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APPENDIX II

Dear Mr. Walklate,

Re- Code of Conduct Review – Councillor Adje

I now enclose my responses to the questions you raise.

Yours faithfully,



K.E. Holder

28th June 2010.

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Who told you of the need for an instrument (later the licence)?

- The need for an instrument arose the meeting with Firoka which preceded my original briefing note.

Was Councillor Adje present, either physically or by any other means of communication, when the need for an instrument was first considered with Firoka?

- Yes. It had its roots in the meeting referred to above.

Was the intention of the instrument to provide a financial benefit to Firoka?

- Not directly.

Was a sum agreed by any party representing the board in discussions with Firoka, either at the inception of the instrument or at a later stage?

- No

Did you, as alleged in Councillor Adje's interview (attached) inform him of the need for such an instrument?

- Not directly and only in the context of having a written document setting out the agreement *if* that was the ultimate decision.

Did Councillor Adje request the briefing note from you that you provided in mid April?

- Not directly. He asked what could be done to avoid Firoka walking away. I took legal advice which was robust in the view that Firoka could not. That is the advice contained in my briefing note – we do not have to do anything.

Did Councillor Adje instruct you to produce the report for the Board on 24th April?

- Yes

Did any other party from the Board or Council contact you to inform you of the need to produce the report to the Board on 24th April 2007? If so, whom?

- No

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 2010 [I assume this is an error and that 2007 is meant] or, not to express those views at the meeting itself or in any other briefing?

- Yes. As previously state 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.

In including the income from the Ice Rink, the licence with Firoka became financially significantly more advantageous to Firoka. Did Councillor Adje either instruct you to include the Ice Rink income or was it included because you were under instruction from him to make the package to Firoka more financially attractive or meet any agreed financial benefit.

- No specific sum was stated or implied. The instruction was to place Firoka in the same position as they would have been if the lease had been completed on 1st May 2007.

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

- Directly by Charles Adje?
- And/or any other party? If so, whom?

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 tax-payer gave impetus to finding solutions.

There are two other matters arising within the statement that was enclosed which I must clarify.

Firstly the matter raised by Councillor Adje on the concept of my working for both the Board and Firoka. In this respect that first knowledge I had of this issue was when I was advised by Firoka's principle that he had spoken to Councillor Adje "to get my bosses permission to talk to me" during a telephone conversation the previous weekend. He wanted initially to establish whether there could be some mechanism devised whereby his company [Firoka] could get some benefit from my knowledge and experience once the lease had been completed. It is my understanding that the discussion with Council Officers had already commenced before me being told by Firoka and I had no prior knowledge of this approach.

Secondly reference was made to my relationship with other Members of staff. During the search for a developer I spent some considerable time away from the Office. There were arrangements in place to cover my periods of absence at external meetings. However the staff and their representatives were always kept informed of progress and this was reviewed as part of the TUPE process. At no stage was there any criticism of the approach. Staff expressing concerns about/ reluctance to being transferred to another employer must not be interpreted as a failure to consult or notify.

LEGAL ADVICE ON THE DEFINITION OF BREACHES OF THE MEMBER CODE OF CONDUCT THAT MAY BE RELEVANT TO THE INVESTIGATION OF MR. CLIVE CARTER'S COMPLAINT AGAINST CLLR. CHARLES ADJE RELATING TO ALEXANDRA PALACE AND THE LICENCE TO FIROKA LTD

INTRODUCTION

This note comprises legal advice approved by the Monitoring Officer of Haringey Council for the purpose of assisting Mr. Martin Walklate (MW) in his role as investigating officer preparing an investigation report into the above complaint against Cllr Charles Adje (the subject Member) for consideration by the Haringey Standards Committee. The Haringey Members' Code of Conduct (MCC) follows the statutory Code in all respects. The paragraphs of the MCC discussed below are those mentioned in the draft investigation report as being the ones most likely to have been contravened by the subject Member. The "Guidance" referred to is the "Guide for Members on the Code of Conduct" issued by the Standards Board for England in May 2007.

When considering the tests outlined below, the evidence must indicate on a balance of probability (i.e. more likely than not) that the factors constituting a breach are shown to exist.

POTENTIAL BREACHES OF THE HARINGEY MEMBERS' CODE OF CONDUCT

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."

Factual background - The draft investigation report records that a briefing note dated 16 April 2007 was prepared by Keith Holder (KH), the former General Manager of the Alexandra Palace trust, and sent to the subject Member, who was Chair of the Alexandra Palace & Park Board (APPB), in response to the subject Member's request for it. The briefing note argued that Mr Firoz Kassam (the leading figure within Firoka Ltd – which had signed a legal

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(193)

agreement, subject to conditions, to take a long development lease of Alexandra Palace) had no right simply to withdraw from the agreement, as he was now threatening to do. Hence, there was no need for any financial "inducement" to prevent Kassam/Firoka from withdrawing, nor any need for other action at this point.

