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APPENDIX 25

Martin Walklate, Investigator  
C/o Dianna St Hilaire, PA to John Suddaby  
Head of Legal Services & Monitoring Officer  
Haringey Council  
River Park House  
225 High Road  
Wood Green N22 8HQ

31 August 2010

Dear Mr. Walklate

**Investigation into my Complaint about a Member**

Thank you for sending me the draft report of your investigation into my Complaint about the conduct of a Member while acting as Trustee and Chair of the Board of Trustees of Alexandra Palace. Thank you also for the opportunity to comment. Some of the comments below reflect observations from a lawyer.

I appreciate that you may include all, some or none of my comments in the final report at your discretion. I understand that I am not to contact you by email, however if it facilitates easier editing, this letter would be available in PDF form.

A number of the comments below reflect on the real effects of limitations of the investigation from the outset, especially the absence of legal advice and the effect of the restrictions in gathering evidence. With some of the evidence that *was* obtained, some conclusions might be revisited.

I note that the form of responsibility of Trustees required in law – Fiduciary Duty – is not mentioned. I understand that some aspects of this case, mainly relating to Trustee Law, do not fit ideally into the Code-of-Conduct.

But if any broader lessons are to be learned from this case, the Council, via the Standards Committee, needs at least to be aware of the context. I submit that it ought to be recognized that it was disregard for Charitable Trust law aspects that landed the Trustees in trouble in the first place.

Were it not for the High Court Review of the Charity Commission's conduct (more below) and the forcing to the surface of the Licence, there might never have been any Walklate investigations and the conduct of Cllr. Adje might never have come to light.

I would also like to take the opportunity to recognize the contribution of a dedicated council officer, Ms Julie Parker. It was Haringey's Director of Corporate Services who commissioned the first investigation into the development of the Licence. Without her crucial first step, the next two investigations – including this one – would not have been possible.

The following comments on factual inaccuracy, misrepresentation or context are presented as far as possible in sequence of:

I – The Report and II – The Appendices

## I – Notes on the Draft Report

### (1) The introduction

... has it that I am a member of the

*Alexandra Palace Statutory Consultative Committee.*

This conflates two separate committees, (1) the AP Statutory Advisory Committee and (2) the AP Consultative Committee. I have not been a member of either committee. The understandable confusion probably arose because the witness who accompanied me at my interview is a member of the Statutory Advisory Committee (Harry Aspden).

### (15) "has co-operated fully with my investigation ..."

I would like to question the factual basis on which you conclude, at paragraph 15 of the draft Report under section 59 of the LGA 2000, that Cllr. Adje

*has co-operated fully with my investigation ...*

This conclusion is a surprising one to reach from any objective perspective given all the contradictory evidence, and from Cllr. Adje's actual responses to your questioning of him as to the circumstances surrounding the Licence, his role in the decision-making process, and the role and advice tendered by officers, particularly Keith Holder (KH).

The crucial part of both my current Complaint and the earlier Walklate reports, centres around the events of 11 – 27 April 2007; the discussions with Firoka, the preparation and contents of the Briefing Note of KH, the meeting of the Board on 24 April, and the preparation and signing of the Firoka Licence. In the background is the Council Majority Group's prospective meeting in May 2007, and the need, if not political imperative, to report positively to them, that everything was 'on-stream' to contract with Firoka, despite considerable delays which had arisen in the process.

The draft report seems to ignore, or not give sufficient, or indeed any weight to the factual matrix and the driving forces involved at that time.

The contents and advice tendered by the Briefing Note are clear and not open to any alternative interpretation. It is dated 16 April, just eight days before the crucial Board meeting. Importantly, it is addressed as "*The Chairs [sic] Briefing Note*", i.e. meant for Cllr. Adje himself; clearly it was intended to provide him with guidance on the crucial stage that had been reached and the threat that Firoka would withdraw in advance of the Board meeting on 24 April. It is dated 16 April and was composed after Cllr. Adje met Mr. Ormrod (of Firoka) on

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16 April. I note that KN comments that he has not been privy to that discussion, nor to what was said between Cllrs. Adje and Meehan on 13/14<sup>th</sup> [sic] (probably 14/15<sup>th</sup> April, as it is referred to as having taken place over the weekend).

