Complaint to Standards Committee	Councillor Charles Adje former Chair, Alexandra Palace Charitable Trust

AS Chair of the Alexandra Palace Charitable Trust Board (May 2006 to May 2007) and as Chair of its trading company, the Member breached the model code of conduct (below). In those capacities, he also betrayed the Principles of Public Life where he did not meet the standard of conduct expected of a Member.

The Member incautiously promoted the grant of a **Licence** to a property developer. The Licence allowed the developer occupation of our Charity's premises *prematurely*. The Licence deprived the Trust of all income and led to a huge deficit for our Charity, a loss met by council tax-payers. The Licence is likely to be unlawful. The Member had un-recorded and un-witnessed contact with the developer.

1 Members' *Model Code of Conduct*

MEMBERS must comply with the code whenever they:

2(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed) … and references to your official capacity are construed accordingly

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

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

The Member had meetings and phone calls with a property developer that were un-witnessed and / or unrecorded. This has at least the appearance of impropriety. *[see section 18]*

6. You – must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage

The Member secured financial advantage for Firoka by the promotion of extra, unnecessary and specifically-warned-about inducements comprising the Licence. Profits of Firoka's occupation can be seen in that company's accounts. *[section 20]*. By the same token and as a consequence, disadvantage was conferred to our Charity. *[section.26; AP accounts 2007/08]*

6 (b) must, when using or authoring the use by others of the resources of your authority – … ii. ensure that such resources are not used improperly for political purposes (including party political purposes)

The Member wanted Firoka locked-in by 15 May, 2007, the date of a scheduled majority group meeting, in order that the Member could make an announcement to that effect on that date. The Licence was rushed recklessly for party political purposes, frustrating careful consideration. *[section 19]*

7. – (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by – your authority's chief finance officer; or by your authority's monitoring officer where that officer is acting pursuant to his or her statutory duties

The Member did not seek the advice of either of these two officers about the Licence; the advice he did seek or receive (the Briefing Note, q.v.) from a senior officer – the General Manager – he then disregarded, to huge cost. *[sections 16, 17]*

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

The Member changed his account between the two Walklate investigations. The Member has provided reasons and answers to investigator Martin Walklate that were inadequate, unsatisfactory and contradicted the account of the general manager. *[sections 17, 27, 28]*

2 Synopsis

THE second of two council-commissioned investigations into the Licence (the Walklate Reports), uncovered a warning about unneeded inducement to Firoka. This took the form of a *Briefing Note* to the Chair (Cllr. Adje). The warning was written by the previous General Manager Keith Holder, to whom most of the blame for the Licence has so far been directed. The Briefing Note was received, read and disregarded by Cllr. Adje.

The briefing note demonstrates that Cllr. Adje as Trust Chairman *received timely credible strong warning against any extra inducement to Firoka.* This is true: regardless of the supposed change of mind of the general manager; almost incidental to the source of the advice and irrespective of who signed the Licence**.** Cllr. Adje willfully ignored the sound advice in the Briefing Note and caused this Licence to be drafted and signed.

Prior this, Cllr. Adje had un-witnessed and inappropriate contact with the developer's principal, Firoz Kassam. Earlier, the chairman had agreed to a clause in the *Lease* allowing premature occupation by the developer; both that Lease provision and the separate Licence he promoted, recklessly disregarded the possibility of Judicial Review.

No alternative to the Licence was considered. No Trustee signed the Licence. It was not referred for legal advice before signing. The Licence is almost certainly *ultra vires* of its signatories and under Trust law, probably also unlawful in its intent and content.

The Licence was the culmination and ultimate expression of a process of increasing concessions and sweeteners to the property developer, a process over which Cllr. Adje presided as Trust Chair. The Licence and occupation of our Charity's premises and all of which ought to be regarded as unlawful, led to losses for our Charity estimated by the investigator to be approximately £1,500,000.

Extensive background is provided in support of this Complaint.

3 Witnesses

THE witness to the conduct is Martin Walklate CIPFA, an independent investigator commissioned by the council. Mr. Walklate interviewed Cllr. Adje and others involved and he produced two reports about this matter. (If the Committee needs more information than is contained in his two reports, Mr. Walklate may be contacted via the Director of Corporate Services, Julie Parker).

A first-hand witness would be the former AP general manager (Keith Holder), but it is unknown as to whether he is prepared to give further evidence. The Trust Solicitor, Iain Harris of Howard Kennedy may also be prepared to give evidence.

4 Documentary evidence in support of the Complaint

2007 May 4 ..... The Licence to Firoka

2007 October 5 ..... Witness Statement of Kassam to the High Court

2008 Sept. 26 ..... Walklate Report–1 ('W1')

2008 October 2 ..... Letter of Cllr. Adje to *Ham & High* newspaper (other H&H reporting available)

2009 April 16 ..... Walklate Report–2 ('W2')
(N.B. Key Dates, Appendix 4)

· Accounts of Alexandra Palace Charitable Trust 2007/8

· Accounts of Firoka (Alexandra Palace) Ltd. 2006–08 (24 months to 25 September 2008, available from writer)

5 Reasons for delay in complaint

THE conduct complained of occurred more than 28 days ago but the sums of money involved justify a complaint: council tax-payers bear the consequences today.

The reason that a complaint was not made near the date of the Licence (4 May 2007), is that the extent of repercussions of the conduct took some while to become apparent, but they have since become well-documented:

1) First, the existence of the Licence was not in the public domain at its inception and not for a long time afterwards. In common with all documents relating to the disposal of Alexandra Palace (AP) at the time, it was shrouded in secrecy.

2) According to the time-line in W2 (Appendix 4) the Director of Corporate Resources only received a copy of the Licence on 27 November 2007, two weeks after she requested it, when a notice of eviction was being considered and more than six months after the Licence was signed.

   It appears that for a while, even the Council Chief Executive was denied access to a copy by an AP management that had been let to run out-of-control, even though large sums of public money were involved.

3) When the existence of the Licence became known, a Freedom of Information request for its release was met with delay. A lightly redacted Licence was finally released by May 2008. The favourableness to Firoka in general terms was apparent immediately, but the cost and full financial impact could not be calculated until later:

4) Only after the Trust balance date of 31 March 2008 was the overall loss for the Alexandra Palace Charitable Trust for 2007/8 disclosed. The 'deficit' (loss) for the 12-month period – two-thirds of which was occupation-by-Firoka – was £3,100,000.

5) On 27 February 2008, the Council Director of Corporate Resources commissioned an independent investigation, which reported in September 2008 (the 98-page 'Walklate Report', later known as Walklate 1). So many questions were raised from the initial investigation that a further investigation was called for.

6) After some delay, the results of the second investigation were finally released in April 2009 ('Walklate 2' – 63 pages). The forensic accountant's conservative estimate of the loss attributable to the Licence was £1,500,000. Walklate 2 uncovered the *Briefing Note* to the Chairman.

7) The loss attributable to the licence period forms part of the accounts for 2007/08, which annual accounts were approved by a majority of the Trustees only and not unanimously (the split was along party political lines). That period's loss of £3.1m was then merged with the cumulative undischarged debt (£37m). The loss attributable to the Licence-period is diluted and disappears.

8) At the most recent Full Council meeting, on 20 July 2009, the council formally declines to discharge any part of the supposed debt, now-increased to £39,118,000.

9) Four months after the publication of Walklate 2 there have been few repercussions beyond the production of a bureaucratic municipal action plan. No action has been announced in respect of the investigations, commissioned by the council at some cost.

10) The loss during the Licence period – equal to the rumoured sale price of Alexandra Palace – is swept under the carpet and the public pay for it. The Member responsible for the Licence remains formally uncensured.

