



12 October 2018

Our Ref: 972/JLD/1393/009  
Your Ref: TBC

**Transport for London**  
Commercial Development  
Directorate (Property)

Mirca Morera  
Unit 56, Seven Sisters Market  
231 - 243 High Road  
LONDON  
N15 5BT

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55 Broadway  
London  
SW1H 0BD

Tel No: 020 3054 5837  
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Email: [joannadaly@tfl.gov.uk](mailto:joannadaly@tfl.gov.uk)

Dear Ms Morera,

## **Re: Seven Sisters Market – Second Investigation**

I am writing in connection with the above matter and the formal complaints we received in September 2017 from you and Ms Alvarez. I would like to apologise for the time it has taken for us to conclude our investigation.

As per my letter of 12 October 2017, the complaints focused on two principle areas:

1. Unfair practices
2. Inappropriate conduct

We reviewed the formal complaints and other correspondence we considered pertinent to our investigation. We have held meetings with you and other traders, as well as MAM and Grainger to investigate the allegations and establish all parties' perspective. Our notes and minutes of meetings are available in the appendices to the report enclosed with this letter.

Having concluded the investigation, we are of the opinion that no further action might be taken at this time. TfL will continue to work with MAM concerning the lease but we encourage the parties to co-operate concerning the management of the trading licenses.

Should you have any further questions do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Joanna Daly'.

**JOANNA DALY MSc MRICS**  
Senior Property Manager | TfL Commercial Development

## **Investigation Report: Seven Sisters Market**

**Date:** 12 October 2018

**Investigation by:** Sinclair Gray, Consultant Property Manager.  
Joanna Daly, Senior Property Manager.

### **I. Background**

The freehold of this building, formerly known as 'Wards Department Store' is owned by London Underground Ltd and managed by their agents Transport for London. The building is situated directly above Seven Sisters (Victoria Line) Underground Station. Part of the ground floor of the building which comprises 231-243 High Road and 249a High Road, Tottenham, N15 is now known as Seven Sisters Market (the Market).

The Market was previously leased to Ms. Jill Oakley who sold her lease – by way of assignment - to Market Asset Management (Seven Sisters) Limited (MAM) with effect from 15 September 2015. The lease that MAM purchased was subsequently renewed in the name of the new business owners - MAM. Sale of the business to MAM included title to and the benefit of all existing Trader licences, goodwill and improvements (i.e. tenants' fixtures and fittings). The lease demise is for part-only of the ground floor of the building and includes a small portion of the rear service yard. The freehold of the service yard to the rear of the Market is owned by Grainger plc and held by MAM under a lease granted by Grainger.

The Market is understood to currently comprise 61 single-storey lock-up kiosks many of which have been combined for a single occupancy. It is fully-let to 38 SME's / Sole proprietor businesses ('Traders') mainly of South American background.

However, when the building was originally leased by LUL to Ms. Oakley in 1984 it was a derelict structural shell without any service supplies, shopfronts or internal fixtures and fittings. The current lock-up units ('stallage') within the demise and the double-fronted shops facing onto the High Road and all service intakes, sub-mains distribution, heating and ventilating, lighting and fire alarm etc. installations represent Tenant's improvements to which title remains with MAM.

The upper floor of the building and part of the ground floor remains derelict and sealed-up since the 1960's when the building and adjacent properties were acquired by LUL as part of the construction of the Victoria Underground Line. Adjacent premises are still owned and separately let and managed by LUL.

## 2. Context

Tottenham is an improving area of North London; the local authority, the London Borough of Haringey (LB Haringey), is taking positive strides to continue to stimulate the area through its programme of regeneration. The Market is a key part of the LB Haringey's development plans for the Seven Sisters' area and the borough. The site is part of a series of developments proposed to bring jobs, housing, and prosperity to this deprived part of North London through its regeneration programme. LB Haringey's preferred regeneration and development partner is Grainger. The development plans are considered to be controversial in the immediate locality, and are not popular with the traders.

Following the assignment of the lease to MAM (by Ms Oakley) a few of the Traders represented by Mirca Morena have made a series of complaints to TfL broadly concerning:

1. the grant of the lease to MAM.
2. the conduct of some of MAM's staff.

The latter was subject of an investigation (the First Investigation) by Alun Jones and Clive Henman which concluded in April 2017. It is in this context that Ms Morena and Ms Alvarez wrote to TfL on 06 and 07 September 2017; both letters of complaint can be found in Appendix 1 and Appendix 1a.

On the 12 October 2017 TfL acknowledged the complaints and agreed that we would investigate them. A copy of the acknowledgement letter of 12 October 2017 can be found in Appendix 2.

We should reiterate at this stage that LUL have not specifically appointed MAM as a market facilitator, they are the leaseholder by virtue of the transfer of the interest from Jill Oakley and the granting of the new lease for uses that include retail, café, residential and car parking. Neither LUL nor TfL have a direct relationship with the Traders. This distinction has a considerable impact on our ability to influence the day-to-day running of the market or to intervene regarding license disputes. TfL only have recourse to address matters related to MAM within the confines of the provisions of the lease granted by LUL to MAM.