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On these three *crucial events* Cllr. Adje provides no or very limited assistance – all referred to in the Briefing Note as giving rise to its production:

- (1) Discussions at a meeting on Wednesday, 11 April (Cllr. Adje, KH and Kassam);
- (2) Discussions (phone) between Cllr. Adje and Kassam 13/14 (probably 14/15) April ;
- (3) Meeting and discussions between Cllr. Adje and Ormrod, Monday, 16 April.

The Briefing Note commences with a reference to Kassam wishing to 'get out' of the process para 2.1 & ff., and more specifically at para. 6.1: "*The start point here was his request to 'get out' last Wednesday ...*" (i.e. Wednesday 11 April ) (page 139). Kassam was threatening to/ "requesting" to withdraw ... and had asked for the process to be "accelerated" i.e. the *Licence* in all but in name; that was the driver for all that followed. The Briefing Note was meant to reassure Cllr. Adje that this was a 'bare' threat and the professional advice (i.e. from the team of advisers including the lawyers) was that he could not pull out without being in breach of contract.

Attention is drawn to paras. 6.1– 6.5 (pages 139–140) which clearly address the risk of conceding Firoka's apparent demand for acceleration of the process. i.e. the *Licence* in advance of the Charity Commission's final approval of the agreement; although the word 'licence' does not appear, this is clearly what is meant to be covered.

Despite the record of events provided by the Briefing Note (and here the questioning of Cllr. Adje ought to have been more robust and precise), Cllr. Adje could not recall the purpose of the meeting of 11<sup>th</sup> April, nor that Kassam asked for "benefits" if he was to retain an interest in the contract , nor does he tell you what he discussed with Cllr. Meehan in any detail; similarly in relation to his meeting and discussion with Ormrod (paragraphs 71– 82 and 99–127, at pages 167 and following). Nor did he or had he told KH what he had discussed and the outcome of these discussions by the time the Briefing Note was prepared.

#### Pages 217, and ff

Cllr. Adje appears to be responding to specific questions put to him by you, which go to the heart of the matter. The replies are

incomplete and not consistent with the contents (and timings) of his various conversations referred to in the Briefing Note. KH has admitted it was specifically prepared for Cllr. Adje ("The Chairs briefing note") in connection with the upcoming Board meeting. The answers of Cllr. Adje are very brief and appear to be generally unhelpful on crucial aspects; in some instances he has not even bothered to answer the question or express any view on a relevant point at all – I highlight the following which are important omissions:

**Q. 1** – the crucial meeting on 11 April ... no mention of the threat to 'get out' which was made at that meeting.

**Q. 2** – incomplete and disingenuous. He admits here that he discussed the Licence with Kassam, but does not condescend to spell out what was said.

**Q. 4** – if the investigation had obtained access to the Trust Solicitor's files or to the files of the lawyer responsible for drafting the Lease (Laurie Heller), Cllr. Adje could have been helped with his recollection of that conversation (see below).

**Q. 7** – this is the most vital aspect, namely he is asked specifically to respond to each question (bullet points) *eight* in number, but provides only a very general gloss on the Briefing Note and his understanding of its contents, and disingenuously concludes/asserts "... that KH (i.e. not himself, which is untrue) and Kassam had discussed matters prior (i.e. to the Briefing Note)."

These answers, lacking particularity in relation to the request to respond to each of the points in the Briefing Note, has, surprisingly been overlooked in the draft report. The thrust of the factual evidence which emerges is that the Briefing Note was ignored because one is driven to the conclusion that Cllrs. Adje and Meehan were concerned that if Firoka pulled out, then the Council Majority Group meeting in May 2007 would regard Cllr. Adje as having let the side down: he had only comparatively recently stepped in as the Chair of the Board. His job was to ensure that the Firoka deal went through come what may and in all circumstances; to that extent and because of that imperative he was prepared to ignore the advice he received and proceed against that advice to "accelerate" the process and grant the Licence to Firoka.

#### **Para 6.5/page 140**

One is driven to conclude that the Member over the weekend of 14/15 April spoke to the Leader of the Council (Cllr. Meehan) and decided that, despite the contrary advice and views expressed in the Briefing Note, the way to avoid any risk whatsoever of Firoka "getting out" was to accelerate the process and give Firoka possession under a Licence, but keeping this from the public, in the light of KH's warning of the

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dire consequences of doing so (para 6.5/page 140). That way Cllr. Adje could report to the Majority Group meeting in May 2007 that all was proceeding well and that Firoka were now "tied in" and happy to proceed.

