made in a 26 page letter dated 08/09/09 from Mr Clive D. Carter, a resident in the Stroud Green Ward of Haringey (the complainant). The letter concerns the conduct of Cllr Adje when he was Chair of the Alexandra Palace & Park Board (APPB) between 22/05/06 and 21/05/07. The "synopsis" in the complaint letter refers to the briefing note dated 16/04/07 sent to Cllr Adje by Keith Holder, then the General Manager of the Alexandra Palace & Park charity (the charity). The briefing note warned against giving any "inducement" to Firoka (Firoka), the private company owned by an entrepreneur, Mr Firoz Kassam, which was intending to take a long lease of Alexandra Palace from Haringey Council. According to the complainant, Cllr Adje wilfully ignored the briefing note and promoted the granting of a licence (the licence) to Firoka, in advance of completion of the lease. The licence enabled Firoka to occupy the Palace on very favourable terms which ultimately resulted in losses to the charity of approximately £1,500,000.
- 1.2 The complainant alleged several breaches of the Haringey Members' Code of Conduct by Cllr Adje. The relevant paragraphs of the Code are set out below together with a summary of the facts relating to each paragraph, as alleged by the complainant:

- (i) Paragraph 5 - You must not conduct yourself in manner which could reasonably be regarded as bringing your office or authority into disrepute.

Summary - Cllr Adje had unwitnessed or unrecorded meetings and phone calls with Firoz Kassam which had the appearance of impropriety.

- (ii) Paragraph 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.

Summary - Cllr Adje secured a financial advantage for Firoka through the “inducements” comprised in the licence. There was a corresponding disadvantage for the charity.

- (iii) Paragraph 6 (b) (ii) - You must, when using or authorising the use by others of the resources of your authority, ensure that such resource are not used improperly for political purposes (including party political purposes).

Summary - Cllr Adje wanted Firoka “locked-in” to an arrangement by 15/05/07, the date of a Majority Party meeting, in order that he (Cllr Adje) could make an announcement to that effect for political purposes. The granting of the licence was rushed recklessly for this reason.

- (iv) Paragraph 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 your authority’s monitoring officer, where that officer is acting pursuant to his/her statutory duties.

Summary - Cllr Adje did not seek advice about the licence from the chief finance office or the monitoring officer and he disregarded the advice he had received from the General Manager.

- (v) Paragraph 7 (2) - You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Summary - Cllr Adje provided inadequate and contradictory reasons and answers to an investigator, Martin Walklate, and changed his account between the two investigations undertaken by Martin Walklate.

2. THE INVESTIGATION PROCESS

- 2.1 The complaint was considered by an Assessment Sub-Committee of the Standards Committee on 01/10/09. The Sub-Committee referred it to the Monitoring Officer for investigation. The Monitoring Officer appointed a former senior officer from another local authority, Martin Walklate, as the investigator. Martin Walklate had previously undertaken two separate investigations and reports into issues connected with the licence granted to Firoka. These reports were made to the APPB and were not intended to deal with issues arising under the Members' Code of Conduct.
- 2.2 Martin Walklate interviewed the complainant on 11/10/09 and Cllr Adje on 12/03/10. Keith Holder was not interviewed in person as part of this investigation process although he had been interviewed for the previous Walklate reports and he did submit his views in writing on points posed by Martin Walklate. The draft investigation report was sent to Cllr Adje, Keith Holder and the complainant for comment in early August 2010. The comments of Cllr Adje and the complainant were considered by Martin Walklate before his investigation report was finalised. Keith Holder's comments were sent later on 20/09/10 and were taken into account by the Standards Committee at its special meeting on 07/10/10.
- 2.3 The Standards Committee met on 07/10/10 to consider the investigation report and the possible courses of action available under the Standards Committee Regulations 2008 (the 2008 Regulations). The Regulations require an investigator to make "findings" as to whether a Councillor did, or did not, fail to comply with the Members' Code of Conduct (the Code) in any respect related to the original complaint. Any finding of failure to comply is of a provisional nature but the Regulations require it to be referred for a formal hearing.
- 2.4 Martin Walklate made a finding that Cllr Adje had failed to comply with paragraph 5 of the Code in that "his failure to disclose Keith 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 and Park Board."
- 2.5 Martin Walklate had also, in the course of his investigation, considered whether the matters alleged by the complainant could amount to a failure to comply with paragraph 3 (2) (d) of the Code which prohibits a Member from doing "anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, your authority." The point at issue was whether Cllr Adje had improperly put pressure on Keith Holder, as General Manager, to conceal the contents of his briefing note dated 16/04/07 and to submit a report recommending wholly contrary

action to a meeting of the APPB on 24/04/07. Martin Walklate found “with reluctance” that this element of the complaint was not proven. Martin Walklate also found that there had been no other failures to comply with the Code and so the other aspects of the complaint were not substantiated.