6 Remedies sought

I CAN have no personal animosity to Charles Adje as I have never met or spoken to him. I have followed the attempt to sell off Alexandra Palace almost entirely *since* his Chairmanship of the Trust. But this case – with Breaches of the Members' code and questioning the Member's judgment – is only the most-recent, best-documented and most-investigated example of what is a pattern of poor judgment.

(For example, in another disposal of council-controlled property, the Member was the subject of a complaint about the disclosure of confidential information to an "independent" solicitor. That complaint (SBE21513.08) was upheld by the Ethical Standards Officer of the Standards Board for England, but no action was taken. Since then, Councillor Alan Stanton has raised further, serious and still-unanswered questions about Cllr. Adje's judgment in connection with the Welbourne Community Centre.)

If this latest complaint is upheld, the Committee ought to consider carefully before accepting assertions in mitigation, that the Member's conduct was in good faith, because there is much evidence to the contrary. Any sanction should be equal to the extent of the Breach.

i. The Walklate 2 Report was to evaluate the practicality of recovering the calculated loss from the retired general manager (hereafter 'GM' or 'KH'). It was concluded that that was not worth undertaking and implied that he could not bear responsibility alone. Our Charity is still out-of-pocket. The Council as corporate Trustee, or the Trust Board as a committee of the council, should **seek restitution from the Member in the amount of the minimum losses suffered by our Charity, as calculated in the *Walklate Report.***

ii. Trustees are liable for a breach of trust, *personally*. If the Member manages to evade personal responsibility and is indemnified by the council, then the alleged **undischarged debt** of nearly £40 million – claimed by the council to be owed to it by our Charity – **should be reduced by the amount of losses caused by Cllr. Adje's Licence to Firoka.**

iii. The Member's conduct over the Licence also questions his suitability to be responsible for public monies. I would ask the Standards Committee to consider, in the light of the 'governance' issues identified by Martin Walklate, **whether or not Cllr. Adje is a fit and proper person to remain on the Council's *Overview and Scrutiny Committee.*** (The Member's appointment to this position of responsibility in May 2009, even after the publication of W2, is one of the reasons for this complaint).

iv. The Standards Committee should **bar the Member from acting as a councillor with immediate effect** in order to recognise the seriousness of the reckless behaviour.

v. Finally, I invite the Standards Committee to **refer this matter to the DPP** to consider whether any aspect may constitute criminal activity.

7 Background information

I DO NOT complain about Cllr. Adje's judgment over a choice of colour of paint, but about judgment that led to financial loss for our Charity – independently calculated to be at least £1,500,000 – and poor judgment that had manifold other repercussions for our Charity and for public funds.

The Licence was claimed by Cllr. Adje to act as an inducement in order to lock-in Firoka and to keep Firoka interested in entering a 125-year Lease of Alexandra Palace (AP).

The development of the Licence to Firoka (Alexandra Palace) Ltd. was the subject of two reports, in September 2008 and April 2009, by independent investigator Martin Walklate who was commissioned by the council via the Director of Corporate Resources.

Those reports are the basis of this complaint.

Even if the Councillor had no involvement in the Licence (which would be incredible), there would remain the question of who should take responsibility for the documented damage done to our Charity. The chairman of a Trust Board should at least partly be responsible for what is done in the name of the Trustees, particularly where a contract in the name of the Trustee conveys the right-to-occupy, exploit and profit from a charity's main asset.

However, the evidence shows active involvement by the Chairman in the supposed need for a Licence, its commissioning and direction. The Chairman can fairly be described as **the father of the Licence**. The committee will need to evaluate carefully any counter-claims of conduct 'in good faith', given the Licence's careless reckless promotion. And in particular, the willful disregard of the General Manager's Briefing Note that was received by Cllr. Adje shortly before the Licence and the irregular un-minuted meeting with Firoka's principal.

The generally perceived reason behind the haste, scope and lack of scrutiny of the Licence, was that Firoka might withdraw from completing the 125-year Lease. This anxiety had a principal source: Cllr. Charles Adje, whose extent of personal contact with Firoz Kassam of Firoka remains opaque.

8 Original choice of Preferred Development Partner

THIS complaint is about Cllr. Adje's conduct over the Licence, which is well-researched by Mr. Walklate. But this should also be seen in the context of **(a)** the selection of Firoka as the preferred bidder for our Charity's asset, two months before Cllr. Adje became Chair; and especially **(b)** the negotiations that followed, leading to promotion and signing of the 125-year Lease during Cllr. Adje's chairmanship.

Substantive questions about the original selection process are beyond the scope of this complaint: I mention this aspect only to suggest that Cllr. Adje never showed the leadership or judgment to doubt the wisdom of the original selection *despite mounting evidence during 2006–7 that Firoka was unlikely to prove a reliable partner*. This is relevant as to why the chosen partner is now suing our Charity for £6,200,000.

After an allegedly rigorous tender process, in March 2006 Firoka was given the status of Preferred Bidder for Alexandra Palace. Cllr. Adje chaired the AP Trust Board from May 2006 to May 2007 during the period of detailed negotiation with Firoka. After other reputable and respected companies had been eliminated, Firoka became the developer-of-last-resort. The discarded companies had left bruised by their treatment. If for any reason Firoka would later withdraw, the Chairman would be left with no Plan B.

Questions about the Chairman's judgment in promoting the Licence also extend to the process that led up to the Licence.

(the writer was not privy to any part of the tender process or negotiations. But it does appear to this outside observer, that at the time that the legal status of Preferred Bidder was conferred on them, Firoka was not sufficiently bound-in and committed-in-detail. The awarding of Preferred Bidder status to Firoka ended the interest of alternative bidders and probably made it unlawful for the council to re-engage with them).

9 The developer-of-last-resort

THE preferred partner was to be entrusted with our Charity's premises, to develop it faithfully and to enter a commitment for 125 years. And yet a trivial Google-search on the Internet would have assisted any inquiry about Firoka's reputation, particularly if 'Oxford', 'City Council' and 'Football Club' were added as search terms. A blind-eye was turned to this aspect.

On 2 February 2006, *The Evening Standard* carried a story *From Slum Landlord to Mr. Ally Pally* (available from the writer) which sketches some of Mr. Kassam's earlier career, including the land dealings with Oxford City council. The investigative reporter was told by former Oxford City Labour Councillor Tony Stockford, that Mr. Kassam got his own way by holding the council to ransom:

> *Mr. Kassam said that if he could not carry out his plans at the stadium site he would walk away from the whole thing, including Oxford United. This left the council in a desperate situation. It would have been electoral suicide if they were seen as the ones who had forced United's saviour to pull out.*

The Leader of Oxford City Council at the time, Labour Councillor John Tanner, said

> *… I do remember that Mr. Kassam drove a very hard bargain. I would not say we were held to ransom, but there was tough negotiating on both sides. Mr. Tanner, 'offered a word of advice for his colleagues at Haringey in their future dealings with Mr. Kassam: "Be tough," he said. "Be very tough".'*

The Standards Committee is invited to assess how robust Cllr. Adje was in his dealings with Mr. Kassam, with particular reference to the Licence.

The two negotiating sides' respective outlooks seem to have been in tension: the Trust was looking at a deal for 125 years whereas Firoka seemed to be concerned with a small fraction of that time-frame (e.g. the three-year limit on finding a TV-museum partner). Perhaps because, as he has done elsewhere, Mr. Kassam intended to sell on AP at a profit within a few years?

Firoka knew all along that they were dealing with a Charity and that that would necessarily involve the Charity Commission. Firoka must have known both of the need for a Public Consultation and the possibility of a Judicial Review. If the original choice was sound – a partner for 125 years – then why was Firoka so impatient over a period representing a tiny fraction of that time-scale?

The Member seems to have been influenced by the verbal bluff and gamesmanship of a business tycoon and he appeared out of his depth in the hard-nosed world of commercial property development.