Subsequently, KH prepared a short report to the APPB, which met on 24 April 2007, recommending a phased transfer of the trust's business, staff and contracts, together with the business of the trust's trading subsidiary, to Firoka. On 4 May 2007, the new General Manager of the Alexandra Palace trust, David Loudfoot, signed a "licence agreement" which effectively allowed Firoka to occupy the Palace, and to take the profit from contracts for events there, while the trust continued to meet most of the overhead costs. The continuation of this "licence agreement" resulted in a gain to Firoka, and a corresponding loss to the Council/AP&P trust, of about £1.5 million until the licence was terminated at the end of 2007.

During a previous investigation undertaken by MW, KH had stated in writing that, after reading his briefing note, the subject Member had come back to KH making it clear that arrangements with Firoka were not to be jeopardised (i.e. arrangements that were leading to Firoka taking the lease) and that KH was to prepare a short paper to be "tabled" at the APPB recommending the transfer of the business to Firoka. The subject Member has denied telling or pressuring KH to write that paper/report to the APPB.

The tests that would determine whether there had been a breach of this subparagraph 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 ?

PARAGRAPH 5

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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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) "Disrepute" is a strong word with a meaning similar to "disgrace" i.e. conduct that would generally be regarded as clearly deplorable - rather than

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conduct about which there might be conflicting views depending on political or social stand-point.

(v) 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.

(vi) 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.

PARAGRAPH 6 (a)

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."

Factual background - This is as set out above. There is no evidence that the subject Member, or any other person, received any form of inducement from Kassam/Firoka for any act or omission. Two further factors may also be relevant here: (1) the licence agreement was initially for a 3 month period from 1 May until 1 August 2007 and the greater part of the eventual financial loss to the Council/trust arose late in 2007 long after the subject Member ceased to be Chair of the APPB, and (2) the licence agreement, while beneficial to Firoka on any interpretation, was part of a "bigger picture" that included the much more significant financial obligations on both sides inherent in the intended long lease of the Palace.

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

(i) 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.

(ii) 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

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progressed by irregular means e.g. in breach of established procedures for decision-making.

(197)
Mr. David Loudfoot 3rd April 2008

Interview commenced: 10.30

Concluded 13.20

Present: Martin Walklate

David Loudfoot

Location David Loudfoot's office

NB:

The interview with David took place over a three hour period. During that time, David outlined many aspects of the history of the management of Alexandra Palace and the challenges that it has faced. He provided context as to the decisions taken both to develop the lease of the operation with Firoka and with specific regard to the development of the licence to operate in April 2007

To facilitate future reporting and to ensure consistency I have used my original interview questions as the basis for cataloguing David's responses although it should be clear that the format of the interview did not follow this precise form.

His responses are not intended to be a verbatim record but to present the key facts as discussed.

Martin Walklate

April 3rd 2008.

General

This section of the discussion seeks to find out more about the roles and responsibilities of the individual and to gain clarification of their reporting chains.

How long have you been in your present role?

David took up his position as General Manager on 1st May 2007 previously having been employed as the facilities manager for the Alexandra Palace.

What do you understand to be the key duties of that role?

David's role was created within the context of the transfer of the operations at Alexandra Palace to Firoka (Alexandra Palace) Ltd. The envisaged duties primarily concerned those issues of management of the charity and parkland which were not part of the Firoka lease as well as the contract management and monitoring of that lease. It was envisaged that his role would be assisted by the Project Consultant (Keith Holder) who was retained by the Trust for three days per week to assist in the transfer and to ensure David developed into the post.

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How are these duties split between the requirements of the Trust and the requirements of the company?

David is an employee of the Trust and his responsibility lies with the trust. He does, as such, have monitoring responsibilities and the ability to request information from the company.

How have you been made aware of the limitations of that role with regard to your ability to commit the organisation(s) resources and to incur liabilities?

David's roles and responsibilities are described within his job description and the powers implicit in his appointment. However, David clearly recognises that his role is managed by the Board of the Trust and would look to them for guidance and approval on any non operational matter. David sees the power of the Trust to give him direction or make key decisions as being in the purview of the Chair of the Trust.

To whom do you report and how does this take place?

David reports to the Board meetings of the Trust which take place regularly. He has regular informal contact with the Chair of the Trust.

Who are your direct reports and what is their function?

For the purposes of this report, David believes that he has no direct authority over any of the other parties involved in this investigation prior to his appointment. Ken Harrington is an employee of the Company although he did undertake work on behalf of the Trust for which the Trust reimbursed the company. Legal advice is commissioned directly by the trust as is appropriate for maintaining independence and good governance and David also has regular contact with the trust solicitor where needed. David sees Keith Holder as essentially an employee of the Trustees and appointed directly by them. His role is in principle supervisory to Keith Holder but is complicated by the role that Keith has in assisting his development and the direct line of report to the board held by Keith Holder..