Nevertheless, TfL recognise the seriousness of the allegations, as demonstrated by undertaking this investigation.

## 3. Allegations

On 06 September 2017 TfL received a letter from Mirca Morera to raise "*a formal complaint of discrimination, victimisation and harassment.*"

The letter dealt with: "*poor management and inappropriate behaviour from the market facilitator and MAM director Jonathan Owen*" in relation to the running of Seven Sisters Market.

The following day on 07 September 2017 TfL received a second formal complaint from Vicky Alvarez. In this letter Ms Alvarez referred to *“Jonathan Owen [sic] actions, which still continue, creates [sic] an intimidating, hostile, degrading and offensive environment in which to carry out our business, it not only violates our dignity but has caused great stress and illness.”*

Due to the proximity of the dates and the similarity in nature of the complaints it was felt that it was appropriate to treat the two formal complaints under one investigation.

In assessing the allegations set out both within the correspondence received in early September 2017 and the letter from Bindmans of 30 July 2018, we have had particular regard to Bindmans’ points 30 (1-7). In this respect we feel that our response of the 12 October 2017, in which TfL highlighted two distinct areas on which we will focus our discussions and investigation is still relevant, and furthermore provided a foundation from which to conduct this investigation. The two points raised in that letter were as follows:

- A.** Unfair practices allegations.
- B.** Inappropriate conduct allegations.

#### **4. Methodology**

In seeking resolution to this matter and in order to conduct an investigation TfL arranged a number of meetings with the complainants Mirca Morena, and Vicky Alvarez and also with a number of the other traders who have raised concerns in this matter such as Fabiano Catano amongst others. TfL also arranged meetings with Jonathan Owen from MAM, also attended by Jonathan Kiddle of Grainger.

In addition to the meetings, as referred to above, we have also held meetings and hosted a number of conference calls with MAM to review progress in relation to the Action Plan produced in April 2017 and to monitor the level of relations between MAM and the Traders. These events took place during June, July, August and October 2017 and June 2018.

Of specific note to the investigation were the following formal meetings which were held as set out below. The distributed minutes are attached in the Appendix 3 to 6.

- 02 August 2017 - TfL met with Jonathan Owen and Jonathan Kiddle at our offices at 55 Broadway. Please note the minutes are documented by way of an email of 10 August 2017 - please see Appendix 3.
- 13 November 2017 - TfL met with Mirca Morena, Victoria Alvarez, Daniel Martinez, Fabian Catano et al. at 55 Broadway. Please see Appendix 4.
- 14 December 2017 - TfL met with Jonathan Owen and Jonathan Kiddle at our offices at 55 Broadway. Please see Appendix 5.

- 08 June 2018 - TfL met again with Jonathan Owen, and Jonathan Kiddle to find out how the various points in the action plan were progressing and to further discuss the original complaint. Please see Appendix 6.

## **5 Findings**

Having set out some of the background and methodology in carrying out this investigation we now progress to the findings, which for ease of reference will follow the basis set out in TfL's letter of 12 October 2017, and Section 3 above.

### **5.1 Unfair Practices**

The first element of the unfair practices allegation centred on the increased utility charges proposed by MAM. TfL responded to the allegations in June 2017 and continued dialogue with MAM to ascertain if unfair practices had in this instance taken place. It should be noted at this point that TfL have no jurisdiction over direct contractual matters such as setting fee levels between MAM and the Traders.

We understand that seven out of 61 traders received new electrical meter installations and utility charges increases. Whilst we understand these seven traders occupy 19 units i.e. 32% of the total number of units, for the sake of clarity we should note that this actually represents 11% of the Traders.

On TfL's request MAM produced market analysis of the utility costs to confirm how the electricity costs charged by MAM compared to the average market rates. Whilst it became clear that an error had been made in calculations, the ultimate conclusion - barring that error - was that the rates charged were not out of line with the market rates, which TfL reviewed and found to be satisfactory.

Based on information provided by MAM, the Traders who received new meters and who were subsequently billed, based on the metered usage, were those who did not appear to purchase the correct number of tokens commensurate with usage at their premises as analysed by past usage and the size of units themselves. MAM stated that there had been several examples of unauthorised and unsafe utility connections and some old token meters had been tampered with allowing tokens to be recycled. TfL have not verified this further as it is not within TfL's remit or indeed TfL's right to do so. Additionally, MAM stated that they intended to roll out new meter installations to other units, pending review of the electrical loads and installation by Traders.

TfL tabled to MAM the 'unfair practices' allegations that the new meter installation and resulting utility increases were discriminatory; MAM strongly rebutted these allegations and referred to the justification summarised above.

Reverting to the increased utility charges, following TfL intervention, MAM committed to provide a breakdown of the utility charges to the Traders to improve clarity of information and restore trust in the accuracy of the charges. In addition to that, MAM held their hands up and admitted that there were errors in calculating the charges. TfL were advised at a meeting on 08 June 2018 that full reimbursements of any overcharged sums had been completed.