- 2.6 The Standards Committee on 07/10/10 resolved to overturn the finding of Martin Walklate with respect to paragraph 3 (2) (d) of the Code. The Committee substituted a finding that the matter of Cllr Adje allegedly compromising the impartiality of Keith Holder, in the manner outlined above, should also be referred to a formal hearing.
- 2.7 The Standards Committee on 07/10/10 also came to a view that their own powers at local level to impose a penalty, in the event of a finding of failure to comply with the Code, were insufficient in the light of the factual background. The Committee therefore asked the Adjudication Panel of Standards for England to accept a referral of this complaint for formal hearing. The Adjudication Panel declined to accept the referral and the matter was reported back to the Standards Committee at its special meeting on 07/12/10.
- 2.8 At the meeting on 07/12/10 the Standards Committee noted the decision of the Adjudication Panel and resolved to refer the alleged failures to comply with paragraphs 5 and 3 (2) (d) of the Code to a Local Determination Hearing. A Standards Hearing Panel (the Panel) was appointed and subsequently, with the agreement of the parties, a date was fixed for the hearing on 30/03/11 and 31/03/11.

3. THE PRE-HEARING PROCESS

- 3.1 The Monitoring Officer wrote to Cllr Adje on 15/12/10 informing him of the outcome of the Standards Committee and asking him to supply his comments on the allegations made against him so that the issues in dispute before the Panel could be defined.
- 3.2 Cllr Adje responded on 24/01/11 and again on 11/02/11 with his completed Forms A, B, C and D which are attached at Part 3 to this agenda pack. Cllr Adje also submitted a Form of “Representations to be taken into account if the Member is found to have failed to comply with the Code” which would only be made available to the Panel if it made such a finding of failure to comply.
- 3.3 Cllr Adje, in his Form A response, has indicated his areas of disagreement with the findings of the investigator and the Committee with respect to the allegations under paragraphs 5 and 3 (2) (d) of the Code. These are considered at paragraphs 6.1 to 6.8 below. Cllr Adje has not indicated that

he wishes to call any additional documentary evidence or any witness evidence at the hearing.

3.4 The investigating officer's representative has asked to introduce in evidence at the hearing some additional documents which are not within the appendices to the investigation report of Martin Walklate. Cllr Adje was notified about this on 14/02/11 and on 24/02/11 and he was sent copies of the additional documents which are contained in Part 4 to this agenda pack. These additional documents, and the reasons for seeking to introduce them, are as follows:

- (i) Part of the Haringey Members' Handbook entitled "How the Council Operates". The relevant extracts are on pages 24-25 under the heading "General Role of Chairs of Meetings". The reason for this being relevant is that it shows the duties of a non-executive Committee Chair in respect of preparing the Committee's business and ensuring that appropriate advice and information is available to the other Committee Members.
- (ii) The Protocol on Member/Officer Relations at Part 5, Section B of the Council's Constitution. The relevant extracts are on pages 8 and paragraphs 7.01 and 7.02 under the heading "The Principle of Impartiality". The reason for this being relevant is that it illustrates the proper relationship between a Committee Chair and a Chief Officer with respect to reports and advice submitted to the Committee.
- (iii) The Protocol on Decision-Making at Part 5, Section D of the Council's Constitution. Much of the document is relevant but the main point and the reason for seeking the document's admission is that it sets out the rules applicable to written reports to Committees including the incorporation of senior officers' professional advice and other information required for a report.
- (iv) An extract at paragraph E.8 from Charity Commission Guidance entitled "The Essential Trustee". The reasons for this being relevant is that it is guidance from the charities regulator making clear that all important decisions concerning a charity must be taken by the trustees acting together and that trustees must take personal responsibility for their decisions.

3.5 The investigating officer's representative wrote to Cllr Adje on 24/02/11 making comments on Cllr Adje's responses in Form A. These are considered at paragraphs 6.1 to 6.8 below. The investigating officer's representative had previously indicated to Cllr Adje that he did not intend to call any witness evidence at the hearing. However, there is now a

possibility that Keith Holder may be willing to attend to give evidence and, if so, the investigating officer's representative will ask the Panel to admit Keith Holder's oral evidence as relevant to the paragraph 3 (2) (d) allegation.