Note:

In his role as consultant, Keith operates directly with the Chair of the Board and reports independently to that board. In effect I do have supervision over Keith as he is a contractor and would therefore have the power to hire or fire him or direct him should I be concerned about any aspects of his work but in all other senses he is managed in a direct line to the board which is unusual for a contractor...Part of the trustee's reason for appointing KH was to provide guidance and support to me whilst I developed into the role.

The trading position

This section of the discussion seeks to clarify the trading situation at the time of the licence preparation and agreement in order to assess the main drivers for the development of this licence.

Could you clarify for me the differing roles and responsibilities for trading between the trust and the company?

Until the granting of the Firoka Licence the Trust undertook the management of the Ice Rink and other direct public facilities including the surrounding park. Additionally, the Trust had the power to withhold up to 30 days of usage for community use or other local benefit.

All other trading activity within the buildings were undertaken by the company acting under the licence. They were responsible for meeting all direct trading costs accordingly.

Prior to the agreement of the licence with Firoka (Alexandra Palace) Ltd what did you understand to be the trading situation within the company?

During the year preceding the granting of the licence other venues had been refurbished and had attracted back some of the concert business. Staffing issues has been complicated due to the imminence of the transfer for example, the sales manager had decided to leave. Christmas events had not been fully realised and concern existed that from year end, going into a short financial period before the lease was effected that the company was close to a position of insolvency which it could not trade out of due to the winding up process that would follow the transfer. These circumstances could have been unlawful for the Directors.

Note

The sales manager was replaced by a candidate essentially selected by Firoka so it would not be correct to say he was not replaced.

Nor would it be right to say we were not trying to attract custom, we were bound by the lease to continue placing sales but had to keep Firoka updated with the details hence them wanting influence by placing their own head of sales into our team

Owner 28/4/08 11:28

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David Loudfoot 20/4/08 23:00

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A report produced on the 24th April to the Trust states that the order book was 'thin'. What is meant by this statement and how does this trading position differ from other times and previous years?

Why was this 'thin' trading position the case and what led you to believe that it would continue?

Traditionally, the period of May/June/July/ August is the least active in the exhibition industry. This coupled with the reasons given above suggested that this quarter in 2007/08 was likely to be a time of poor trading.

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David explained that the horizon originally envisaged for the licence was only three months (to end July) and the view of the trading position should be taken within this context.

Note

The expectation was for a swift transfer and that the company was to have been wound up as soon as possible

Was there an assumption that Firoka would be in a better position to improve trading results and, if so why?

Firoka were keen to begin the development of trading at the venue. The considerable delays in the transfer process were affecting staff morale and customer commitment.

When, if ever, was the trading company involved in formal discussion considering its financial position and the consequent advantages of pursuing the Firoka licence route?

David only attended the trading company board meetings on one or two occasions post the determination of the licence when APTL was being re-vitalised.

The Licence to operate with Firoka

This section of the discussion seeks to gain general information regarding the licence development, the extent to which decision makers were fully informed and the options considered.

When did you first become aware of the need to enter into such a licence?

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.

Under whose instruction did the licence development take place?

David recalls originally obtaining the electronic copy of the licence from the legal Advisors at the request of Keith Holder. He then transferred this to Keith Holder and Keith developed the first drafts (probably 4) of the licence before David's involvement in the latter work.

What was your role in the development of that licence?

As suggested earlier, David's role was limited to the work on TUPE and insurance indemnity.

What did you believe was to be achieved by the award of that licence?

This was a period of extreme sensitivity in the relationship with Firoka. Two years had elapsed since the original bid work and the master agreement, project agreement and lease had been signed for some considerable time.

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The market was changing both in regard to building costs but also opportunity for business development. The Wembley arena had reopened and the Excel centre was a fast developing competitor. Changes in client requirements including the need for advanced technology were becoming difficult to achieve without additional investment.

Firoka were indicating that they were not prepared to continue with the present position which appeared to suggest that yet more months could pass before the Lease would be completed. The long term strategic aim of securing an outsourcing partner for the palace was under severe threat with its consequent cost implications for the trust and the borough.

The provision of the licence allowed for Firoka to begin benefitting from experience of running the Palace prior to the lease coming into force. It reduced the risk of the deal collapsing and may have gone some way to secure future trading by allowing customers to be approached without explaining the issues of a impending transfer. In many ways it was doing little more than implementing aspects of the agreed lease at an earlier stage than would otherwise have been possible.

David Loudfoot 22/4/08 11:06

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Importantly, it allowed a phased approach which meant that significant issues relating to employment, pensions etc. could be resolved without this delaying the stability mentioned above

Note

I believe that at the time of the signing of the LEASE there had been significant discussions around pensions etc with Andrew Travers leading from the Local authority for the staffing issues This would have needed finalisation before the staff could formally transfer.

In correspondence I have seen It is suggested that the licence needed to be completed by the 15th May. What was the reason for this deadline/urgency?

David did not know any significance of the 15th

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

Either for;

Other company officers/directors

The Board either as an entity or for individual trustees

Local Authority Officers

Local Authority Members

Legal advisors

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David does not believe that any additional background papers were produced for any of the above, or at least, not with his contribution. David was of the understanding that the financial consequences had been made clear to Council Members via Charles Adje briefing the group.