We do not accept there was any unfair practice by MAM. There was a process put in place to address historic irregularities. Errors appear to have been made which have now been corrected. No further action is required.

## **5.2 Inappropriate conduct, harassment and discrimination**

The second allegation was of inappropriate conduct, harassment and discrimination and this centred around allegations made by Fabiano Catano in relation to his proposed eviction. Whilst TfL understands that the eviction of Mr Catano was a result of unpaid outstanding license and/or utility fees, it must be made clear that this is a direct contractual matter between Mr Catano and MAM. Nevertheless TfL have sought to understand the reasons, and to that end MAM provided TfL with a Statement of Account for Mr Catano, which they felt demonstrated Mr Catano's poor licence fee payment history. This included a period prior to the new meters having been installed. This Statement of Account demonstrated irregular payments and outstanding amounts of monies owing accumulating over a significant period of time. That said, we note that the utility charges have further contributed to the level of debt Mr Catano appears to have had with MAM. We were also informed that several payment plans have not been honoured. The conclusion that TfL can draw is that the eviction was not related to Mr Catano's place of origin, or his disability or a result of the unpaid increased utility charges, but instead most likely a result of an ongoing history of poor payment of monies due under the license Mr Catano held from his landlord MAM.

We understand an offer of a new license was made to Mr Catano's wife, which has not been taken up. We also understand that Mrs Catano remains in occupation as a Tenant at Will.

At a meeting on 14 December 2017 with MAM we discussed the specific allegation centred around nationality, particularly in relation to the electrical charges. MAM were adamant that they adhered to both LU Harassment and Bullying at Work Policy and Procedure and MAM's own Equality and Inclusion Policy, which they shared with TfL.

We note the inclusion of additional claims of inappropriate language used by Mr Owen of MAM - this is behaviour TfL does not condone. That said, it appears most of the examples referred to at the meeting with the Traders in November 2017, had already been dealt with as part of the First Investigation undertaken by Alun Jones and Clive Henman, and concluded in April 2017, and which Mr Owen had already acknowledged and apologised for.

In respect of Victoria Alvarez's formal complaint which was borne out of MAM seeking specific items of information from Ms Alvarez, we consider that it is perfectly normal practice for licensors to understand the contractual arrangements of their licensees trading from any given premises. TfL do not therefore consider that it is inappropriate for MAM to investigate contractual issues and to expect to be provided with answers to questions relating to the contract. MAM are entitled to seek to establish contractual relationships between parties who operate units and those who hold licenses. TfL do not consider requests for information to be examples of harassment or victimisation. TfL in fact consider that it is prudent in the context of the track record of unauthorised underlettings to obtain information in order to protect the public from any potential liability arising out of any contractual relationship.

At all three meetings TfL have held with MAM since August 2017 we have tested and challenged MAM on the subject of behaviour, attitude and language. We are reassured that MAM recognise the need not to allow such situations to occur. Please see the Action Plan in Appendix 10 and the email / minutes of 10 August 2017 (Appendix 3) which clearly demonstrate that TfL is and has been consistently and actively engaged in monitoring MAM's behaviour, and specific actionable improvements to the Market.

The Action Plan continues to be a subject of discussions between TfL and MAM to track progress.

Additionally, we have been informed that MAM now employ staff such as Malcolm Veigas, Henry Paz, Marisol Lopez as intermediaries between MAM and the Traders and this minimises day-to-day contact, reduces exposure to the possible confrontational exchanges. These changes appear to have improved relations.

## **6. Other actions taken**

TfL and MAM have been working on the developing Action Plan since early 2017. This piece of work has been expanded on since then and MAM have continued to engage with it further. TfL believe that significant steps have been taken to improve the Market area for the Traders. The Action Plan has identified several areas of works such as security, car parking facilities, cleaning and removal of graffiti amongst other things where specific actions have been identified, actioned and completed. The Action Plan is also intended to help with promotion of the Market; a series of cultural events have been arranged and gives a commitment to continue to work to improve the relations with the market traders. MAM have advised TfL that many of the market promotions, or business support facilities offered have not been taken up by the Traders.

A copy of the Action Plan is available in the Appendix 10.

## 7. Conclusions

TFL continue to recognise the challenge of running the Market in the context of the proposed development of the site. We understand that this is an extremely testing time for many people with a long-standing connection to Wards Corner.

We have met with the Traders and carefully considered the content of their correspondence, as well as the reasons that have given rise to their complaints.

We have held several meetings with MAM and Grainger to continue to reinforce not only the concerns raised by the Traders, but also to monitor and to drive forward the agenda set out in the Action Plan. Furthermore, we have considered the various actions that MAM have advised us have been undertaken since the conclusion of the First Investigation, and this is captured in the body of this report and the Action Plan.