(in the Briefing Note [6.3], q.v., the general manager related what is an insight into the negotiating style of Mr. Kassam:

> *If Kassam were to accelerate the process he claims this would save the Trust some £250,000 over a three month period and he has requested we use that funding to support him and reflect the additional risks he would assume over the interim period)*

The threats of withdrawal seemed to be that of a partner who was impatient but they also could have been interpreted as a hard negotiator exploiting delays so as to win more concessions (as discussed in the GM's Briefing Note). The withdrawal threats also suggested a partner who might be unreliable inconstant and uncommitted. Should the intimations of withdrawal have been taken at face value by the Chairman? Did Cllr. Adje not realise that Mr. Kassam was being presented with the coup of his career?

A savvy Chairman of the Board of Trustees might have **(a)** had a plan B and / or **(b)** called the bluff of Firoka, just as the High Court Judge eventually did in the Judicial Review. Cllr. Adje allowed himself and by extension, our charity, to be bullied by a property developer into making more and more costly concessions. Cllr. Adje was not responsible for the mistaken selection of Firoka in the first place, but the continued negotiations, which offered ever-greater inducements, was poor judgment: not only the Licence but,

***All* the legal documents including Lease, Master and Project agreements were biased in favour of Firoka, *heavily*. For all the safeguarding of public interest and the £800,000+ spent by Cllr. Adje's Trust Board on its own lawyers, the resulting contracts might as well have been written by Firoka's lawyers.**

It was left to Cllr. Adje's successor as chairman, Matt Cooke, to declare later:

> *The Firoka Group turned out not to be the partner the Trust had hoped for. A number of financial hurdles, for example, were placed before the charity – including paying Mr. Kassam's legal fees, as well as our own – which we were expected to jump over in order to continue negotiations – hardly a partnership approach.*
>
> Ham & High 28 / 08 / 08

How much preferable it would have been, well before this point had been reached, if the previous chairman (Cllr. Adje) had better recognised Firoka's tactics and reputation and had not acted to indulge Firoka to such an extent and at such cost to the public purse. Cllr. Adje's Licensee and Development Partner now sue our Charity for £6,200,000.

Kassam did not have much respect for his negotiating partner, whom he appears to have regarded as weak.

10 The Trust led by the Member: skilled in negotiation?

HEARSAY has it that Firoka won preferred bidder status with a bid of £5m and after the other bidders were dispatched, lowered the bid to £1.5m.

The rumoured regular threats of withdrawal had an effect. The evidence suggests that the longer the negotiating went on, the better the deal that was offered to Firoka.

The permission for Casino use At a minimum, Cllr. Adje as Chairman must have known of the casino user clause in the Lease, much wanted by Mr. Kassam and Cllr. Lister. Did the Trust Chairman accept his colleague Cllr. Lister's argument, that a casino at AP would promote regeneration and *be of particular benefit to black and minority ethnic communities and socially excluded neighbourhoods*?

Cllr. Adje's agreeing to include the casino clause might not necessarily represent questionable conduct, but it nonetheless might represent bad faith with fellow councilors: on 21 March 2006 the Council Executive had voted *against* setting in motion an expression of interest in a casino for AP, to the DCMS's Casino Advisory Panel. Permission for a casino seems not to be in the spirit of his colleagues' vote, whose expressed will was *not* to start the casino process. The clause (3.11.2.6) allowing for a future Casino appears to be one of the aspects of the Lease that Cllr. Adje most wanted kept secret, possibly from fellow councilors as much as the public.

If a future council licensing committee ever turned down a Casino Licence Application by Firoka at AP, Firoka might have interpreted that as the Trustee (the Council) reneging on their promise and might have sued. Including the casino promise seems unnecessary at best and at worst, giving a hostage to fortune. Did agreeing to have this casino permission in the Lease at all, represent wise judgment by the Chairman?

When the Trust Solicitor wrote to the Charity Commission (7/7/06) arguing that "*Casino use does fall within the objects of the Charity as a recreational activity*", was he doing so on his own initiative or at someone's instruction? Given that in effect, public money was funding this representation, was this a wise or appropriate line for the Charity or the local authority to pursue? In whose interests was the letter?

Sweeteners The slide of concessions in the negotiations, over which Cllr. Adje presided, included an acceptance that the world's first television studios would be demolished. This, plus an agreement whose terms were so harsh, that even a (separate) replacement tiny token museum, would be unlikely to get off the ground let alone survive and prosper.

There was uncertainty about the fate of the Father Willis Organ and the Victorian Theatre. Even the CUFOS centre, a building separate from Alexandra Palace, was not safe: *Community Use for [the] Old Station* became the subject of negotiation: there was little limit to the appetite of the developer and it seems, no limit to what Cllr. Adje might arrange to appease it.

In the run-up to the Licence, Cllr. Adje had lost a sense of what might represent a fair and equitable balance between the developer's interest and the public interest. During the Lease negotiations, each sweetener after the previous concession would have seemed to have been one small, incremental step for the Chairman. But the Licence

would be a leap beyond what had gone before: **the key Briefing Note to the Chair (below, S.17) implies strongly that inducement including financial assistance was being considered by Cllr. Adje.**

In a Borough that might have benefited from more money going into social services, a councilor was to cause or arrange a significant council tax-payer subsidy to a company owned by one of Britain's richest men.

The slide towards benefit for Firoka culminated in the Licence which would prove to be hyper-profitable for Firoka because of the size of the tax-payer subsidy. Cllr. Adje was in a position of responsibility and should have been acting in the interests of beneficiaries and residents. That reality became so distorted that, like others involved in the disposal, his actions gave the appearance of acting at least as much in the interests of the developer as in the interests of our Trust.

Cllr. Adje allowed the Trust to be manoeuvred into a position where threats of withdrawal by Firoka would allow Firoka to demand and be given what they asked for: just as had happened with Oxford City Council, from whose experience the London councilor learnt nothing.

Cllr. Adje allowed his Trust to be bullied by a practiced operator who had built a fortune and property empire on the back of property deals with local authorities. Cllr. Adje should have recognised Firoka's negotiating tactics for what they were and achieved a better deal than the Lease demonstrates. Cllr. Adje might himself have threatened to withdraw the Trust from negotiations, but due to other mistakes, that appears never to have been seriously considered.

Ostensibly, the lengths to which Cllr Adje was going, was in order to secure the future of Alexandra Palace for future generations by securing a large investment. If Cllr. Adje's dealings with Firoka were anything to go by, the Trust Board might have had difficulty in enforcing the terms of the Lease. The press reported varying figures as to just what 'investment' Firoka would bring. Mr. Kassam was once quoted as saying he would invest "£100m" in Ally Pally. Palace officials, at different times, said the investment that Firoka would make was '£65m', '£55m', '£45m' and '£35m'. The figures covered a wide range and there seemed a tendency for those figures to shrink over time. Was Cllr Adje providing incentives and taking big risks with our Charity, all for a pig in a poke?

11 Possibility of Judicial Review discounted

ANY Judicial Review would be unlikely to succeed – that was the legal advice received, which in the event, was flat wrong. The Licence was conceived with that poor-quality legal advice in mind. This was perhaps not objective advice, but advice that the chairman wanted to hear and to believe and it encouraged Cllr. Adje to push the Licence.

The general manager's advice was, "*It is accepted by everyone in this process that a judicial review is a possibility …*" (although like the Trust Solicitor, the GM said also, "*it is everyone's view that the prospect of an application is remote and of success even more so*". (GM's Briefing Note [q.v.] at 3.4). However, the GM did not think that this view could justify a precipitous inducement package, against which he argued strongly.