David is clear, however, that as the licence progressed, and in particular regard to its being allowed to run on without formal extensions before and again after the Judicial Review, that Cllr. Adje was informed as to the financial consequences of the licence provisions. David recalls exchanging text messages and conversations with Cllr. Adje on this issue.

David Loudfoot 11/4/08 10:44

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Note

I understand there was an APTL board meeting that resolved to ask for additional funding. I was not present at it but I think this may have been the 1st August ??

Could you assist me in drawing up a notional understanding of the financial consequences of the licence?

David was not really able to assist in this matter. He was aware that the gross income of the Ice Rink in the previous year was Circa £700,000 but was uncertain about what operating costs Firoka would have incurred. He was understandably not prepared to speculate on the likely value of the licence in regard to the main operations of the exhibition trading.

Were you involved in any written or verbal communications with Firoka over the content of the licence? If yes, in what respects?

David was aware of the negotiations and that they were very difficult. He did not engage in any of the negotiations regarding the original drafting and granting of the licence.

What were the key differences between the licence given to Firoka (Alexandra Palace) Ltd and those previously experienced by the operating company?

The major difference was the Ice Rink, the provision of employees, profit or loss retention.

The report of the 24th April and subsequent written approval gives authority for the assignment of the existing company licence. What do you understand by this authority?

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.

Similarly, the report gives approval for the development of a management arrangement for the Ice Rink. What is your understanding of the term 'management arrangement' in such circumstances?

David again recognised that the final licence differed from the normal arrangements associated with a management agreement. Again, he was operating under the guidance of the Trust.

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The licence was signed by Mr. Loudfoot and Mr. Harrington on the 5th May. Were you involved in this decision?

David accepts he signed the licence within the context already described under clear guidance from the Chair of the Board and Trading company along with the outgoing general manager. Mr. Harrington signed on behalf of the company.

What is your understanding of the powers delegated to these individuals to sign such a licence?

David's view was that given the Board approval, the views of his Chair and his own powers were sufficient authority to sign the licence in these circumstances. In fact, David was explicitly instructed to sign the licence at a meeting with the chair in late April 2007.

Following the implementation of the licence in May 2005 what responsibilities did you have for monitoring the implementation of that licence and recognising the financial consequences of that agreement?

It was only as the licence agreement progressed that the true financial consequences became more obvious and this, coupled with the Judicial Review challenge and subsequent decision led David to proactively advise that concerns must be had about the licence. As stated earlier, David recalls discussions with outgoing and incoming Chairs on this issue around the end of the first licence period in late July and again in September. Again, a key issue was to retain Firoka on board in the arrangement at this time. He also recalls texting Charles post judicial review before talking to him that weekend.

In early correspondence about the conception of the licence agreement Mr Holder in an email states that he is looking for answers on 'how can we lock Kassam in by 15th May. I have specific reason for asking which I cannot divulge at the moment'. Do you know what is meant by this statement?

David expected that this related to the need to ensure that Firoka remained a party to the lease agreement whilst the protracted situation over the transfer was resolved.

Mr. Harris, in response to further correspondence arising from this statement gives advice that the prudent course for the trustees would be to wait until the one month period has expired?

What did you understand by this 'one month' period?

I was not aware of this specific advice, Once the charity commission order was in place it would have been possible for Firoka to bring forward the implementation and activity of the lease from the agreed notice of commencement of three months to just one. In these circumstances it was anticipated that only one month need have elapsed prior to Firoka taking on the full responsibility.

What discussions were you involved in regarding the actions to be taken following this advice?

I was not aware of this advice. My understanding was that the licence be entered into as soon as possible to ensure the continued involvement of Firoka.

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Liaison with the local authority

This section seeks to understand the relationship between the Trust and the Authority and the extent to which liaison took place over this matter given that the Authority is a key stakeholder and underwriter of virtually all trust activity.

Given the importance of any financial loss to the Authority what do you understand to be the key measures under which the Trust keeps the Authority informed of its actions?

David saw the key contact with the Local Authority as through the Trustees of the Board and, in particular, the Chair of the Trust. Key to this was the board reporting process whereby the clerk to the trustees (a local authority officer) was responsible for the circulation of board reports to appropriate officers in the council.

The Memorandum and Articles of Association state that a local authority officer shall be a director of the company. This practice appears to have ceased between 2005 and late 2007? Do you know why this happened and what steps were taken to remedy the position during that time?

David was aware of this lapse. However, it needed to be seen in the context of the limited future of the company and the expectation that the lease with Firoka would be engaged much earlier than actually occurred. It should be noted that it was not for David to have done so. It is a matter for the company..

Note

As I understand it, the chief executive David Warwick sat on the APTL board, when he left the incoming interim CE did not take the seat up as it was viewed that the transfer was imminent. (DL)

What liaison, if any, took place with the Authority over the development of the licence and its subsequent agreement?