Therefore, the conclusion that Cllr. Adje has co-operated in all respects with this enquiry is mystifying and not borne out from my reading of the draft report. His answers to the crucial questions are largely and significantly incomplete, disingenuous, and opaque. Please bear in mind, as well, the initial non disclosure to you of the Briefing Note itself by Cllr Adje "The Chairs Briefing Note" as described.

I would add that the draft report is incomplete in at least two other respects in that *access to relevant files of Trust advisors* was not obtained, nor apparently any of KH's notes of meetings, as described by Cllr Adje. The files of Trust Solicitor Iain Harris and principal *Lease* drafter Laurie Heller would be likely to contain contemporaneous notes of the nature and extent of their instructions and who (and what) was driving the Licence forward. However, they were not called for.

### (38) The Licence

*"The responsibility for signing the contract must rest with the General Manager to the Trust and the Company Secretary to the Company ..."*

This is presented as fact, but I believe it reflects its source which is council officer opinion and without the benefit of *independent* legal advice. I believe in this context it may be a factual misrepresentation and possibly even unlawful. This claim has not been tested in court but it is possible to make some observations.

The use of the word 'contract' suggests a transaction that might be routine. But if 'contract' means *The Licence*, then this was far from any ordinary contract, licence or lease in the park, such as might obtain for a hot-dog concession.

The law on Trust imposes the highest, fiduciary duties on Trustees. Duty (to achieve the objects of the Trust) is at its heart. But here was a Licence that would divest the Trust of its principal asset and only income stream.

One of the Licence signatories (Ken Harrington),

*stressed again that he was physically remote from the strategic discussion over the lease and the licence and was not asked to be involved although he would have happily been so if requested" (Appendix p.92 – W1)*

Does this sound like someone who in any event should have stood in for a Trustee?

The 'contract' is likely to be unlawful from most viewpoints. It is hard to imagine a greater Breach of Trust. Not a single Trustee signed the Licence and it is difficult to see that this instrument was anything other than *contrary to the interest of the Trust*.

There is surely *prima facie* evidence that the Licence signatories had no right to sign on behalf of our Charitable Trust because *the signatories were not Trustees*. The lawfulness of the licence, if not it's intent and content (which I believe may be unlawful) is surely in question. Investigators have a responsibility to report conduct they believe to be unlawful. It is almost a footnote that the 'contract' would also force the local authority to make a huge tax-payer-funded subsidy, which was *over-and-above*, what would be required to put Firoka in the same position as the Lease.

(40) ... *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.*

*matters of administration* – these were matters not comparable to those in a council department or in a private company such as paying an electricity bill. These were matters of the execution of a document of the highest possible importance *to a major Charitable Trust* and subject to special and different considerations and law.

*responsible officer* – in context, it is questionable that this is accurate. Mr. Loudfoot was an employee of our Charitable Trust and could not be responsible (with other employees) for committing Trustees to alienating the main asset and all Trust income. It is not enough that the signatories might have believed they were acting on behalf of the Trust: such a powerful 'contract' – which would effectively end our Charity in all but name – surely had to be signed by Trustees.

I believe the reason that Messrs Loudfoot and Harrington signed the document was because they had not had sight of the Briefing Note, nor been involved in the discussions in April which gave rise to it. Cllr. Adje otherwise would have signed the document, or one of the other (majority group) members of the Board. Obviously, Cllr. Adje would have been required and/or felt compelled to tell them that he had received contrary advice from KH. At the very least his colleagues would have read the document and seen that it went much further than had been disclosed at the Board Meeting. I do not believe that any Trustee would have signed the Licence without raising concerns and/or refusing to do so.

It was not simply that Messrs Loudfoot and Harrington might have been required to sign something against their better

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judgment; it was that they were asked to sign something that the Member should have known they had no authority to sign (not being Trustees) and for that reason alone appears to be *ultra vires*.

It is casualness about our Trust's administration that is one of the chronic governance problems.

If in respect of a matter and document of the importance of the Licence (which would surrender the main asset and all Trust income) can be delegated to, and signed by, mere employees, even senior employees without knowledge of the background to the document and/or advice received, then there is no document which could not be signed by non-Trustees and yet still commit the Trust. The special requirement of a Trustee is rendered meaningless as well as unlawful. The Trust then becomes wasteful, leaderless, purposeless and dysfunctional.

It is the confusion of the *fiduciary duties* of Trustees, on the one hand, with 'administration' and 'operational matters', on the other hand, which is a core theme of the documented, chronic governance problems at our Charitable Trust.

