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11th December 2018

Dear [REDACTED]

I write as an Allerdale resident and taxpayer, to you as the Council's most senior legal officer, with concern following my recent receipt of documents relating to the AIP.

I ask that you provide me with the detail of all advice received by the council, councillors or officers, originating either internally or externally, in relation to the legal requirements placed upon each of them by the members agreement and their signed undertakings.

You will recall that I wrote to you back in 2016 in relation to the effect of the Companies Act 2006 on the directorships of Councillors Smith and Fryer, and how that act imposes duties upon them that may be at odds with their duty to the Council and to Allerdale taxpayers. In particular, my concern was with Sections 172 (duty to promote the success of the company) and 175 (duty to avoid conflicts of interest). I also raised with you the possibility that they may not be protected by limited liability, but that the veil of incorporation may be lifted to make them personally liable for the actions of the company. I ask that you provide me with the detail of the Council's position, and advice to members, on these points.

Within the documents I received were a number of undertakings, signed by Councillors Smith and Fryer, [REDACTED] - who no longer works for the council - and [REDACTED] who, as our Responsible Financial Officer, is the effective treasurer of the Council. I would like to know who replaced [REDACTED] and ask that you send me a copy of their undertaking, along with that of any other councillor or officer that I haven't listed.

Worryingly, these undertakings read like an oath of loyalty to be sworn to the AIP LLP while neglecting the duty that the councillors and officers have to the council and to Allerdale taxpayers.

I would specifically point out the following undertaking, signed by each of the aforementioned councillors and officers:

2. In all respects as contemplated by the Members' Agreement, act in the best interests and good faith towards the LLP;

It is my opinion that this undertaking has the effect that councillors and officers must work in the best interests if the AIP LLP, over and above any duty they owe to the council or Allerdale taxpayers. While there may be some argument to be had about the duties conveyed upon councillors, there can be NO argument about the fiduciary duty placed on the Responsible Financial Officer. In the case of Attorney-General v De Winton (1906) the court held that a Treasurer is not merely a servant of the Council but holds a fiduciary relationship to the tax payer.

I ask that you provide me with the detail of the Council's position, and advice to members and officers, on this potential conflict but specifically in relation to the conflict which HAS TO arise in the position of the RFO having signed this undertaking.

Having read the members agreement, there are several points that I believe set the council against its electors and ultimately prevent the council seeing best value for its assets.

At the outset of this partnership, the council were sold a number of benefits - such as significant financial returns and large-scale job creation in the first five years from the first three sites, alongside a number of

other benefits. The council has recently accepted that it is now impossible to see those promises met at all, not just within the proposed timescale.

I don't say this lightly, but it is my belief that Allerdale taxpayers are being asset-stripped in front of our very eyes. This is being assisted by the Executive, who were no doubt blinded by the promise of the new stadia and leisure facilities that the council are now planning to borrow for. I note several similarities between the stadium plans, and those stadia that Lucent (the original architect of the AIP) have previously been involved in.

My belief appears to be borne out by the fact that the council has written its Asset Management Policy, and its Disposal and Acquisitions Policy around the involvement of the AIP in the 'first instance' in any disposal. The latter policy explicitly states that:

"Should there be a commercial opportunity available to the Council a disposal to the AIP will then be considered prior to any other disposal model."

This appears to be a requirement placed upon the council by clauses 8.3 and 8.4 of the AIP LLP Members Agreement as follows, where reference to Lucent is a reference to the AIP LLP:

8.3 *The Council undertakes to consult with the LLP during the term of this Agreement in respect of any potential dealings it may enter into or consider entering into in relation to any of its land assets from time to time and to act in good faith in respect of any such consultation. Provided always, that the Council shall not be required to consult with the LLP in respect of:*

8.3.1 *any land to be disposed of to a community organisation such as a Town Council or Voluntary Body;*

8.3.2 *any land to be disposed of pursuant to a "Right to Buy" related to social housing,*

but shall be required to notify Lucent of any land to be disposed of pursuant to the duty of the Council to make available to community organisations "Assets of Community Value" under the Localism Act 2011. The Council further undertakes to the LLP to use its reasonable endeavours to notify the LLP of any potential sites which would be suitable for consideration by the LLP for investment in accordance with the Objectives.

8.4 *Exclusivity of Future Sites*

If the Project Team shall identify a Future Site which is owned by the Council and is deemed to be surplus to the Council's requirements, the Project Team may determine that such Site should be investigated by the LLP with a view to it being acquired by a Project SPV. The Council shall, within 20 Business Days of being requested to do so by the LLP, provide the LLP with a duly executed exclusivity agreement in respect of such Site in substantially the form of the Exclusivity Agreement.

I am concerned that these requirements mean that for a minimum of 25 years, being the length of the contract entered into with the AIP LLP, the Council must go through the AIP – a third party and external private company - to SEEK ITS PERMISSION prior to entering any land transaction, unless that transaction involves a community organisation, a council or if it's 'right to buy'.

I am concerned that these requirements also mean that ANY site across the Borough can be requested by the AIP. If the council deem the site surplus, we MUST then - within THEIR TIMESCALE - draw up an exclusivity agreement barring any talks with any other developer. It would also seem to state that the council must also spend taxpayer funded officer time using 'reasonable endeavours' to notify the AIP of ANY suitable land.

I ask that you release any advice that the council may have given or received on these matters, and any advice that the council may have given or received on the possibility of withdrawing AT NO COST from the vassalage imposed on us by these agreements and undertakings, prior to the 25-year termination date.

Yours sincerely



Mark Jenkinson