Given his limited role, David was uncertain as to any liaison with the Authority.

The report of the 24th April 2007 had clear financial consequences to the Authority. What steps were taken to ensure that these were evaluated by the Authority and the opportunity for advice to be given accordingly?

David concurred that it was unlikely that the Authority officers were consulted on any financial effects of the decision put to the Board on 24th April however, he was not leading on this issue and would not necessarily have been aware of any such discussions. At the meeting with the Chair in late April (which he mentions above), it was made clear to him that the strategy of the licence had been discussed between Charles Adje and the leader of the council.

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Concluding Remarks

This section of the discussion is to allow any other issues to be raised by the interviewee which they would either wish to have taken into context in the report or may add additional understanding and clarity to the review

Although acknowledged through this note, it must be made clear that David would wish to stress the different context between when the decision to enter into the licence was taken and that currently experienced.

There was clearly a strong political desire to conclude the lease and in order to ensure that this took place it was seen as necessary to take a short term expedient decision to maintain relations with Firoka which were at a very difficult state.

It was the view of all who advised David and his colleagues that the likelihood of a judicial review was remote and that if there was one then it would not succeed and as such it was simply a matter of time before the lease could be enacted.

That the apparently risk limited decision to agree the licence should be taken in the context of the overall benefit to the Trust that would have incurred had the lease with Firoka proceeded.

I agree that the above notes represent a fair and accurate reflection of my involvement in the drawing up, execution and delivery of the licence to operate with Firoka (Alexandra Palace) Ltd as ascertained by interview and subsequent email correspondence

Signed

.....**David Loudfoot (General Manager)**

Dated

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LONDON BOROUGH OF HARINGEY

APPENDIX 14

INTERVIEW WITH KEITH HOLDER

THURSDAY 23RD OCTOBER 2008

PRESENT

Martin Walklate

Terence Mitchison

Keith Holder

The interview started promptly at 10.00 and continued until 12.15

It was intended that the interview would follow a series of questions arising directly from the Terms of Reference which had already been shared with Mr. Holder.

Keith was informed that notes would be kept by Martin Walklate and Terence Mitchison. Following the interview they will jointly prepare a summary of the interview and these will be provided to Mr. Holder for him to consider, amend and add as he feels necessary, and then sign and return. The notes will be countersigned by Martin Walklate and Terence Mitchison. Where any dispute over the content takes place this will be noted on the record as a disputed item and the nature of the dispute.

Contact

Keith confirmed that he was happy to receive the notes by email and suggested that the address to use was keithholder@btinternet.com

Prior to the commencement of the structured interview

Firstly, Keith was concerned about the presence of Terence Mitchison. Although he accepted that he had been offered the opportunity to be accompanied he felt this was unnecessary and saw the discussion as a one to one interview. He felt that the presence of a legal advisor from the Borough suggested that the interview was at a different level and one at which he may require his own legal advice.

Terence was able to reassure Keith that his role was primarily a learning one and his presence offered an opportunity for him to be more aware of the wider aspects of this

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case so that when, at a future stage, he was required to give advice on what action the Council or the Trust should now follow he would be in a better position to do so.

Martin Walklate then sought Keith's approval to continue the interview in Terence's presence with the proviso that Keith was always able to refuse to answer any question if he felt that advice was necessary or he could terminate the interview at any time. Keith agreed with this course of action.

Keith then explained that he had produced a written note in response to the terms of reference sent to him by Julie Parker. He felt that it was important for us to read that note and the accompanying appendices before commencing the interview. A short recess of about fifteen minutes took place whilst we read the provided papers. Keith assisted with explanations where appropriate, e.g. 'George' referred to the Leader of the Council.

(Nb: a request will be made to Keith to ask if it is possible for him if the papers could be provided electronically. If this is acceptable they will be appended to this note.)

The papers provided are:

Letter – Keith Holder to Martin Walklate 22nd October 2008
Email – Keith Holder to Cllr. C Adje – 17th April 2007
Attachment – Chairs Briefing note –
Email - Automatically generated response acknowledging receipt 17 April 2007
Directors Briefing note – Special meeting 1st August 2007
Briefing note - 15th November 2007
Briefing note 2 21st November 2007
Options Paper 21 November 2007 (author Director of Finance/Acting Head of legal services)
Letter- Keith Holder to Cllr. Matt Cooke

After consideration of the papers Martin Walklate reflected to Keith that they 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. At Terence's suggestion Keith agreed that Firoka might have had a right to withdraw from the Master Agreement if no lease had been granted by 1 August 2007 but there was no urgency about that in April beyond the insolvency issues referred to later. Further questions ascertained that Keith, as stated in his submission, was basically instructed to move to a strategy whereby Firoka were placed in a position similar to the one they would enjoy post signing of the lease.

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Keith had no doubts that Cllr. Adje was acting following discussion with other senior politicians and was informed that meetings had taken place with senior members on this matter. These meetings were referred to in later meetings between senior members and officers during the discussions that took place later in the year. Keith stated that he was not present at any meetings with senior politicians that Cllr Adje referred to.