#### (60 – 62) Complaint of disregarding advice

(61) *"... 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.*

(62) *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 ... Disregarding advice from the General Manager of the trust cannot fall under this paragraph.*

(here, at the last line of (62), the Trust status is invoked, and yet at (13) it is stated "He [Cllr. Adje] again was prepared to accept that they [key employees] were employees of the London Borough of Haringey". The current governance, riddled with conflicts of interest, obliges even an investigator to select when to invoke Trust status and when to invoke local authority status)

I think certain conclusions on conduct have been drawn without receiving all the necessary and/or available evidence. As you know, I believe that it would have been desirable if the investigation had benefited from some legal support in carrying out the enquiry.

In these paragraphs (60–62) the extent of the Member Code of Conduct appears to have interpreted (a) in a particularly narrow fashion and (b) as to whether the Board was bound by the C-of-C in providing reasons. In the former respect it is difficult to see how the current interpretation can be correct. KH was a servant of the council and the Board is created under delegated powers of the Council. It is the Council as constituted. That deals with the point on providing or not providing reasons for decisions as well (not that these have to be published in the same way as planning decisions etc.).

Really telling questions might have been:

- Why did it take W2 to reveal the Briefing Note?
- Who read the Briefing Note?
- Who decided *not* to disclose it at the 24 April Board Meeting?
- Who typed up the Agreement itself and on whose instructions.
- What is the paper trail?
- Did Cllr. Meehan see it and why was he not questioned about his discussions with Cllr. Adje on 13/14 April?
- Where are the minutes (actual handwritten notes or recording) of the Majority meeting in May?
- Where are KH 's notes of the meetings referred to by Cllr. Adje?

(65) *None of this is applicable to the Alexandra Palace & Park Trust Board which is a non-executive Committee administering a charity ...*

This is the viewpoint of a legal officer employed by the local authority. The precision is questionable and possibly misleading. This description could suggest the Board just happens to be a committee acting as some kind of agent, to organise clerical/secretarial services. It implies some distance or at least an arms length. But AP is not merely 'a' charity that Haringey administer and it is not remote or removed.

The only sense in which the trustee is an agent is that they are supposed to act on behalf of Trust *and in order to achieve the objects of the Trust.*

However inconvenient and regrettable it may be, in law, the Council *\*is\** the Trustee. This is shown in the *Alexandra Park and Palace Act (1985)*:

*"the Trustees" means the Council of the London Borough of Haringey as trustees of the Park and Palace*



(It might be an improvement if the *Board* actually did administer our Charity: but the Board largely delegates this function to council employees and frequently it delegates too far. The loose description of the Trustee (65) is likely to be a commonly held belief in council circles but it has caused much trouble in the past because it blurs responsibility: a key Governance problem.)

*Appendix p.164, para 43* also refers. The Trustees have to act in the best interests of the Trust at all times with a view/intention to achieve the objectives of the Trust. The basic conflict of interest means that there will be many occasions when in order to act exclusively in the best interests of our charity, Board members cannot *act* as Members as well as acting as Trustees (though they are Members).

#### Para. 85

KH's response at para. 85, that following Cllr. Adje's receipt of the Briefing Note the political imperatives took over, has a great deal of weight/credence. The evidence points to Cllrs. Meehan and Adje making a decision on 13/14<sup>th</sup> April (actually 14/15<sup>th</sup>) and Cllr. Adje conveying the decision to Shaun Ormrod/Firoka on 16 April the next working day (Monday).

Then things get murky again. There is a failure to uncover the paper trail leading to the decision to dump the Briefing Note, mislead the Board on 24 April and sign a Licence which does not mirror the draft agreement with Firoka, but gives them the income and none of the overheads for the next three months at least.

#### (86) and following

All of paras. 86 ff, are clear testimony that KH was obeying and acting "*under instructions*" not to disclose the Briefing Note and proceed with the "*acceleration*" of the arrangements with Firoka, (or the Licence, as it became).

Cllr. Adje's response. para. 89:

*"I wondered at the time why he felt it could now be done."*

(!) is disingenuous in the extreme if not totally false. KH makes it clear that he (KH) never "*changed his mind*", he was simply carrying out instructions. The weight of evidence, such as was obtained from two officers, KH and David Loudfoot, points to the driving force for the need to enter into Licence emanating from Cllr. Adje, who was the Chair of the Board and under whose instructions they were obliged to act.

Given KH's Briefing Note, it is inconceivable that KH then went ahead with the Licence as "*a frolic of his own*".