We appreciate that MAM's way of operating the Market might at times appear to be insensitive and in some instances this may be seen as unfair to the Traders in light of a long standing relationship with the previous tenant – Jill Oakley. However, it is a commercial reality that MAM are not bound to do as their predecessors did in terms of their approach to managing their contractual relationships with the Traders. There is no evidence that their actions have been unfair or in breach of any contractual relationships that are in place with Traders. Most of the actions referred to appear to be consistent with the contractual relationship that MAM has with the Traders.

We recognise the testing circumstances which both MAM and the Traders have been operating under, and recognise that this has led in some instances to mutual distrust; this in turn impacts on the tone of communication between both parties. However, as stated above, most examples of inappropriate conduct were in fact addressed as part of the First Investigation, for which an apology has already been provided. MAM and its directors recognise the root cause of conflict, and are aware of the importance of avoiding testing encounters wherever possible, and this is evidenced by the number of staff MAM now employ (as opposed to in 2016/17) in a concerted effort to uphold and maintain respectful relations.

To conclude, Tfl want to take this opportunity to underline our commitment to all the licence holders at the Market, but TFL cannot act as an umpire in the ongoing disputes between the landlord and the license holders, in particular in contractual matters which only the parties to the contract can address. We echo the sentiments of the court in relation to the case brought forward by Mr Fabian Catano against MAM, in which the parties were directed to revert to mutual, bipartisan dialogue in order to resolve the dispute outside of the jurisdiction of the court. Notwithstanding the above TFL continue to stress its commitment at the highest level to all customers of TFL regardless of ethnicity, race, or colour and will continue to encourage all those it has dealings with to do the same.

## **Appendices**

- (1) Mirca Morena's letter of 06 September 2017
- (1a) Vicky Alavarez's letter of complaint of 07 September 2017.
- (2) Joanna Daly's letter of 12 October 2017.
- (3) Sinclair Gray's email / minutes to MAM of 10 August 2017 (Meeting 02 August 2017).
- (4) Minutes of Seven Sisters Market Meeting held on 13 November 2017.
- (5) Minutes of Seven Sisters Market Meeting held on 14 December 2017.
- (6) Minutes of Seven Sisters Market Meeting held on 08 June 2018.
- (7) Mirca Morena email to Sadiq Khan 15 January 2018.
- (8) Bindmans LLP Letter dated 30 July 2018.
- (8a) TFL's reply to Bindmans 18 September 2018.
- (9) Letter to Haringey Council - 15 August 2018.
- (10) Seven Sisters Market: Action Plan.

Mirca Morera,  
Unit 56, Seven Sisters Market,  
231-243 High Road,  
London N15 5BT

**Graeme Craig**  
**Transport for London**  
**5th Floor - West Wing**  
**55 Broadway**  
**London SW1H 0BD**

**6th September 2017**

Dear Graeme,

**Subject: Meeting**

I would like you to accept this letter as a formal complaint of discrimination, victimisation and harassment within the premises of Seven Sisters Market.

Since the last TFL February 2017 complaint regarding poor management and inappropriate behaviour from the TFL appointed market facilitator Jonathan Owen; and his use of language with racial undertones of "bloody illegal immigrants" and "not meaning to be Irish" in a public meeting with a migrant community on the 13th February 2017; there have been further incidents instigated by the market facilitator and MAM director Jonathan Owen.

1. There have been utility hikes of 300% experienced by 32% of market traders. All of the 7 traders subject to these hikes are of Latin American origin. Many of the traders receive no information on their bills relating to their energy usage or related cost breakdowns.
2. Disabled, afro-latino, trader Fabian Catano (victim of the London 7/7 bombings) has been issued with an eviction order dated 27.7.17. The

eviction is wholly related to these hikes. Fabian has partial hearing and bomb shrapnel in his leg. He suffers communication and mobility difficulties, and he has had to sell his car to pay the excessive utility charges.

3. Negligence in security management has led to four traders being victims of crime inside the market place in May 2017. There was a near fatality in the market car park in June 2017. Children play inside the market place and businesses pride themselves on being family friendly, so this is a major concern. The police have advised that the current system in place is inadequate to address security concerns. For instance, the CCTV system is defunct as incident recordings are not being handed over to the police. Jonathan Owen has contracted an external provider to do random patrols of the car park. However, it is for a limited timeframe and the police have highlighted the absence of a sign in system for the patrol team as an issue, as there is no proof that patrols are taking place. Recently, there has been an increased police presence onsite. However the police have advised that they are not responsible for private property security management and have managed our expectations accordingly. Recommended minimal measures such as security signage have not been introduced by management despite repeated requests.
4. An unscrupulous parking firm has been appointed by Jonathan Owen to manage the car park, which is literally driving away trade, instead of attracting further custom as alleged by Jonathan Owen. Traders and customers have been issued with parking fines when parking ticket meters were not working properly and when cars were even not present at the car park at the alleged time of the parking offence. Latin American trader Maria Osorio has reported around 9 parking fines and court actions with a total value exceeding £1000. Customers have been deterred from visiting the market and many traders have been issued with multiple fines and court actions.
5. Traders have publicly demonstrated a vote of no confidence in Jonathan Owen, as well as members of the public. Millionaire Latin businessman Oscar Murillo has recently offered to purchase the lease of the market, in order to save the market and his offer was refused by TFL. The community Trust offered £100k per annum for the lease of the market yet it was awarded to Jonathan Owen for £60k per annum without

tender, despite being heavily contested with complaints for behaviour previously mentioned and was legally challenged.