But, regardless of any estimates by advisors of its likelihood for success, **even just knowing – as the Member with ultimate responsibility did know – of the possibility of a legal challenge to the Charity Commission's Order, with the implications that might have for the Lease itself, ought to have given pause. A cautious prudent reasonable person *would have waited* for three-months:, i.e. the chance for a challenge either to lapse or to manifest itself.**

Cllr. Adje's judgment was: I shall take the risk of a legal challenge and if there is one, I'll bet on it not being successful. I will commission a Licence now, regardless of the consequences.

Warning of intended Judicial Review was made well before papers were lodged. When the possibility of a Judicial Review was known, to forge ahead with a Licence of any kind that conveyed (prematurely) the right to occupy was to take a huge gamble and questions the judgment of the person who was most responsible for the Trust, its Chair.

The Licence was to provide Firoka with as much as possible of the benefits as the Lease itself, even if this meant jumping-the-gun. The Licence has been characterised as a bridge between the Lease and the occupation, but the Walklate reports show it was a bridge too far.

12 Late change in the Lease allowed premature occupation

ALLIED to his wishful thinking that a Judicial Review would not materialise, was the Member's agreement to a late change in the Lease that would permit early occupation of our Charity by Firoka (Alexandra Palace) Ltd. This was yet another concession and a foolish one. Again, the prudent course would have been to allow the **normal three month period to elapse** after the Charity Commission's Order, in order to allow full time for any legal challenge to emerge.

This sensitive late change in the Lease, suggests that Firoka may have been anticipating something like an inducement-rich Licence all along. The amendment would reinforce any Licence and *vice versa.* We may never know whether or not Kassam or a representative dictated the terms of the Licence over the telephone, with Adje's approval, to the GM who was then directed by Cllr. Adje to give effect to them.

Both the unusual shortened delay clause in the *Lease* and the Licence itself, represented a gamble on there not being a JR before the challenge period was up and if a JR materialised, that it would not succeed. Cllr. Adje lost both bets. The gamble may have been aided in the knowledge that if it all went wrong, after May (2007) it might all become someone else's problem.

13 Credibility of Kassam's verbal threats of withdrawal

ANXIETY about Firoka withdrawing led to a Licence of exceptional generosity – and recklessness. How realistic were the threats of withdrawal? Regardless of how tightly Firoka was bound in legally (and the GM says it was very tight), the stake that Firoka had in completing the deal was considerable. In his sworn statement to the High Court, Firoz Kassam says of his stake in the deal:

> *FAP [Firoka (Alexandra Palace) Ltd.] and Kings Cross … over the last few years have invested huge amounts of time, energy and money (in excess of £500,000 plus the value of a considerable amount of management time) in the Alexandra Palace project …"* and *"… the negotiations with the Trustees and other parties involved in the agreement were difficult, protracted and complex.*
>
> FK Witness Statement for the JR: 5/10/07

There is no reason to disbelieve this. The deal finally struck came after lengthy negotiation that saw the Trust Board make concession after concession. No one walks away lightly from a deal that is highly attractive, even if it takes longer to complete than hoped for. And not least when you believe your counter-party to be malleable and – in a complex legal-political environment – willing to cut corners in order to get the deal done. The desire of Firoka to stay in the game must have been strong because the prize at the end would be lucrative.

It was rumoured in the property world that Kassam was boasting how little he was paying for this prime 7.5 acre site with panoramic views over London: just £1.5 million (a figure neither confirmed nor denied). The profit-sharing deal, agreed with a feeble counter-party, would cause him little trouble.

The longer the negotiations went on, the more money Firoka spent and the greater was the investment of time that Firoka made in the deal. Contrary to Firoka's negotiating posture, as time went by it became *harder* for Kassam to walk away because it would mean not only abandoning the coup of his career but also abandoning the investment in time and money he had already sunk, as outlined in his Witness Statement.

Any threats of withdrawal by Firoka prior to the Licence, had to be seen in the light of the then-status of the *Lease*. The Lease had been signed relatively recently and *Firoka were locked-in already* – a point made by the general manager in his Briefing Note to Cllr. Adje. There was no need for further inducement of any kind (beyond the great concessions already in the Lease).

14 Position of APTL and its staff

A FURTHER claim made for the need for the Licence was that the Trust's Trading Company (Alexandra Palace Trading Ltd., also chaired by Cllr. Adje) was in danger of becoming insolvent. Martin Walklate's skepticism about the reasons behind this appearance are little disguised:

> *David Loudfoot is clear that this situation was not engineered but it does appear that the decline in revenues is exceptional when taken in the context of both the previous year and the budgeted expectation for the subsequent year. [W1:para 97].*

The damage to our Charity's accounts due to the Firoka occupation is not limited to the period of the Firoka occupation. Business might decline anyway in anticipation of the change of ownership and possible dislocation/discontinuity. But there are persistent suggestions that the slump in APTL's trading was enhanced in order to persuade the Charity Commission that getting rid of Alexandra Palace was justified. When APTL had to be revived hurriedly at short notice (as Firoka were evicted), it took a while for custom to recover and perhaps also, to explain the bizarre events to

long-term customers. If one looks at the annual accounting period, which includes one month *before* the licence-occupation and the three months *afterwards* spent trying to recover, the loss directly and indirectly attributable to the Licence is up to £3,100,000, i.e. the 12 month 'deficit' of our Charity.

Cllr Adje professed in at least one place to have been concerned about APTL's staff, as an additional reason for the Licence. Staff might have been more inclined to stay if they had had confidence in the whole process and especially its leadership. In the event, post-Licence, the departure of staff continued if not accelerated. Staff relations with Firoka were so bad, that at least one member of staff was moved to send out a whistle-blower letter, complaining about the treatment of staff by the new Firoka management. [see W2:65]

15 Inadequate briefing & understanding of other Trustees

W1. para 92: "*a view persists throughout the interviews with the officers of APPT that liaison [with the local authority] was effected through Councillor Adje*". In the confusion of officer roles, Walklate notes that the Chair cannot be responsible for briefing other Trustees: "*This is particularly important given the political balance of the composition of the Trustees*".

This underlines the pivotal and political role that was in fact played by Cllr. Adje.

The rest of the Trustees and not least, Trustees from the council minority group, were kept in the dark about the Licence development, as with other aspects of the disposal. Who was responsible?

The key Briefing Note to the Chair of 16 April 2007 was not copied or shown to other Trustees – Cllr. Adje confirmed that to Martin Walklate. Is it going too far to suggest that the Chairman *withheld* this crucial piece of advice from this fellow trustees?

In his remarkable letter to the *Ham & High* (2 October 2008), Cllr. Adje attempted *inter alia* to defend his fellow Trustees against perceived criticism by Walklate. Cllr. Adje wrote that all but one of the Trustees "*were new appointees with no previous involvement with the Board*". The *Ham & High* noted in an editorial that this was, "*as close to an admission of not knowing what they were doing as you are ever likely to hear from an executive member of a local authority*" (*Ham & High*: 9 April 2009). Which made the need for adequate briefing of Trustees even greater.

In theory, the Trustees are personally liable for their actions but at AP, in practice they are indemnified by the council. They were not briefed on the final Licence, did not see the final Licence and did not understand its implications, as Walklate makes clear:

> *I can find no documentation that suggests that the details of the new Licence were made available to the Board either at the time or at any time subsequently*. (W1: para 71).

16 Licence not referred for legal advice

IF CLLR. Adje had serious concerns about Firoka withdrawing, then he should have discussed this with the whole Board. The poor judgment of Cllr. Adje extends to his not appreciating when he

needed to get the input and good judgment of others and not least, legal advice about the Licence. Should the Chairman at least have directed that such a document should be checked by a lawyer?