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All of the evidence points to KH's version at paragraph 104 to be accurate, and Cllr. Adje's at 103 to be false or incorrect.

Your analysis of the evidence at para 116, may be wrong as you conclude that KH did not regard his own integrity being comprised by Cllr. Adje's failings relating to the Briefing Note.

At the end of the day, KH was the servant and Cllr. Adje the master, of the relationship. It was not simply that Cllr. Adje was Chair of the Trust Board (which alone would have been enough to determine who was boss).

It was also that Cllr. Adje was *Chair of the AP Trading company* (and for some time after he ceased being Trust Chair); before becoming Trust Chair he had been the *immediate past Council Leader* and at the time of the Licence, Cllr. G. Meehan, Council Leader was a *close confidant*. For all these reasons, KH would have been in no doubt of the political will nor as to who would have the last word.

If Cllr. Adje chose to ignore and compel KH not to refer to his Briefing Note at the meeting on 24 April, that was Cllr. Adje's decision not KH's. That much is recognized at para 130. And the finding of bringing the office into disrepute is clearly made out. How many others are implicated is a matter for conjecture, until the paper trails, such as still exist, are disclosed.

The conclusion at 143 fails to take into account the conflict of interest between the Council and the Trust and the need, in the absence of the Firoka deal, for the council to spend vast sums to repair and maintain the APP out of its own resources. The ulterior motive was to be able to go to the Majority Group meeting in May 2007 and be able to report that Firoka were now *in situ* and that the process, which had been so long drawn out, was reaching its desired conclusion.

However the Member failed in his duty to ensure that the Board was aware of the Briefing Note and/or the extent of the Licence which went beyond simply replacing APTL *pro tem*.

*Notes on the Appendix follow*

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## II – Notes on the Appendix

(notes of meeting with complainant, 24 November 2009)

As noted earlier, witness Harry Aspden is a member of the AP Statutory Advisory Committee but is not a colleague in the sense that I am also a member of that committee, because I am not.

### Disrepute (p28)

*Matters relating to criminal activity or dishonesty were discounted as no party could bring any evidence that would suggest this was the case.*

*Matters ... discounted* – this is a discounting by the investigator, not by me. I was uncomfortable about the discounting at the time and remain uncomfortable about it.

The evidence that a private individual Complainant can bring is limited by their powers and the resources at their disposal. The only evidence that I could 'bring' had to be publicly available (largely W1 & W2). The possibility of criminal activity is suggested to me by appearance and by the aggregate of the circumstantial evidence.

By circumstantial evidence, I also mean to include the conduct known about the Member over the attempted sale of another council-controlled property, the Welbourne Centre (q.v), where there remain serious unanswered questions. Although my Complaint is based on the two previous investigations, in any event, some of the other evidence I can bring for the Complaint is also circumstantial.

In the background and driving the purchase, were the profits that the developer intended to make from acquisition of our Charity's asset. These profits must have looked huge to the developer – so big, that Firoka remained interested for months, even after the High Court quashed the Lease and even after their eviction.

An investigation with power of seizure would have been able to sequester emails, phone bills and bank statements. If such an investigation or a public enquiry is ruled out – as it was – then no-one can find, let alone bring, any evidence of that nature. This does not mean that such evidence does not exist. (We already knew of irregular, undocumented and unwitnessed meetings with Firoka's principal; we now know that Cllr. Adje held the personal phone number of Firoz Kassam (Appendix, p.185, para 227). This could be entirely innocent of course.

**(p.30) Disregarding Advice:****Cllr. Adje's responsibilities as a Trustee**

I was pleased to see recorded that this aspect would be reviewed as part of the investigation (even if it did not result in a finding of non-compliance with the code). Although 'Fiduciary Duty' would be more accurate than 'responsibility'.

However, I cannot find such a review, nor a recommendation that the Charities Commission should consider the Trustee aspects of this case, despite the acknowledgement that this *was a matter* for the Charities Commission. Even if Cllr. Adje is no longer involved on the Trust Board itself, as a Member he remains a Trustee alongside all Haringey Councillors.

The case, including possible Breaches of Trust, contains serious unresolved questions about the governance of our Charity and which – although possibly not part of the Council's Code-of-Conduct – ought in a formal way to be brought to the attention of the proper Regulator: the Charities Commission.