6. Trader Vicky Alvarez has been singled out by the market facilitator by Jonathan Owen and he has intruded in her private business affairs. Her private business accounts and information relating to her employees have been solicited. Jonathan Owen has already forcibly taken a trading unit from Vicky Alvarez. In addition, Jonathan Owen offered Vicky Alvarez's unit to her employee, while Vicky Alvarez was away from her unit.

7. A trader has reported offensive sexist language that was used to describe Vicky Alvarez and another female trader. The trader reported that Jonathan Owen called Vicky Alvarez and another female trader a "fucking bitch."

8. Jonathan Owen approached another disabled Latin trader Fernando on 5th September 2017. He told Fernando that he was very angry with Fernando and me because of our public declarations made at the CPO hearing July 2017. He has threatened to take further actions against us.

In our meeting with TFL on the 16th March, we highlighted the following points

- "Migrants, refugees we are all human beings."
- "We need to treat all human beings refugee or migrant."
- "With respect and dignity."

The lack of dignity and respect that has been shown by a TFL appointed market facilitator needs to be addressed. We have felt discriminated as a migrant community. I would have expected that a state owned enterprise as TFL would have taken this matter more seriously. In accordance to the United Nations Guiding Principles on Business and Human Rights, state owned enterprises are meant to lead by example. Please note that the United Nations publicly intervened on our behalf in the recent hearing and were requested to make contact with TFL.

The Equality Act 2010, under victimisation places a duty on Transport for London to ensure they do not subject another person to a detriment because they believe they have done a protected act or may do a protected act such as bringing proceedings under the act and doing anything which is related to the provisions of the act.

Mirca Morera,  
Unit 56, Seven Sisters Market,  
231-243 High Road,  
London N15 5BT

**Graeme Craig**  
**Transport for London**  
**5th Floor - West Wing**  
**55 Broadway**  
**London SW1H 0BD**

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1. There have been utility hikes of 300% experienced by 32% of market traders. All of the 7 traders subject to these hikes are of Latin American origin. Many of the traders receive no information on their bills relating to their energy usage or related cost breakdowns.
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eviction is wholly related to these hikes. Fabian has partial hearing and bomb shrapnel in his leg. He suffers communication and mobility difficulties, and he has had to sell his car to pay the excessive utility charges.

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4. An unscrupulous parking firm has been appointed by Jonathan Owen to manage the car park, which is literally driving away trade, instead of attracting further custom as alleged by Jonathan Owen. Traders and customers have been issued with parking fines when parking ticket meters were not working properly and when cars were even not present at the car park at the alleged time of the parking offence. Latin American trader Maria Osorio has reported around 9 parking fines and court actions with a total value exceeding £1000. Customers have been deterred from visiting the market and many traders have been issued with multiple fines and court actions.
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tender, despite being heavily contested with complaints for behaviour previously mentioned and was legally challenged.

6. Trader Vicky Alvarez has been singled out by the market facilitator by Jonathan Owen and he has intruded in her private business affairs. Her private business accounts and information relating to her employees have been solicited. Jonathan Owen has already forcibly taken a trading unit from Vicky Alvarez. In addition, Jonathan Owen offered Vicky Alvarez's unit to her employee, while Vicky Alvarez was away from her unit.

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8. Jonathan Owen approached another disabled Latin trader Fernando on 5th September 2017. He told Fernando that he was very angry with Fernando and me because of our public declarations made at the CPO hearing July 2017. He has threatened to take further actions against us.

In our meeting with TFL on the 16th March, we highlighted the following points

- "Migrants, refugees we are all human beings."
- "We need to treat all human beings refugee or migrant."
- "With respect and dignity."

The lack of dignity and respect that has been shown by a TFL appointed market facilitator needs to be addressed. We have felt discriminated as a migrant community. I would have expected that a state owned enterprise as TFL would have taken this matter more seriously. In accordance to the United Nations Guiding Principles on Business and Human Rights, state owned enterprises are meant to lead by example. Please note that the United Nations publicly intervened on our behalf in the recent hearing and were requested to make contact with TFL.

The Equality Act 2010, under victimisation places a duty on Transport for London to ensure they do not subject another person to a detriment because they believe they have done a protected act or may do a protected act such as bringing proceedings under the act and doing anything which is related to the provisions of the act.

Also the Equality Act under harassment places a duty on TFL to ensure they do not engage in unwanted conduct relating to race, disability and gender which has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Lastly, the Equality Act 2010 (the Act) states that trader Fabian Catano is protected against unlawful discrimination because of his disability. The Act places a duty on TFL to ensure they do not treat someone unfavourably because of something arising in consequence of their disability and they cannot show that the treatment is a proportionate means of achieving a legitimate aim.