The Licence that represented a massive inducement to Firoka and which would expose our Charity to great financial risk was ***not referred for legal advice before it was signed.***

Was this because the content and signatures were believed beforehand to be unlawful and because Cllr. Adje wished the Licence to be rushed through and to remain in an unchecked and probably unlawful state? Does this not look like bad faith?

17 The briefing note: Officer Advice to the Member

THE Member received a detailed warning about the mooted course of action, i.e. of offering to Firoka inducement of one form or another, by the then general manager. See W2, Appendix 1, *Chairs Briefing Note – 17 April 2007* p41–44.

The Briefing Note is the strongest evidence of culpability on the part of the Member. It was a prescient double-warning about **(a)** any need for inducement at all, and **(b)** the risks of inducement. On the first point, the general manager argued that even if Firoka really wanted to withdraw, the legal advice was that Firoka were unlikely to be able to do so. That lent weight to the interpretation that the threats of withdrawal, being channeled through the Chairman, were likely to be a negotiating tactic (see below) to gain extra benefit.

It is worth reproducing the part of the Briefing Note, relevant to the Licence which within days would encapsulate a massive inducement, precisely of the nature warned about:

> ***6.4*** *… Our advisors are clear in their view of the current situation and have repeatedly stated that Kassam has* ***no grounds for terminating the arrangement****. Against this background* ***there can be no basis for considering any inducement at this point in time****. In addition consideration needs to be given to* ***the argument that the whole "I want out" scenario may simply be a mechanism from which to launch the inducement argument and gain a benefit not otherwise available. Caution should be exercised at this stage and there do not appear to be any grounds for a rushed decision.***
>
> [emphasis added]
>
> ***6.5*** *Any public decision to financially assist Kassam would undoubtedly generate fierce public opposition. It is also unlikely that such a stance could be politically justified. If there were a desire to provide some assistance it would, in my view, have to be restricted to the non-recovery of some legitimate expense incurred prior to transfer. The danger of course is that any non-recovery may be exposed by a liquidator reviewing transfers between the Trust and APTL and become public knowledge through that route. Support of this nature is fraught with danger****.***

This perceptive assessment of risk and sounding of alarm bells, was even made in the belief that the chances of a successful Judicial Review would be *even less than remote*. The general manager's prescient, timely warning has been more than vindicated. Why did the principal Trustee go against this officer advice?

The GM's analysis is credible and ought to have made sense at the time to any reasonable person. Is it plausible that the GM would perform a *volte face* over inducement, against which he argued cogently and forcefully?

The unnamed 'disputer' of the GM's claim that he changed his mind *as a result of instruction,* is undoubtedly the GM's boss, Cllr. Adje. It is hard to believe that someone writing such a piece of reasoned argument would soon take action to draft a document in total opposition to the logic he expressed, *on his own initiative.* The evidence suggests that Holder was overruled by Adje and directed by Adje to organise the signing, against Holder's better judgment.

The Chairman acknowledges receiving the Briefing Note: he could hardly do otherwise because his email system acknowledged receipt automatically. Mr. Walklate asked Cllr. Adje:

Do you accept that the Briefing Note is clear Officer advice that (please respond to each of these in turn) [here Mr. Walklate lists eight separate points made by the General Manager in the Briefing Note.] The entirety of Cllr. Adje's response is:

> *I noted the contents of the note and took no further action bearing in mind that KH and Kassam had discussed matters prior*

This response suggests that the Chairman chose willfully to disregard this wise counsel. We know that the chairman knew of good reasons not to proceed with the Licence, but he went ahead regardless. Good faith?

The only odd thing about the Briefing Note is that the former GM did not produce it about six months earlier for W1, even though documents like it were asked for and even though it showed he was alive to the danger of inducement. Was Keith Holder then trying not to implicate his former boss? If a more complete picture had emerged from W1, might not the net of the W2 investigation have been cast wider and led to a remit that included the Member?

The Standards Committee might like to tease out the subtlety in Cllr. Adje's responses to the investigator's inquiries to confirm receipt of briefing notes. Cllr Adje confirms receiving the Briefing Note of 17th April (which is anyway confirmed automatically), but when asked why he had not remembered any briefings on the Licence in an earlier interview, he also confirms he *"did not receive any particular briefing/s nor discussions regarding any of the proposed changes to the licence and profit or loss implications".*

18 Unrecorded contact with Kassam

A MEETING took place between Cllr Adje, the GM and Firoka on 11 April 2007. The General Manager says that over the following weekend (14/15 April) there were further telephone discussions between Cllr Adje and Kassam. There is no record of the conversations. There followed on the Monday a meeting between the Chairman and a Firoka representative.

In respect of the extent of his contact with Firoz Kassam, Cllr. Adje's account changed between Walklate 1 and Walklate 2:

> ***W1:*** *Cllr. Adje, although also certain of the potential for withdrawal is clear that his contact with Firoka was limited to meeting when Keith Holder was present. (para 64).*

> ***W2:*** *"I seldom* ***received calls*** *from Kassam." (letter of Cllr. Adje to Martin Walklate and Julie Parker, 17 November 2008)*

Cllr. Adje had phone calls (Walklate noted) and may have met with Firoka's principal without council officers present and without recordings or notes being taken. Whether or not Cllr. Adje made private deals and arrangements with Kassam, the effect of the Licence promoted by Cllr. Adje is a matter of record on **(a)** our Charity Finances and **(b)** the results for Firoka (Alexandra Palace) Ltd.

While anxiety about the possibility of a withdrawal by Firoka stemmed from Cllr. Adje, the GM discounted this possibility. The Member seems to have been the Trust's prime contact in the opaque relationship with Kassam. It seems significant that Walklate said that no alternatives to the Licence were considered. Was a licence insisted on by Mr. Kassam as the means by which to convey inducements, in a discussion or un-minuted meeting with Cllr. Adje?

When asked about his own possible involvement in the detail of the Licence, the then council leader George Meehan noted that

> *As Leader of the Council I made it a practice not to discuss such issues with companies unless officers of the Council were present and meetings noted*

Walklate 1 (para.85) noted "*Negotiation [of the Licence] in the absence of any agreed framework or written evidence places those involved in difficulty of being able to justify decisions or defend accusations of impropriety.*"

19 "Lock Kassam in by 15th May" (2007)

A SUPPOSED need to "lock Kassam in by 15th May" was for a reason that Keith Holder could not divulge at the time to the Trust Solicitor. According to KH later, the reason for Cllr. Adje's deadline was in order to be able to confirm to his colleagues at the scheduled AGM of the majority group, that the matter had been settled.

Any possible change in AP chairmanship agreed at the AGM was said by Cllr. Adje to risk a lack of continuity. Cllr. Adje may have worried that a successor would take more time and trouble over the Licence and referred it for scrutiny and legal advice. But Cllr. Adje may also have wished to appear as a hero to his majority group colleagues for having finally disposed of the troublesome Ally Pally. If meeting this artificial deadline was an attempt at glory, then it also came with the risk of losing public money.

Is this the action in good faith by someone who holds public office, who chairs a large Charity and has a *fiduciary duty* to safeguard the Charity's assets? Surely, the prudent course of action would have been to negotiate the Licence carefully and to protect the position of the Trust in all eventualities?

Far from asking *'how can we lock-in Firoka'* for the convenience of a majority group meeting, well before arriving at this point, a wise judgment might have been 'how can we lock Firoka out' or at least, 'how can we *threaten* to lock Firoka out?' Leadership on this matter should have been exercised well before the 'lock-in' Licence came up.