**(p.186) Motivation of Complainant (para 241)**

*Councillor Adje sees it [the Complaint] as a witch hunt, racially and politically motivated.*

This accusation is groundless and is no more than an attempt to distract attention. As I made clear in my Complaint (p.5) I have never spoken to, nor ever met with, Charles Adje. Nor have I ever even attended a Board meeting he chaired. In fact, I have not had dealings with him of any sort, ever.

Therefore, there can be no suggestion of a 'witch hunt', or vendetta, personal or otherwise: I hope that my Complaint and the Investigation Report will be published in full as a matter of beneficiary-, tax-payer- and public- interest.

The only references in the Complaint to political parties were (a) the approving references to Cllr. Adje's Labour Party councillor colleagues in Oxford (from whose relevant experience with Firoka Cllr. Adje learnt no lessons) and (b) to the Trustees of the council minority group, who were kept in the dark about the Licence development. Although the Trust Board behaves as a political instrument, I have scant evidence that Minority Group Trustees were kept in the dark *any more* than fellow Trustees from Cllr. Adje's Majority Group were kept in the dark.

The suggestion that the Complaint is racially or politically motivated is a canard.

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Since late 2006 I have been an opponent of the sale of the People's Palace to Firoka and would have opposed it with or without Cllr. Adje's Licence. I opposed the sale as a resident, as a beneficiary and as a council-tax payer; however the attempt to sell Alexandra Palace to a property developer doubtless had *both* supporters and opponents in *each* of the two main parties of our Borough.

I will confirm my *original* motivation:

In 2006 I learned from the local press that the Trust Board chaired by Cllr. Adje was to connive in the destruction of the birthplace of television: the 1936 BBC Studios in the South East Wing. I was disappointed – and even alarmed – at remarks in the press attributed to Cllr. Adje:

*The proposed lease includes clauses on the provision of a television heritage facility, the details of which will be subject to planning and listed building consents. This provides the opportunity for those who believe that such a facility is viable to engage with the charity's investment partner, Firoka, and develop a workable solution."*

These weasel words described a travesty. There was no sense that any value was attached to the world's first public television studios. Cllr. Adje was prepared to allow our heritage to be destroyed. Further enquiry only increased my concern about care and governance at our Charitable Trust.

My subsequent motivation was the hope that lessons might be learnt from this episode and that governance might be improved.

#### **(p.187) Blaming the Charity Commission (alone)**

#### **(para 245) Charity Commission and Judicial Review**

*"The Judicial Review came about because of the way the Charity Commission had carried out consultation".*

In this claim, Cllr. Adje implies that the Judicial Review ('JR') was the fault of the Charity Commission alone. However, High Court Judge Sir Jeremy Sullivan said:

*they [Commission and Trustees] were both equally to blame for this unfortunate set of circumstances"*

And yet the Councillor continues to blame others for the results of his conduct.

It is true the Commission was the Defendant in the High Court Judicial Review (with the Trustees listed as first interested party). But without context, Cllr. Adje's statement is misleading and is an attempt to hide his own role.

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Cllr. Adje's Trust put the Charity Commission under pressure *to conceal the Lease from the public* at the same time the Commission conducted a public consultation about the Lease. This insincerity flew in the face of a promise in Parliament by a Minister, for full open public consultation over the sale.

This conduct proved to be the Board's undoing and the Court quashed the entire Lease and chose to award costs against the Trustees. In respect of the award of costs, Justice Sullivan said:

*in large measure the Trustees are the authors of their own misfortune, but they have been ably assisted and abetted, I am afraid, by the Commission. In reality, the running today was made very largely by the Trustees, ...*

This recognition hasn't yet registered with Cllr. Adje, who blames anyone but himself.

In any event, all documents relating to the High Court Hearing, including the letter- and the email-trail, witness statements and the Judgment, are in the public domain and the record is plain.

#### More blame (p.187, para 247)

*"If anyone should be held responsible for this problem it should be Mr. Carter and his cohorts as they instigated the judicial review at a very late stage."*

It was only thanks to the Judicial Review that the conduct over the Licence eventually came to light. The case or 'problem' is complex and Cllr. Adje's mention of the JR appears to be an attempt to confuse rather than offer accurate context.