I have tried to resolve the matter formally in a TFL meeting on the 16th March with Alun Jones, Tom Atkinson and Clive Henman in Seven Sisters, and a TFL investigation was initiated. However, we have not received a satisfactory outcome. I am making a second formal complaint and I would like to arrange a meeting at the TFL offices. In your response please let me advise me of a date of a meeting.

Please provide your response in writing within 14 days from receipt of this letter.

Yours sincerely  
Mirca Morera



## **APPENDIX I(a)**

**From:** el cafetal [<mailto:elcafetalservices@hotmail.com>]

**Sent:** 07 September 2017 19:45

**To:** Henman Clive; Butler Ellis Edward; Miller Elspeth; Craig Graeme; Martin; [kuimudpatel@tfl.gov.uk](mailto:kuimudpatel@tfl.gov.uk); [jonathan.weisgard@london.gov.uk](mailto:jonathan.weisgard@london.gov.uk); Craig Graeme

**Subject:** Re: Seven Sisters Market: Units 37 /38 - Update

good afternoon

once again I am forced to email everyone on the list

as I am NOT getting any response from Jonathan Owen, your appointed market operator, neither by email nor phone,

so I would like to make all of you aware that we have answered his email and due to fear of reprisals I have send you this email.

I also have no choice but to serve you with this notice

unit 37/38 seven  
sisters market  
231-243 high  
road,london n15 5bt

Graeme Craig  
Transport for London  
5th Floor - West Wing  
55 Broadway  
London SW1H 0BD

**07/09/2017**

Dear Graeme

### **harassment,victimisation and bullying**

I would like you to accept this letter as a formal complaint of harassment within the premises.

- your appointed market operator Jonathan Owen of MAM and Quarterbridge has in many occasions approached our members of staff in an overwhelming and imposing manner offering them the opportunity to take over our units(37/38),this has led to the staff leaving
- due to the stress caused by this dreadful harassment and has caused us great financial loss.
- Jonathan Owen actions ,which still continue, creates an intimidating ,hostile ,degrading and offensive environment in which to carry out our business, it not only violates our dignity but has caused great stress and illness.

- we know his actions are based on his proven track record of racist remarks , which you are well aware of, his actions increase with greater intensity after every complaint that we make about him ,after every action we take to try and save the market

The Equality Act 2010 under harassment places a duty on the TFL, the landlord to ensure they do not engage in unwanted conduct relating to racism thru bullying , victimisation which has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

I have tried to resolve the matter informally but I have not received a satisfactory outcome. I am making a formal complaint and I would like an explanation as to why I was treated in this way. In your response please let me know of your plans to rectify this situation and how you intend to prevent this from happening again.

Please provide your response in writing within 28 days from receipt of this email.

Yours sincerely/faithfully

Victoria Alvarez  
units 37/38

ps

please make sure that I donot suffer more of the same after you make Jonathan Owen aware of this complaint,i send this email with the trust that you would not allow us to suffer more because we have complained!!!



12 October 2017

Our Ref: 972/STG/1393/009  
Your Ref: TBC

**Transport for London**  
Commercial Development  
Directorate (Property)

5<sup>th</sup> Floor, South Wing  
55 Broadway  
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## By Email Only

Mirca Morena  
Unit 56, Seven Sisters Market  
231 - 243 High Road  
LONDON  
N15 5BT

Dear Ms Morera,

## **RE: SEVEN SISTERS MARKET**

Thank you for your correspondence regarding Seven Sisters Market. I am writing to outline our approach to addressing matters raised in your and others' correspondence and to arrange a meeting with you to discuss your concerns.

Before I outline our approach, I wanted to clarify the relationship between TfL, Market Asset Management Ltd (MAM) and market traders. We lease the premises to MAM for uses that could include retail, café, residential and car parking. We have not appointed MAM as a market facilitator and have no direct relationship with traders. This distinction makes a considerable difference to our ability to influence the day-to-day running of the market or to intervene regarding license disputes.

After receiving allegations regarding MAM and its director Jonathan Owen, we need to discuss these allegations further with affected parties. Allegations received by us fall into two areas on which we will focus our discussions:

- A. Unfair practices (including allegations of uncompetitive utility prices); and
- B. Inappropriate conduct (including sexist and/or racist language).

We will:

- Arrange meetings with you, Mr Catano and Ms Alvarez and any other licensee who are able to share specific examples of unfair practices or inappropriate conduct;
- Arrange a meeting with Mr Owen to gather his response to the specific allegations of unfair practices or inappropriate conduct;
- Identify and take appropriate actions; and
- Produce findings in writing and to circulate them to those involved in the discussions and relevant political stakeholders.

Please note that many of the points raised in correspondence that we have received are outside of our remit as landlord and relate to direct contractual obligations between MAM and the traders or that, in the case of harassment, in the first instance ought to be directed to the Citizen Advice Bureau or other entities that are more appropriate to deal with such matters.