20 The inducement-laden Licence

THE Board's intention, as far as they had one, appears to have been to novate the APTL licence with one to Firoka on similar terms. Walklate 1 compares the 2002 Licence issued to APTL (then, as now, a council-controlled company) and the May 2007 Licence issued to Firoka, in order to demonstrate how advantageous the 2007 Licence was to Firoka. The operating costs of Firoka's occupation, to be met from the public purse and included in the Licence were:

- Wages and other employment costs of seconded staff
- Repairs and maintenance on AP
- Maintenance of all equipment
- 24 hour security of AP
- Insurance cover
- Rates

The Licence provided for a fee to be paid by Firoka of only £1,000 / month (£8,000 for the whole occupation), not remotely near a market rent and in context, a peppercorn rental. In other contexts when letting, the Trustees are obliged to let at best market rent. There is no provision for interest on defaulted fee payments in a Licence that dripped with incentive clauses.

Firoka were even allowed to operate the **ice rink,** previously controlled by the Charitable Trust and benefiting our Trust directly. The ice rink had been a big contributor to our Charity's funds and its gift of control to Firoka was possibly the biggest sweetener of all. There seemed to be no limit to the generosity toward this property developer, but it came at great cost to public funds.

The Licence was intended as a short-term device and the **Licence Period** was to end on 1 August 2007 (i.e. three months). However the occupation continued beyond this end-date without interruption and continued even after the High Court quashed the separate Lease on 5 October 2007. The occupation of our Charity's premises would eventually last eight months, from May 2007 to January 2008, with Firoka making hyper-profits thanks to the tax-payer subsidy. **The Licence allowed these profits to be kept by Firoka, to be denied to our Charity or to the council and all this in the name of the Trust, chaired by the Member.**

As the Licence was probably unlawful in its entirety (intent, content, terms, signatures), it is almost incidental to note that after the Period of the Licence (its expiry) on 1 August 2007, the failure to evict Firoka until a further four months later, meant that the Trust *continued* to deprive itself of income (a Breach of Trust) … even beyond the agreed period.

The denial of Alexandra Palace to the council's trading company included the most-profitable Christmas period. During the eight month occupation, Firoka (Alexandra Palace) Ltd. traded at least as profitably as was disclosed in their public accounts: that company made a donation from profits to the Aga Khan Foundation of £500,000. Should this money (in the first place), have left a Charity that was much closer to home?

21 The Licence signatures page: *ultra vires*

ALL this flowed from the one-sided Licence that permitted Firoka to occupy AP, a Licence of doubtful lawfulness from the start. The signatures page of the document is almost certainly *ultra vires:*

Not a single Trustee signed the Licence that would alienate all income from our Charity's principal asset.

Any legal document that has such implications – even if just for the anticipated three months – cannot be treated as a routine matter to be dealt with by employees. This Licence is unlikely to be found lawful.

As Chairman of the Board of Trustees, Cllr. Adje should have realised that any document contemplated with the kind of power this Licence had, was not a matter that could be delegated. Indeed that to do so would risk its being found unlawful. As with many aspects of AP *governance*, the Licence was treated merely as another operational matter. The three signatories were:

For our Charity:

David Loudfoot	the then recently appointed general manager, an officer of the Trust
Ken Harrington	Company Secretary of APTL for a couple of years. He was scheduled to retire in January 2008, 10 months later (his boss was Cllr. Adje, also Chairman of APTL)

For Firoka:

Firoz Alibhai Kassam ..	principal and ultimate controlling party of Firoka (the signature appears similar to that appended to Kassam's Witness Statement to the High Court).

While officer-employees were apparently good enough to sign on behalf of the Charitable Trust, the Firoka side was signed by someone who indisputably had authority to sign for Firoka. And no one would be reluctant to sign a legal document whose terms they might have dictated in the first place.

Insufficient authority to sign As officer-employees, the two AP-side signatories must have realised they had *insufficient signing authority*. If they were aware of the GM's Briefing Note, then they must surely have had misgivings about signing, even if they did have authority to sign (which they did not). One can only surmise they were pressured into doing so by someone superior, someone who might themselves have had some authority to sign, but who was unwilling to be seen later to have his signature on the Licence.

The Licence was regarded by the Chairman as vital to holding Firoka's interest and second in importance only to the Lease itself, towards which the Board had been working for years. Is it plausible, that the subject of who would sign and attempt to commit the Trust, was not a matter at least of agreement by the Trust Chairman, if not his direction? Mr. Ken Harrington, the APTL Company Secretary, confirmed that Cllr. Adje was driving the processes (W1: para 73).

Was the person who, directly and / or indirectly, pressured the two employees to sign, in fact Cllr. Adje? If so, this seems to be something unworthy of a Member. If an attempt was made, as appears, to force others to sign a document which was either known to be unlawful, or

which ought to have been known to be unlawful, in order to avoid directly implicating oneself, then this seems to be an abuse of power and political authority.

Delegation of responsibility from Trustees to officers – in this case over the Licence – is not unusual at Alexandra Palace, indeed this is one of the chronic governance problems. Amateur, transitory councilor-trustees often find it convenient to delegate in this way, sometimes to avoid responsibility. But the Licence was at least one case where the Trustees had to be involved and not least, the Chair of the Trustees. If there had been any doubt about sufficient authority to sign any document binding on the Trust, then the prudent course in all cases, would be to have *Trustees* sign.

However, even if a Trustee like Cllr. Adje had signed this Licence, the document was so un-protective of the Charity's position, that it would likely have been a Breach of Trust anyway. The content of the Licence, which allowed Firoka to keep all profits during the occupation, amounted to a denial of income to our Charity: even if every Trustee on the Board had signed it, it is possible that the whole document would be unlawful and those Trustees liable for Breach of Trust.

If key aspects of such a crucial document were *not* known about by the Chairman of both Trust Board and Trading Company (is this credible?), then it reflects on both the Leadership and Stewardship of the Member.

Again, the person with ultimate responsibility for distinguishing between matters that were merely 'operational' and matters that were strategic, had to be the Chairman of the Trust. Did the Chairman understand what the ordinary responsibilities of a Trustee were?

22 Review by the High Court

THE sale process and negotiations had continued with 20:20 tunnel-vision, even after the Chairman must have realised that Firoka's insistence on secrecy was in irreconcilable conflict with the legal requirement for full open Public Consultation – a government minister had specifically promised as much in Parliament. The fairness of the Public Consultation organised by the Charity Commission, was challenged in the Judicial Review of 5 October 2007. The Defendant was the Charity Commission.

But it was recognised that it was the *Trustees* (listed merely as 'Interested Party'), which in truth had made the running over the Public Consultation. The Trustees had been the prime mover behind the extent of the Public Consultation (over Christmas and the New Year), which was ruled to be unlawful. **At the time of the (unlawful) Consultation, the Trust were led by Cllr. Adje.** He had acceded to Firoka's demands for secrecy and he may have had reasons of his own for wishing the deal to be kept private at the time of the (farcical) Public Consultation.

The writer requested a copy of the Lease from the council on 11 December 2006 in time to make an informed response to the Consultation ending on 5 January 2007. This request was met with a letter of 21 December with prevarication and dissembling from the Corporate Legal Service, but no Lease. Was this line ordained by the then Trust Chairman, Cllr. Adje and if so, was this a prudent policy?

Without the Judicial Review, possibly none of these matters would have come to light and Mr. Walklate's investigation might never have been commissioned. The Standards Committee is invited to read the Judgment of Justice Sir Jeremy Sullivan.