Cllr Adje's statement is either a misunderstanding or is an attempt to mislead through a pretence that nothing relevant or significant preceded the JR 'instigation'. He appears to imply that, if a judicial review had been launched at an earlier stage, then the 'problem' might have been avoided. However, this ignores at least three factors:

First, at a late stage in the development of the *Lease* an amendment was made to permit Firoka premature occupation. The draft agreement *had* been that Firoka must wait until the three month deadline for Judicial Review had expired. Cllr. Adje and his Board were responsible for agreeing to an unusual and irregular change that would allow Firoka to complete the deal just one month after the date of the Commission's Order was signed (4 May 2007).

Second, it was Cllr. Adje personally who promoted the Licence that would spell out the terms and conditions of Firoka's *premature* occupation of our Charity's premises. The

development of this Licence was the subject of the Walklate 1 and Walklate 2 investigations.

Third, the stage at which the JR was instigated (July 2007) had no bearing on the JR outcome on 5 October 2007. The Judgment given on that date turned on the farcical Public Consultation that had ended nine months earlier, on 5 January 2007, but the terms of which Cllr. Adje's Board had 'agreed' (browbeaten?) with the Commission much earlier: 15 March 2006.

On 2 March 2006, the Trust Solicitor wrote to the Commission: ... *If I have misunderstood the position with regard to the Lease I am obviously pleased but would ask you to confirm that you will not require draft Lease terms to be published.*

[note the Trust Solicitor's guileful use of *draft lease terms* rather than simply *Lease*].

On 15 March 2006, the Commission wrote back to the Trust Solicitor: *I can confirm that we will not require the lease terms to be published.*

Those few words would have huge ramification.

Even today, Cllr. Adje appears not to want to understand the three-month opportunity for Judicial Review. If the grounds for challenge had already been provided by Cllr. Adje's Board (the agreement with the Charity Commission to conceal the Lease), then, provided a JR was launched within the statutory period, the stage at which it was instigated is immaterial.

Cllr. Adje's statement appears to betray a casual view that the JR process was merely an unimportant possible irritant, rather than part of the law and something to be fully respected and all eventualities planned for. But the statement is so misleading as to be untrue and demands further comment:

During Cllr. Adje's 12-month chairmanship of the Board, the possibility of legal challenge to their plans (i.e. review in the High Court) appears never to have been taken seriously. This was not entirely due to his poor judgment. The significance of JR could and should have been known about well beforehand.

In his letter of 2008 (p.257) KH quoted the Chair as saying that it had taken 18 years of hard work to get the Charity to this stage [of the Licence] – the Trust Solicitor has been engaged for about that length of time. KH himself was employed as Trust General Manager for 11 years. At the behest of the Trust Board, Parliament passed an Order permitting a 125-year lease for all of AP in 2004.

But despite the length of time spent in planning and preparation, there was little apparent awareness or perspective in this lack-of-foresight saga.

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In the 24 month period to December 2007 and in connection with the sale, the Trust Board paid a minimum of £797,833 of Charity Funds to two law firms (FoI data). The need for a Charity Commission Order, the probability of a Public Consultation and the possibility of a JR – probably all of these were pointed out to the Board by lawyers on more than one occasion. The Board's conduct over the Lease (as well as the Licence) involved obsessive secrecy and it was that which provided the raw material for the JR.

The three month opportunity for legal challenge (to the Charity Commission's Order) in these circumstances is the law of the land. The late change in the Lease (or related documents) and then the Licence, that permitted premature occupation, were to gamble:

- (i) there would be no Judicial Review; or
- (ii) if a JR was launched, it would not succeed;
- (iii) if the JR were successful, the Lease would not be quashed;
- (iv) if the Lease was quashed somehow the preferred partner Firoka would not need to be evicted;
- (v) if evicted, somehow Firoka would not become annoyed and seek redress

If the *Lease* now permitted premature occupation in principle, the *Licence* would define the details of the actual premature occupation.

Regardless of assessments of the likelihood of a JR, the Trustees could possibly have avoided a JR altogether and certainly minimized its chances, if earlier when he was Chairman, Cllr. Adje had ensured that all aspects of the sale were lawful, instead of hiding information to which the wider public and beneficiaries were entitled.

*Prima facie* evidence of unfairness in the Consultation was there for any objective and interested person to see: a JR might have come from any resident or Trust beneficiary. As chairman, Cllr. Adje was responsible at least in part for the secrecy surrounding the Lease (and related aspects), the concealment of which was later found in the High Court to be unlawful.

Repeated efforts were made to reason with the Trust Board and to encourage the Charity Commission to think again. I believe the Judge recognized that the JR was undertaken only as a last resort and once every other possible avenue was exhausted.