Martin Walklate 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.

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.

Keith wanted to emphasise that he and others only ever saw the licence development, its concessions and its value as a short term expedient given that the initial term of the licence was only 3 months. It was intended to cover the early months of trading in 2007/8 when business was traditionally quiet and prior to the formal transfer of the business, building and staff to Firoka under the master agreement. .

Keith also made the general point that as the months of his consultancy went on he was progressively marginalised in involvement in decision making and knowledge of operation and strategy.

Martin Walklate thanked Keith for the production of his paper and his forthright answers to the questions posed. He then sought Keith's permission to continue with the structured element of the interview recognising that Keith's answers should both be seen in the context of his paper and that the content of the paper may well substitute for any other answer.

1 What was your precise role in securing that the licence was signed on 04/05/07?

This is fully covered in the written response from KH. His role was to implement an agreement with Firoka within the terms set out by Cllr. Adje.

David Loudfoot in his original interview commented that he was called into a meeting between yourself 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?

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.

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One of the features of your contract is the necessity to advice on governance issues. Given the importance of the licence did you give any advice to David on the governance issues that surrounded this licence at this time?

As previously stated both in the preamble and in KH's note, Keith recognized that the governance issues were of secondary importance to the political imperative of 'locking Kassam in'. This approach was further confirmed during the meeting referred to in answer to the previous question.

1.3 How was the licence actually physically signed? Who was present?

Keith was not present so did not know.

1.4 What arrangements were made for Firoka to sign?

Not known

1.5 Who signed the licence first?

Not known

1.6 One of the points of dispute in the first report was the extent to which legal advice was secured from the Trust Solicitor. Can you advise on the extent to which he was included in the process, whether he saw the final document (or waived his right to do so) or whether he sought inclusion?

The trust solicitor was not consciously excluded and indeed was involved in advising on whether the development of a licence was an acceptable mechanism. Although he was not expressly provided with a final copy of the licence he could have had one if he had asked. Similarly, at the meeting on the 24th April if he or others had any views on whether the report was inadequate or governance issues were not being appropriately followed, he had the opportunity to raise them. In answer to later questions, Keith clarified that the Trust Solicitor had not been expressly asked to advise on the final version of the licence before signature. Some advice on the terms had been provided by Laurie Heller of BLP.

2 Was the signature of the licence outside the authority given by the board on 24/04/07? This was covered extensively in the first report. Do you wish to add any more to the views you expressed in the first interview?

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

keith 28/10/08 12:51

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2.1 What are the normal arrangements for signature of documents of this kind? Iain Harris in his interview implies that it would have been normal for these to have either been signed by the Head of Legal Services or express instruction would have been given by the Board. Do you recall Iain Harris making any representations of

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this kind either before or during the meeting?

Keith saw this development as a temporary and operational procedure aimed at achieving some stability within APTL and the Trust as well as working to the instructions given by Cllr. Adje. He felt that in this regard this was contained within his delegated powers. Had it been a strategic issue then he would not have agreed for it to be dealt with in this way and signature, following normal protocols, would have been by the Head of Legal Services. He does not recall Iain Harris making any such representations at any point in the process.

- 2.2 **The delegated power of chief officers is that matters of management or operational issues can be taken on behalf of the council. Do you consider that the licence can be contained within these powers despite the considerable financial and strategic implications? Did you advise David Loudfoot that he should sign the document?**

See above

- 2.3 **Did you consider that your tabled report actually gave you or the general manager authority to complete (i.e. sign up to) a licence despite the recommendation you drafted stating "be authorised to begin the process of phased transfer of the charity etc to Firoka" ? Did this not strongly suggest that a further report to the APPB would be needed before such a major transfer as the actual licence?**

Keith felt that his authority when considered within the context of his political lead was sufficient to allow him to move forward on this matter. He saw the signing of the licence as the beginning of a process that would have resulted in the eventual transfer of the business through completion of the lease and related agreements. In answer to later questions, Keith said he was confident, despite possible ambiguities in the tabled report, that the Board Members had fully understood that they were authorising an imminent transfer of the business albeit on a temporary and revocable basis.

- 2.4 **Given the differences between the matters described in your tabled report and the actual licence (e.g. "assume the terms of the APTL licence" and "management agreement for the operation of the ice rink") was the APPB resolution on the basis of your tabled report really sufficient authority for the licence that was actually signed?**

In the context of Cllr Adje's unequivocal direction, yes.

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

Any loss to the charity must be set in the context of the attempt to prevent loss through Firoka's withdrawal. Can you advise on what this sum may have been and what is it constituted by?

The strategy since Keith became involved in AP in Sept. 1995 has been to transfer the entire risk associated with the building and business because of the costs to the

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council taxpayer. Since the commencement of the process of engaging a partner and receiving tenders in December 2005 the building costs associated with the project had increased by approximately £9m. A further £1m could be assumed to be incurred in the various professional fees etc that would be necessary to begin a new competition.