4. THE MEMBERS CODE OF CONDUCT

- 4.1 Paragraph 3 (2) (d) of the Members' Code of Conduct 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" [i.e. your Council].
- 4.2 Paragraph 5 of the Members' Code of Conduct states that "you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

5. THE MATTERS AGREED

- 5.1 Cllr Adje was the Chair of the APPB between 22/05/06 and 21/05/07. In 2005 and 2006 a process of competitive bidding established Firoka as the preferred redeveloper of Alexandra Palace. After the recommendations of its professional advisers, and authorisation by the APPB on 14/11/06, Haringey Council as trustee of the charity entered into a binding Master Agreement with Firoka. This was a complex document but it provided for the Council to grant a 125 lease of the Palace to Firoka once the formal consent of the Charity Commission had been granted by Order.
- 5.2 The Charity Commission consulted publicly on the terms of its draft Order in late 2006 and January 2007. A large number of representations were received from the public mostly unhappy with the proposed redevelopment by Firoka. Consideration of these delayed the decision by the Charity Commission which did not make its Order permitting the lease until 04/05/07.
- 5.3 Meanwhile, in early April 2007 Firoka was becoming very concerned at the delay and made suggestions that it might withdraw from the redevelopment project entirely. Cllr Adje and Keith Holder met Firoz Kassam, the principal of Firoka, on 11/04/07 to discuss these concerns.
- 5.4 After this meeting Cllr Adje asked Keith Holder to prepare a briefing note and Keith Holder did so on 16/04/07. This was emailed by Keith Holder to Cllr Adje who read the contents. The briefing note advised that (i) Firoka had no legal grounds for "walking away" from the redevelopment project, (ii) there was no case for the Council giving financial assistance/support to Firoka/Kassam and (iii) there was no need for any action at this point.

- 5.5 Shortly afterwards Cllr Adje had a meeting with the then Leader of the Council and the then Chief Executive when some of the issues involving Firoka and Alexandra Palace were discussed.
- 5.6 On 24/04/07 Keith Holder tabled a short written report at the meeting of the APPB. This report recommended a phased transfer of the charity's business, staff and contracts to Firoka following the making of the Charity Commission's Order. This was to involve the termination of the licence to occupy the Palace currently granted to APTL, the charity's wholly owned trading subsidiary company, and the secondment of staff to Firoka.
- 5.7 The briefing note dated 16/04/07 was not disclosed to other Councillors serving on the APPB or to other offices or advisers. Cllr Adje was present as Chair of the APPB when Keith Holder presented his short report on 24/04/07.
- 5.8 The APPB agreed the recommendation to transfer the charity's business to Firoka. The licence agreement was granted to Firoka on 04/05/07 and it permitted Firoka to occupy Alexandra Palace and to use it for income generating purposes consistent with the charity's objectives.

6. THE MATTERS IN DISPUTE

- 6.1 These are the main points or issues in dispute between Cllr Adje and the investigating officer's representative. In this context, the investigating officer's representative has to act in accordance with the finding of the Standards Committee on 07/10/10 when Members decided to refer the allegation under paragraph 3 (2) (d) of the Code to a formal hearing.
- 6.2 The allegation under paragraph 5 of the Code is that Cllr Adje failed to disclose Keith Holder's briefing note to his fellow Board trustees before their decision on the licence to Firoka and this brought into disrepute both Haringey Council and Cllr Adje's office as Chair of the Alexandra Palace and Park Board.
- 6.3 In his Form A response Cllr Adje states "It is customary that confidential briefings are deemed to be such and especially where there is no need to discuss such." Cllr Adje also refers to his response to Mr Walklate regarding his final report which would be his letter dated 27 August 2010. In that letter Cllr Adje said "I do not accept that I deliberately withheld information from my colleagues which would have affected the outcome of their decision.....I has asked for the briefing and, as a former local authority officer, you [i.e. Martin Wakkate] know that not all briefings are made available to other Members or made public, especially where there is no requirement for this. I do not believe that the briefing would have had any effect on the decision of the Members, as the organisation [Alexandra

Palace Trading Limited or APTL] was trading at a loss and was therefore insolvent and being liquidated.

- 6.4 The response of the investigator's representative is that the briefing note from Keith Holder should have been disclosed to the other trustees on the APP Board at their 24 April 2007 meeting and it should not have been deemed confidential. This is because:

(i) Councillors, generally, and charity trustees in particular, are under a duty to reach their decisions collectively and on the basis of their own individual knowledge;

(ii) this was a decision to transfer the whole business of the charity which was of the greatest importance and should have been informed by the fullest advice from officers, including Keith Holder as the Chief Officer/General Manager, on the legal and financial issues; and

(iii) Cllr Adje, as Chair, was well aware that quite different and contradictory advice (i.e. Keith Holder's briefing note as compared to his tabled report) had been provided by the Chief Officer a few days before and, in all the circumstances, this should have been available to the other trustees.