**Context of legal advice:** The ability of the Board reliably to forecast a JR was compromised by the ambiguous role of the



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Trust Solicitor, who had long been responsible for Trustee relations with the Charity Commission.

Instead of independently defending our Trust against assault as might be expected, at political behest, the Trust Solicitor was doing all he could to advance the sale of our Charity's main asset. Promoting the deal largely took the form of persuading the Charity Commission of the soundness of the buyer and the supposed need for the sale in the first place. In the 24 months to November 2007, the law firm Howard Kennedy – in which the Trust Solicitor was a partner – was paid at least £345,000 from our Charity's funds (FoI data).

At the same time, the Trust Solicitor was expected to provide sound objective advice on the likelihood and possible outcome of a JR – a JR which contained the possibility of overturning that same sale. This would be a challenging task for even the most able of lawyers. It was part of the reason for questionable quality of legal advice received and the degree of preparedness. The advice that a JR was remote was self-deluding and little more than wishful-thinking.

This is a minor example of the many conflicts-of-interest that bedevil our Charity and to which the Board is often oblivious. Regardless of the quality of the Board's legal advice about the likelihood of a JR, the Trustee had already provided the material and evidence for a JR well beforehand. That could not be undone after the Charity Commission's Consultation, the terms of which had been 'agreed' with Cllr. Adje's Board.

If Cllr. Adje is looking for *precipitate* behaviour over the JR, he might look to the preferred development partner (Firoka) who insisted on an expedited hearing – a one-day rolled-up JR (i.e. Application and Hearing on the same day).

Cllr. Adje's remarks betray more than a lack of preparedness for a JR. Assisted by doubtful legal advice, the remarks suggest a detachment from the law governing Charitable Trusts and an unwillingness to face up to the unlawfulness and his own complicity in concealment.

(p.187, para 247)

*"At no time did Mr. Carter or his associates approach me directly with their own alternative rescue plans for the Palace, although I arrived there when Firoka had been approved as a preferred bidder by the previous Board".*

The clause of the first half makes no sense, as hinted at by Cllr. Adje himself in the second half. The award of Preferred Bidder is a legal status that would probably have made it unlawful for the Board later to consider any subsequent bid or approach, let alone done a deal with anyone else.

Setting aside the unlawfulness of such consideration, the suggestion that, nonetheless, the Chairman was prepared to entertain any alternative to the Preferred Bidder, is a notion whose credibility will be understood well by anyone familiar with the situation.

Close observers at the time told me later that the Firoka deal had been steam-rolled through by Cllr. Adje. Much of the subject of this Complaint is the degree of determination by Cllr. Adje to accommodate the deal whose die had been cast.

I recognize that Cllr. Adje's cannot be held responsible alone for the original misconceived policy to sell Alexandra Palace and the selection of the developer-of-last-resort was made before his chairmanship. I had no involvement with Alexandra Palace until *after* Cllr. Adje's chairmanship.

(after the eviction of Firoka, members of the *Save Ally Pally* campaign group did present an alternative called 'The Way Forward' to a meeting of the AP Consultative Committee – chaired by the subsequent Board chairman).

Despite all that has happened, even today Cllr. Adje cannot see that the contents of the vital General Manager's Briefing Note was sound advice. I note he has expressed no remorse for his conduct of concealment that led to a loss for our Charity of between £1.487m and £2.023m according to the Walklate 2 Report and arguably as much as £3.1m (our Trust's deficit for the 12 months to 31 March 2008).

I further note that the former preferred development partner (Firoka) has not withdrawn their claim on our Trust for £6,200,000 and their intention to sue.

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It is disappointing that by the time this case reaches the Standards Committee, more than one *year* will have elapsed since the date of my Complaint. Since then, at least the AP Board has now formally abandoned the policy of 'holistic' sale which is probably now recognized, widely if not by all, to have been misconceived and misguided.

The deeper issues of governance at our Charitable Trust pre-dated Charles Adje's arrival in May 2006. But instead of addressing those problems, the new chairman was to carry on with the inherited policy of tossing the keys of Ally Pally to someone else – regardless of cost and corners cut. His conduct was only the best-documented example of the chronic governance problems which I hope may yet be fixed. If they are not, I believe farragoes like this will happen again.

Yours sincerely,

C D Carter  
Haringey resident, council-tax payer &  
**Beneficiary of the Alexandra Palace Charitable Trust**  
190c Stapleton Hall Road  
Stroud Green  
London N4 4QL  
31 August 2010