I AM NOW GOING TO TAKE YOU THROUGH ELEMENTS OF THE LICENCE AGREEMENT AND ASSOCIATED TRANSFERS. I WOULD APPRECIATE YOUR VIEWS ON THESE MATTERS.

- 3.1 The licence with APTL required an annual payment of £255,000 per annum to be made to the Charity. In the licence this is reduced to £1,000 per month. Does this not bring about a loss of around £162,000.

It would if APTL had the money to pay the licence costs. A quarterly sum for this amount would amount to £65,000 and this would simply have been beyond the finances of APTL in the first and probably second quarter. Whilst subsequent quarters would have improved the position it should be remembered that a) the company was seen as insolvent and b) it was not expected to have a trading life of more than a few months given the transfer. Keith reiterated his view that the licence must always be seen as a temporary expedient.

- 3.2 The trust decision allows the secondment of staff to Firoka for the licence period with the costs being incurred by the Trust. The trust paid APTL just under £617,000 in reimbursement and a further £100,000 in staff costs for the Ice Rink. This led to no direct benefit to the trust.

keith 28/10/08 13:00

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Firstly, the decision to reimburse the APTL was made subsequent to the Firoka licence period and was part of the rescue package after revocation some eight months later. Secondly, this payment, as with others, was to reduce the risk of further losses arising from poor trading contracts. It was also an essential element in meeting the political requirements.

- 3.3 The trust decision allows for the novation of contracts in the region of £250,000. Whilst the APTL would have had to provide staffing etc. for these contracts it is presume that the rate card on which they are based would have provided a significant profit. Similarly, the events would have derived an unspecific amount of income from catering etc. Does this not represent a further loss to the charity?

It cannot be automatically assumed that a profit would be made. Keith was advised by Ken Harrington that the future for the company was very bleak and that he saw many of these contracts as unlikely to achieve any profit. Keith commented on the poor oversight of contracts by the previous sales manager which may well have led to loss making contracts and cited the increase in bad debts from specific contracts which supported this view.

- 3.4 The Trustee decision allows for the creation of a management agreement for the Ice Rink. Whilst there is uncertainty and ambiguity over what this may have meant the outcome is that the Trust lost the income for the Ice Rink during the licence period

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which is recorded as in excess of £550,000. Additionally, a proportion of the private hire and club income can be attributed to this sum and this is in the region of £160,000. Does this not represent a further loss to the charity of £710,000.

Keith could not comment on these sums. He again reminded Mr. Walklate that the earlier months of the year were traditionally poor in income from the ice rink and that the licence was only there to cover this early period.

Discussion took place on the allocated costs to the Ice Rink in the statutory accounts as opposed to those costs met by Firoka. Keith was surprised by the additional sums shown in the accounts and could not identify with them. In regard to the additional sums for fees he was unable to offer more than some possible lines of enquiry.

- 3.5 Additionally, Firoka were able to make use of the premises for approximately eight months under the licence (restricted by the novated contracts for which they received income). An average take for the last three years (after deduction of the £250,000 licence fee and adjusted for the unusual bad debt position in 2006/07 would have indicated a normal gross profit of around £1m per annum. Indeed the income figures for 2007/08 would indicate that this trading position is likely to be achieved in 2008/09. Firoka during the eight months under licence let a considerable number of contracts for which they received all income and subsidiary trading benefits which, had they been let by APTL would have resulted in income to the trust.

What are your comments on why a proportion of the normal trading gross profit cannot be attributable to losses to the Charity?

Again, it must be remembered that the focus was on the first three months prior to transfer. On the basis of those months there would be no covenant. Keith accepted that, given the overall trading results for the year, there would have been a covenanted sum but without access to the records he would be unable to comment on how much.

- 3.6 Entering into the licence incurred costs for the Trust which would not have occurred had the licence not existed. These included legal fees etc.

What are your comments on why these should not be attributed to losses to the Charity in taking the licence decision?

The majority of such payments can be attributed to the transfer not the licence. A small level of cost would have been incurred but this would have been absorbed into the overall costs of transfer. Keith, for instance, could not recall seeing an individual invoice for any licence specific items. If there were any such invoices these would not have been submitted in the normal course of events until end of May.

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

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- 4.1 **Can you confirm that you were an employee of the Council during the year 2006/07 and subject to its conditions and protocols during that period?**

Keith confirmed this situation

- 4.2 **The London Borough of Haringey has specific agreed protocols for decision making. In fact the last update took place a few weeks before the report was prepared and presented. Were you aware of this protocol? Do you have any reason to assume that it did not apply to you?**

Keith was aware of the protocol but not any recent update but accepted any change would have applied to him. However, in the circumstances he was acting under he recognised that he was acting under strong political guidance and it was made clear how it was intended he should proceed.

Keith was fully aware of the requirements to consult etc but again had little choice but to follow the strategy that had been set.