23 Evidence of Kassam's High Court Witness Statement

INVESTIGATOR Walklate could find *no evidence in writing* of threats of withdrawal by Firoka at the time of the Licence. The only evidence *anywhere* in writing of any preparedness to withdraw, is a witness statement to the High Court by Firoka's principal Firoz Alibhai Kassam. That statement was made five months after the Licence began and while Firoka were still occupying our Charity's premises. In his Witness Statement, *inter alia,* Kassam crafted carefully qualified caveats:

> *If, during those negotiations [over the Lease], the Trustees had suggested to me that, as part of the consultation process which the Charity Commission had agreed to undertake prior to granting the required Order, the lease (and perhaps the other associated documents) would need to be disclosed in full for public scrutiny, I would have been extremely uncomfortable and would have seriously considered walking away from the project at that stage.*

Justice Sir Jeremy Sullivan observed,

> *It is interesting to note that Mr. Kassam does not state in terms that even if full disclosure had been required, he would have walked away, merely that he would have given serious consideration to doing so.*

Mr. Kassam also said in his Witness Statement for the Hearing:

> *If … the Trustees are unable to enter into the documents which have been agreed between them … [Firoka] will, as matters currently stand and for wholly commercial reasons, withdraw their interest in Alexandra Palace.*

and:

> *If the deal that was finally agreed … is not allowed to complete in the terms agreed, the current intention is to abandon any interest in Alexandra Palace.*

Thus, in the Witness Statement to the High Court where Mr. Kassam had to choose his words carefully, each of the three clauses that threatened withdrawal, were qualified and conditioned.

The Judge had no hesitation in calling Mr. Kassam's bluff and he quashed the whole Lease (5 October 2007). Yet three months later, in January 2008, according to the then new AP chairman, Firoka *re-confirmed* their interest in the deal.

24 Even a quashed Lease & eviction did not deter Kassam

ONE might have supposed that the quashing of the Lease in the High Court (5/10/07) would have been the last straw for the development partner. Kassam did not withdraw interest at that point even after all the withdrawal threats. One might have supposed that Firoka's receipt of a Notice of Eviction in early December 2007 would have

been the last handful of straws for Kassam. Or that the physical departure of Firoka (Alexandra Palace) Ltd. four weeks later, would have been a bale of straw.

But far from withdrawing, in late January 2008 Cllr. Adje's successor Chairman announced that Firoka had given its commitment to re-applying to run AP:

> *Firoka has provided the clarity the board wished to see. The Board resolved unanimously in December to seek a fresh commitment from Firoka on whether it wished to take a long lease on the building and we are pleased that this has been forthcoming. Discussion will proceed between the Trust and Firoka on the best way forward …*
>
> (front page, Ham & High, 24/01/08).

It is notable that this "***fresh commitment"*** by Firoka came six weeks after their eviction notice and two weeks after their physical departure. Was this the action of a company who really 'wanted out', or was it the action of a company that despite two big setbacks, still wanted to stay in and complete the lucrative deal agreed?

Firoka did not withdraw until 18 August 2008, more than 10 months after the High Court had quashed the entire Lease. **This shows *in fact*, how reluctant Firoka was to withdraw.** (Firoka's final withdrawal may also have been influenced at the time by the outlook for the leisure and property sector which if so, would also question their long-term commitment).

25 Walklates 1 and 2 and governance issues

WALKLATE 1 refers to weaknesses, shortfalls and shortcomings in the ***governance*** regime, procedures and arrangements. These summation generalities obfuscate the individual responsibility of the Chairman of the Board of Trustees at the time of the Licence. In his astonishing letter to the *Ham & High*, Cllr. Adje states:

> *We had never denied that there had been longstanding governance problems with the Palace. The Board was faced with a dilemma: whether to spend its energy on the issue of governance as inherited (which is a perennial issue) or to focus on the transfer (which would have resolved the governance issue as the Trading Company would have been liquidated following the transfer).*

I believe the Walklate reports show that the Chairman was at least as much part of the *"governance problems"* as any individual at *"the Palace"* and at least as much part of the problem as he was part of the solution. Today, the mantra of 'improving governance' is often heard, but lacks meaning.

The Standards Committee might like to reflect on what Councillor Adje meant by *governance problems* and what investigator Walklate meant by the same concept. Was the description 'long custom and practice' (of instruction and delegation) also part and parcel of the governance problems?

26 Calculation of loss

WALKLATE 2 documents the effects of the Licence on the finances of our Charity (W2: paras 55–111) and I will not reproduce them here, except to comment that the headline figure for estimated losses being in the general region of £1,500,000, is near the lower end of the possible range. Depending on which method of calculation is used, "*the loss to the Trust is somewhere between £1,487,000 and £2,023,000*".

W2 makes no mention of the accounts of Firoka (Alexandra Palace) Ltd. covering a 24-month reporting period (to 25/09/08). These accounts became available in the same month as W2 is dated (March 2009). It appears that Mr. Walklate did not have the benefit of seeing Firoka's accounts, which disclose turnover of £4,284,520 which occurred in the eight-month occupation period. Their figures for cost of sales and administrative expenses (c. £3.5m) are not broken down.

27 Member's account contradicted

WALKLATE recognises that AP staff operate "*within a political environment*". Much of the blame for the Licence has been put on a retired former council employee (ex-general manager Keith Holder). But at a political level, no individual has taken responsibility. In respect of the Licence, the accounts of Messrs Adje and Holder contradict each other. On key points, both accounts cannot be true.

Is there any doubt that *at the time*, Mr. Holder was doing what his boss the Chairman wanted him to do and directed him to do? There appears to be no evidence that Cllr. Adje was unhappy with the Licence *at the time* and while the Licence remained secret.

Although the focus of Walklate 2 is on quantifying the loss to the Trust and establishing the extent of culpability of a former senior employee, inevitably the question arises as to who was instructing the general manager.

Here, the investigator notes much contradiction between the statements of the now-retired General Manager and the current Member. Is this not a case of CA and KH both being parents to the Licence, with CA trying to deny paternity?

While it seems to be a case of one man's word against another's, the Standards Committee might wish to consider which of these two had more to lose by the whole truth coming out. To this writer, the situation also appears analogous to a contract killer and the employer of the contract killer: the police would prosecute *both* for the crime.

In W2, Martin Walklate comments on Cllr. Adje's responses in numbered paragraphs 20 to 35, which please see. Mr. Walklate is unsatisfied and uncomfortable with Cllr. Adje's position, but as he was working with a narrow remit focused on a single individual (Keith Holder), the investigator was unable to pursue his concerns beyond outlining them.

The Standards Committee should be able to take this further, which is another important reason for this complaint.

28 Letter of Keith Holder to Martin Walklate

EXCERPTS from the letter of the former general manager to the investigator:

> *Cllr Adje … was driving this process*
>
> *A few days after reading and considering the briefing note the Chair came back making it clear that* ***the arrangements with Firoka were not to be jeopardised*** *…*
>
> *The benefit arising from the staffing [staff seconded to Firoka] would be the contribution sought as commented on in paragraph 6 of the briefing note.*
>
> *My advice [KH's advice] that no action was necessary at that stage was clearly set out for the Chair of the Board.*

29 The Member apportions responsibility

A casting of blame by the Member can be discerned from his being interviewed by Martin Walklate. Cllr. Adje insinuates that the former general manager was responsible for the Licence failings. Is this an unfair evasion by the Member of his own higher and larger responsibility?

The only public comment by Cllr. Adje about his role in the Firoka affair was a letter published in the *Ham & High* on 2 October 2008. The letter was so remarkable that it was mentioned by Mr. Walklate and it formed part of the covering bundle with the Walklate 2 Report.

In that letter, the Councillor states *"The licence should have been terminated immediately after the outcome of the Judicial Review as the need for it to continue no longer existed."* The first part is true, but the second part is misleading if not disingenuous. The councillor is unable to recognize that: **(a)** there was never a need for the Licence in the first place; **(b) the Licence put Firoka in a position where they might have to be evicted** and **(c)** he is in any way responsible for this.

Cllr. Adje accepts no responsibility for any failure; he blames his successors for Firoka's final withdrawal *("inaction on the part of the Board to progress matters").* The Standards Committee might wish to check the veracity of this claim with the Chairman's successors. (It seems to this writer that, if successor Chairman Matt Cooke was handed a poison chalice, then it was Cllr. Adje who had filled the chalice to overflowing.)