My colleagues Sinclair Gray ([SinclairGray@tfl.gov.uk](mailto:SinclairGray@tfl.gov.uk)) or myself will be in contact to arrange a convenient time to meet.

In the meantime, please do not hesitate to get in touch.

Yours sincerely,



**JOANNA DALY MSc MRICS**  
Senior Property Manager | Commercial Development

### **APPENDIX 3**

**From:** Gray Sinclair

**Sent:** 10 August 2017 13:03

**To:** 'Jonathan Owen'

**Cc:** 'Jonathan Kiddle'; Daly Joanna; Atkinson Tom (External Relations); Thomas Esther (Group Property)

**Subject:** Seven Sisters Update with actions to confirm ASAP

Dear Jonathan,

Many thanks for your time last week - it was a pity that the meeting was cut short as we only really managed to address points 1 - 3 below.

1. Accusations of the 'Rude and Abusive Behaviour'
  - We note that you said that allegations might be from the period that we covered in our investigations in March 2017 and that there are no traders named in the allegations. We also noted that you said that there had been some heated discussions with Mr Esquera, but that you explained the circumstances behind this. As discussed, we will next seek to talk to some of the traders and then revert to you.
2. MAM to report on how current utility bills compare to the rates achieved in the wider market.
3. Please update and confirm appropriate course of action regarding claims with Mr Catano.

The following points remained unaddressed at the time of the meeting, and we look for to hearing from you with relevant updates:

4. Report to us what actions have been taken in relation to the agreed action plan produced in March 2017 - see attached.
5. The status of the car wash 'business' - relevant agreements etc.
6. Triangular site - MAM to provide an offer.
7. Design for the windows at Wards Corne
8. Design for the shop front hoardings.
9. BBC Filming request – update.
10. Rent Review letter sent on 20 April 2017.

I would like to meet next week on site at say, 11h00 on Wednesday 16 August - please confirm - in the meantime, could you please specifically update us on and confirm the following points today:

- The briefing note you were going to prepare for the tenants, relating to the market comparison of electricity costs. Has this been prepped, and / or sent? Can we please see your draft? In allowing you – and us in our correspondence with political stakeholders – to explain the actions being

- proposed against Fabian, it will be beneficial to communicate the comparison and make-up of the electricity bills (climate change levy, standing charge, VAT – on electricity but not on rent) to all traders/electricity bill payers and allow them time to then digest and ask any questions. As previously agreed, you were to send the market comparison note to all traders, including Fabian, at least one week before any action was taken against Fabian.
- Further correspondence you have had with Mr Catano / his sub-licensees in respect of his arrears, and your current proposals in that regard. You discussed taking action / possession by Wednesday 16 August 2017, but, as above, it will be beneficial to allow time for the traders to understand the comparison work and make-up of electricity bills – pushing any action back until after that. We would appreciate if you then, in due course, inform us of any new date for action but ideally this should be postponed until he returns from holiday in September. Can you find out from his representatives when he is expected to return?
- You were going to update us as to the splits between total arrears / electricity charges in respect of the tenants with the most significant arrears / issues, namely:
  - [REDACTED]
  - Alvarez
  - Catano
  - [REDACTED]
  - Morena
  - [REDACTED]
  - Plus other tenants who have meters.
- Please provide details of any traders who you feel it might be useful us speaking to as part of our ongoing discussions.
- Please update the spreadsheet attached incorporating additional milestones, and actions undertaken to date.
- Please provide details of the use and occupation of the ground floor of the Wards corner building, and illegal ‘shanty’ occupier to the rear.

Please can you revert, updating the attached action plan. I understand that Graeme Craig our Director is arranging a meeting with Grainger’s Chief Executive at the end of September, and as such it is important that we are all aware of the precise status of your discussions and action plan.

As an aside, in respect of the leaking roof my colleague Esther Thomas is spearheading the programme of works to make the building watertight. She has been on site this morning to assess the situation, and the leak as suspected is

coming through various places from the roof above the market area. H A Marks are currently on site to assess the longer term repairs, but will in any event undertake a temporary fix. We will be in a better position to provide a further update tomorrow and give specific timescales in due course once we have completed our assessment.

We are continuing to get quotes for the removal of the graffiti and installation of vinyls in the windows (images of fresh produce as we have shown you) to deter any further graffiti - we are hoping that these works will take place fairly soon.

I look forward to hearing from you in due course.

Thank you.

Kind regards,

Sinclair

**Sinclair Gray I BA (Hons) Pg Dip MRICS**

Consultant Property Manager | Commercial Development

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## **APPENDIX 4**

### **Seven Sisters Meeting: Monday 13 November 2017 (12 – 3pm)**

**Location:** Circle Room 8th Floor, 55 Broadway, London, SW1

**Attendees:** Fabian Catano - Unit 53  
Daniel Martinez - Butcher Unit 52  
Victoria Avarez President of the traders Units 3/37/38  
Mirca Morena – founder Latin Corner daughter of trader  
Luis Fernando – has 7 units been a tenant for 13 years.  
Stephanie Alvarez – trustee and daughter of VA.