4.3 Why was this considered a matter of Urgency?

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'.

- 5 **How far was KH responsible for any losses by breach of his consultancy agreement with the Council after April 2007? Do you wish to offer any comment on this issue?**

The consultancy contract does not cover any matters in relation to the licence. The contract was drawn around the need to advance, conclude and implement the transfer of the building, business and staff under the proposed lease and does not make any provision for the licence. The consultancy contract origins were in the relevant clause of the Charities (Alexandra Park And Palace) Order 2004 in which the Charity Commission wanted to ensure the trustees had in place a mechanism by which they could be satisfied that the covenants within the proposed lease were being met. He therefore had no responsibility for the licence and cannot be held responsible for any losses.

- 6 **Did KH commit a fundamental breach (under cl 29.2) of his consultancy agreement with the Council?**

Given the above, no

- 6.1 **Your contract requires you meet regularly with the authorising officer. Did such meetings occur and, to your knowledge, were they minuted? If so, do can they be made available?**

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The meetings were informal. Keith and David worked in close proximity and met informally to try to keep each other abreast of issues. However during the passage of the consultancy contract Keith said he was progressively marginalized and as time progressed knew less and less about the day-to-day management. No formal meetings took place, no minutes were taken and no failure to meet any contract term was ever reported to Keith.

6.2 Your contract specifies that the support services to the general manager shall include

- **the development implementation and monitoring of policies and strategies to ensure the effective governance of the trust**
- **the implementation of effective systems of financial management in the day to day operation of the site budget**
- **preparing reports and documentation as defined by the general manager from time to time to reflect performance over the site activities**
- **Preparation of a monthly activity report**
- **select appropriate training courses for members of the board of trustees**

Can you indicate the actions that you took in regard to the licence in terms of each of the above?

No action was taken because these matters only arise after transfer of the building, business and staff to Firoka. The licence was not part of Keith's consultancy contract arrangements either directly or indirectly.

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

None as it was not part of his responsibility. He assumed that this was a matter covered by Ken Harrington as part of his direct role and that he was liaising with David Loudfoot directly. No matters of this nature were referred to him

7.1 Were these matters the subject of the monthly activity reports or meetings?

n/a

7.2 Were you involved or responsible for producing any such monitoring reports to board or APTL meetings?

No

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

Keith was involved in dealing with some limited staffing and operational matters. These could not be considered monitoring compliance which was David Loudfoot's responsibility.

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

9.1 When was the issue of the licence revocation reported to Trustees?

- a) Informally – Keith was not aware of any informal discussion. He was not involved.
- b) At a meeting of the Trust. The earliest that he could recall was the meeting on the 5th December 2007. He was in attendance but for the most part was not engaged in the debate.

9.2 the licence was initially for a period of slightly more than three months to the 1st August. Why was no report to Trustees made at that time seeking approval to extend or advising on the implications of the licence in the first months.

Keith agreed that there should have been such a report reviewing both the terms of the licence and whether it should be renewed. He is not aware of why it wasn't reported.

9.3 The success of the judicial review can be said to have had immediate implications on the licence agreement. Why was this not reported to Trustees at the special meeting on the 10th October.

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Keith was on holiday in Canada during the JR hearing and the calling and execution of the special meeting the following week. On his return he was very surprised to see that the licence agreement had not been considered at the special meeting and he was agitating for early consideration of the licence revocation. His reasoning for this was that whilst the early part of the year was a slow time for the Palace the opposite was true of the autumn and winter months when the Palace was at its busiest. He was aware of a number of events, including the key event of the darts competition, which would provide substantial revenue to APTL if it was given the opportunity to run them. He raised these issues with David Loudfoot and Iain Harris but does not recall being given a response.

- 9.4 The first written indication of any action being considered to revoke the licence is Iain Harris's letter of the 21st November 2007. Why the considerable delay and can you outline any other actions that you took during this time? Had Iain Harris previously indicated to you that revocation of the licence should be considered more urgently?

Keith was not aware of this correspondence. He had no such indication from Iain Harris. His assumption was that the delay in considering the licence revocation arose from David Loudfoot's holiday break and it must be remembered that Keith was being increasingly marginalized at this time.

- 9.5 Iain Harris, in his letter to David Loudfoot of the 21st November refers to a 'fundamental review of the existing licence agreement'. Were you aware of this review and if so, what were the outcomes of that fundamental review?

Keith was not aware of any such review

- 9.7 When was the decision to revoke the licence notified to Firoka? The report of the 5th December 2007 specifies that a shorter time be negotiated if possible. Were you involved in that negotiation, and, if so, what was the content of that negotiation.

He played no part in that negotiation.

I agree that the above notes represent a fair and accurate reflection of my involvement in the drawing up, execution and delivery and revocation of the licence to operate with Firoka (Alexandra Palace) Ltd as ascertained by interview on the 23rd October 2008 and in my submission and appendices referred to earlier in this report and subsequent email correspondence

Signed

.....Keith Holder

Dated