In Walklate 2, Cllr Adje says *"Keith (Holder) did thank me for letting him run the business* ***without any interference****"*. If Cllr Adje's words are believed and taken at face value, then the Committee might wish to ask, did this imply too much delegation? Given the onerous personal standards expected of Trustees in law, did this in fact suggest an abrogation of the Councilor's duties as a Trustee, let alone as Chairman of the Board?

In his letter to the *Ham & High*, Cllr. Adje claims that *"I should also like to state that I have had no dealings in the affairs of the Palace since I left as Chair"*. But after handing over chairmanship of the *Trust* Board, the Member continued as Chair of the Trust's *Trading Company*, and tried to hang on to this job. Due to the conflict-of-interest with his role as cabinet member for resources, he had to be forced out by full council.

30 The general principles of public life – not met

THE *Members' Code of Conduct* also contains as an Appendix, 10 general principles of public life. Since the conduct complained of was not a single incident but occurred over a period, it is difficult to place the conduct under a single heading. I cannot rule out a single principle that may not have been breached. However, the heading under which falls the most grievous harm done to the reputation and finances of the council, is **Stewardship**:

> *Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.*

The Chairman's reckless disregard for the consequences of the hasty, slipshod Licence that he forced, led to our Charitable Trust recording a loss for 2007/8 (including the eight month Firoka occupation) of £3,100,000.

With regard to the personal contact he had with Kassam, Cllr. Adje has been less than candid and forthright. I would like the Committee to take into account the degree of openness, with which Cllr. Adje answered the questions of investigator Walklate. Cllr. Adje's accounts differed both between Walklate 1 and 2 and also between his own account and that of the retired general manager.

Members have a duty to uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them. The need of Members to uphold the law, must also include the law relating to Trust:

31 Fiduciary Duty of a Trustee

CLLR. Adje's conduct over the Licence fell short of the Standards expected as a Member of the Council. Although beyond the scope of a local authority Standards Committee, it should also be noted in this context that, as a *Trustee of a Charity* Cllr. Adje's actions were probably a Breach of Trust. The standard expected of a Trustee – *Fiduciary Duty* – is onerous, even higher than for a Councillor.

As Trustee, Cllr Adje held the asset for the beneficiaries (us), to whom the beneficial interest belongs. The notion of *duty* to the beneficiaries, is the key concept of Trust. Amongst a Trustee's principal duties are to take reasonable care in exercising their powers as Trustee; to read and understand the Trust instrument; to comply with the terms of the Trust and to provide information and accounts.

The general and statutory duties of care of Trustees include the duty to exercise their power in the best interest of the beneficiaries and not to cause loss to the Trust. A Trustee should exercise such care and skill as is reasonable in the circumstances; and should always consider the need to seek specialist advice in relation to their duties as a trustee. If trustees fail to meet a required standard, they are in breach of trust and may be personally liable to make good any loss to the trust. Beneficiaries are able to take legal action against trustees to recover any loss.

Even a casual reading of the tests for Breach of Trust suggest that, over the Licence to Firoka, Mr. Adje might fail to meet standards for a Trustee, before he failed to meet the standards expected of a Member.

One aspect of investigator Walklate's engagement was that, as well as reporting to the Director of Corporate Resources, he was also in part reporting to Cllr Adje's successor Trustees. The former Trustee, Cllr Adje was not mentioned by name in the remit of W2 as the general manager had been. Did he pull his punches over the ex-Trustee?

Mr. Walklate was engaged by the local authority and is an accountant experienced in local authority investigation. His brief was directed towards administrative failings which over-lapped with failings of direction, judgment and stewardship. He was skeptical about the administrative performance of a number of those involved in the development of the Licence, especially the two key individuals, KH and CA.

If Mr. Walklate had had a wider brief from the council or if he had been a lawyer with Trust and Charity experience, might he have been more critical of the chairman's role as a Trustee with respect to his *fiduciary* duty to the Trust?

32 Public could not depend on the Regulator

IN HIS role as Chair of a Charitable Trust, Cllr. Adje was subject to little supervision, certainly little apparent from the Charity Commission (CC). Despite repeated warnings, the proper regulator has often turned a blind eye to chronic mismanagement at the AP Charitable Trust. The CC appears neither to have seen a copy of the Licence beforehand nor to have shown much interest in it since.

The CC's failure to regulate adequately is a big separate subject; the point here is that, given the lightness of regulatory oversight of AP, Borough residents and Trust beneficiaries had to depend on the *personal* judgment and leadership of the Trust Chair to meet the standards expected of a Councillor, let alone those of a Trustee.

Everyone now acknowledges that undefined 'governance problems' existed at Alexandra Palace. That they have been allowed to continue for so long is partly due to the non-intervention of the charities regulator. The conduct of this Charity appears to have been untouchable by the Regulator (but that does not absolve the Member).

The conduct of the CC itself, in the Public Consultation over the sale of AP and related matters, was the subject of sharp criticism by the High Court, when their Order giving permission for the sale was struck down. The Judge wanted to award costs against both the CC and the Trustees (in the event, due to a pre-Hearing agreement costs were awarded against the AP Trustees only). The Trustees, listed only as an Interested Party, were seen to have been the prime mover and their conduct was also heavily criticised by the Judge.

A year after Walklate 1 and four months after the publication of Walklate 2, the CC has yet to take action in respect of our Charitable Trust. Apparently it is enough that everyone repeats 'governance needs to be improved'. Assurances by AP of better behaviour always appear to be believed by the CC. The decision by the council to commission an investigation – whose remits were set by the council – seems to have allowed the regulator to sit on their hands.

I invite the Committee to take action now, post-Walklate.

33 Conclusion

THE Chairman said that his "Board's *aim at all times was to* ***transfer the risks*** *and secure the future of the assets …"* [*Ham & High* letter]. Walklate said *"I fail to understand what risk"* [W2:83]. The Licence, far from transferring risk away, was to take risk on and led in fact to great actual damage.

The Licence that cost our Charity a fortune, is only the most visible example of Cllr. Adje's prosecution of the sale at all cost, despite warning signs.

If the deal was a car, then it was being driven along a pot-holed road that became rougher, but it did have controlled intersections. Traffic lights along the way would show orange or red, but the Trust Chair kept his foot flat to the floor. The trip would lead to the Judicial Review of the CC's Order that stalled the entire Lease which Cllr. Adje had earlier driven with blinkered vision. The journey ended in the final crash of Firoka's withdrawal and seeking of damages – for which we may all pay. Cllr. Adje had left the scene of the accident and the wreckage and bills were left for others to deal with.

The sale of AP to Firoka, over which the Chairman presided, is replete with mistakes and lack of prudence. Not all the effects of Cllr. Adje's conduct over the Licence could be predicted, but the risks and uncertainties of a Licence were clear and spelt out at the time and the Licence continues to have ramifications.

Longer term implications An eviction of Firoka would never have been necessary, had the Licence not permitted occupation *prematurely*, as the Licence provided for. The irritation Kassam must have felt after having been evicted, may have contributed to his eventual decision to sue our Charity for £6,200,000.

A deal might have been struck that satisfied all parties, but that would have required more resolve by the Chairman to defend the public interest during the critical negotiation period. The rush to force through the Licence and its fall-out may have set back the attempt to find a decent development partner by 25 years.

When the current AP chairman, Pat Egan, acknowledged at a Board meeting that *"we are not loved"*, he probably meant the Board rather than Alexandra Palace. One way to restore some confidence would be for the Standards Committee to demonstrate that the most egregious and best-documented case of unsatisfactory conduct at senior level at AP has been more than recognised, but dealt with.

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