- 6.5 As to the point about the effect of the briefing on the other trustees, the insolvency of APTL was not in itself a sufficient reason for granting to Firoka a licence on terms that exacerbated the financial difficulties of the APP charity and APTL. Furthermore Cllr Adje cannot have been certain that Keith Holder's briefing would not have influenced the decision of the other trustees on 24 April.

- 6.6 The allegation under paragraph 3 (2) (d) of the Code is that Cllr Adje improperly put pressure on Keith Holder, as General Manager, to conceal the contents of his briefing note dated 16/04/07 and to submit a report recommending wholly contrary action to a meeting of the APPB on 24/04/07. This amounted to action which compromised, or was likely to compromise, the impartiality of those who worked for the authority. In this context "impartiality" does not only mean not being subject to party political pressure, it also means maintaining an officer's professional integrity and right to advise as he/she considers proper.

- 6.7 In his Form A response Cllr Adje states "It is absurd, to say the least, that the [Standards] Committee could come to such a conclusion, especially as the officer concerned had confirmed that this was not the case. This confirmation bears out what I have said repeatedly: that he [Keith Holder] was not pressurised or compromised in any way. The officer is an experienced local government officer who would report any Member to the

Chief Executive or Monitoring Officer if he felt that his advice was being compromised or undermined.....It is not in my nature to pressurise any member of staff let alone compromise them.”

6.8 The response of the investigator’s representative is as follows:

(i) it is accepted that when asked by Martin Walklate whether his integrity or required impartiality had been compromised directly by Cllr Adjé, Keith Holder responded “not at the time” (letter to Martin Walklate dated 28 June 2010). However, this is an ambiguous response which must be seen in the context of Keith Holder’s other written statements on the matter;

(ii) Keith Holder states at several points in his correspondence and interviews with Martin Walklate that he was instructed or required by Cllr Adjé to produce a report for the APPB recommending the granting of a licence or the transfer of the business to Firoka. This was so despite Keith Holder’s previous briefing note which appeared to represent his true professional advice. Keith Holder states that he did not ever withdraw the advice contained in his briefing note of 16/04/07; and

(iii) The Panel will be asked to consider the relevant parts of these written statements and all the background circumstances before coming to a conclusion as to whether Keith Holder’s impartiality was compromised, or likely to have been compromised, by any action on the part of Cllr Adjé.

7. HOLDING THE HEARING IN PUBLIC/PRIVATE

7.1 Guidance from the former Standards Board states that hearings should be held in public where possible to make sure that the hearing process is open and fair. The guidance does acknowledge that there may be circumstances where part of a hearing may be held in private where there are strong reasons for protecting individual privacy which outweigh the case for openness.

7.2 Cllr Adjé has indicated that, subject to the status of the investigation report being final, he has no objection to the hearing being held in public from a transparency and public interest point of view. The investigating officer’s representative agrees that, given the strong public interest in transparency about the events in question, the hearings should be held in public.

8. WITNESSES

8.1 Cllr Adjé has not identified any witnesses he intends to call to give oral testimony at the hearing.

- 8.2 The investigating officer's representative intends to call Keith Holder, if he is willing to give evidence, so that the Panel can have his oral testimony on the allegation under paragraph 3 (2) (d) i.e. compromising the impartiality of an officer.

9. REPRESENTATION

- 9.1 Cllr Adje has said that he intends to attend the hearing but he has not indicated whether he will be represented.
- 9.2 The investigating officer, Martin Walklate, will be represented by Terence Mitchison, Principal Project Lawyer Corporate, in the Council's Legal Service.
- 9.3 The Monitoring Officer, John Suddaby, will attend to advise the Standards Hearing Panel on procedural and legal issues.

10. PROCEDURE SUMMARY

- 10.1 The full Haringey Procedure Rules for Local Determination Hearings are attached to this agenda pack as Appendix A in Part 1.
- 10.2 There are three main stages to the procedure:
- (i) the Panel must make findings of fact about the matters in dispute between the parties, i.e. Cllr Adje and the investigating officer's representative, and
 - (ii) the Panel must determine, on the basis of the facts found in (i), whether Cllr Adje did, or did not, fail to comply with the Code in any respect, and
 - (iii) in the event of a finding of non-compliance, the Panel must consider further representations from the parties and then decide on the appropriate penalty (if any).
- 10.3 With the agreement of the Panel, and at appropriate points in the hearing, the parties may make statements and representations and may ask each other questions. Members of the Panel will be able to ask questions of the parties.