**Transport for London:** Joanna Daly, Senior Property Manager, TfL  
Sinclair Gray, Consultant Property Manager, TfL  
Tom Atkinson, Communication & Engagement Manager, TFL

1. Initially stated that they wished to record the meeting in order to have a transcript and would this be okay? A dictaphone was put on the table.
2. Agenda: SSM then provided their agenda - see attached Appendix 1.
3. L&T relationship: Started by saying they want TFL to terminate the contract with MAM, and that we do not have a conventional healthy, arms length, landlord / tenant relationship, and that we were in breach of the s.106 - Appendix 2.

*NB s.106 agreements are private agreements made between the local authorities Harringay and the developer and run with the planning permission. If consent is not yet granted this is not yet live.*

4. Quoted page 5, paragraph 1 of the United Nations convention of Human Rights (Appendix 3) saying that TFL and MAM / Quarterbridge are in breach.
5. Claims TFL are in breach of s.149 of the Equalities Act, and their own code which covers  

*“3<sup>rd</sup> parties exercising public functions for a public authority who must comply with the duty.”*
6. SSM claim that under the last review Jonathan Owen has purportedly accepted seven instances of misconduct raised by Bindmans.
7. The three elements: SSM state that their claim has three elements:
  - a. Threats
  - b. Verbal harassment / discriminatory language
  - c. Singling out Colombian nationals for higher utility charges

8. Luis Fernando (LF) - particular points raised in respect of Luis Fernando (LF) who had stood up in the Compulsory Purchase Order (CPO) Public Inquiry (which was held between the 11 July and 28 July 2017) in order to point out that Jonathan Owen (JO) had called Victoria Alvarez (VA) and Mirca Morena (MM) ‘fucking bitches’ (FBs). It was pointed out that these comments were made by JO to LF and not directly to VA and MM’s faces.

LF also played out a voicemail recording of a conversation with JO which took place in the recent months, which he forwarded to MM and VA. The recording was of poor quality with background music. LF stated this to have been an unpleasant conversation/confrontation.

It was felt that JO continued to 'victimise' LF, and this is evidenced by the fact that the floor around his unit has not been repaired.

9. Utilities: SSM traders then advised that they felt that JO was discriminating against the Colombian traders over the treatment of the utilities bills. They pointed out that there are 60 traders in total and 19 units or 32% who have been impacted by the increase in utilities and provided a chart - Appendix 3. These are occupied by 7 traders, some of which occupy multiple units.
10. Fabian Catano: We then discussed specifically Fabian Catano's situation - see attached chronology Appendix 4. The salient points of which are FC received a significant invoice in the early part of 2017, and has refused to pay until he has seen a breakdown, as a result the bill has grown significantly and it now stands at circa £4k. In March FC asked for a breakdown and this was only provided in August. However JO has not provided any further breakdown relating to the apportionment between rent, gas, electricity and water. These invoices are not considered to be presented in a way that allows the recipient to fully understand what is owing. Clarification is to be provided in advance of the hearing.
11. Vicky Alvarez:
  - a. Unit 21 /22 – VA's father has been trading for 20+ years, but JO claimed not a license technically and VA has never been accepted as a licensee.
  - b. Hairdresser approached for subletting.
  - c. VA sought legal advice.
  - d. 37/38 trades as limited company but JO refuses to accept payments from Ltd company as the licence is in VA's personal name. J Daly explained that this is the correct approach and that is important that the correct party pays.
  - e. VA stated that JO had harassed her traders and attempted to grant a new licence direct.
  - f. VA stated she felt harassed by JO for information on her employees. She now provided confirmation to JO that they are employees. J Daly explained that JO as her landlord has right to request it, even though VA has been singled out in this request. This is because she had a history of subletting.
12. Parking:
  - a. JO aggressive with Daniel Martinez over £100 parking permit. This seems to have been very historic (2015)
  - b. JO also acted inappropriately by offering free parking permit if Daniel paid his utility arrears.
  - c. Daniel had emailed all the trader about his arrears position, he has also refused to pay until the breakdown invoices have been subdivided and clarified.
13. General:
  - MAM provided another trader, Manuel with money for floor repair
  - Other floor repairs paid for by Daniel and two others outside won units as JO refused to give them contribution or pay for the floor repair, which is in a very bad condition throughout the market
  - Agreed that the graffiti and benches would be dealt with separately by SG and MM. Await email.

## Seven Sisters Meeting: Thursday 14 December 2017

**Location:** Pick Room, 5<sup>th</sup> Floor, 55 Broadway, London, SW1

**Attendees:** Jonathan Owen (JO), Market Asset Management, MAM  
Jonathan Kiddle (JK) Senior Development Manager, Grainger PLC

**Transport for London:** Joanna Daly (JD), Senior Property Manager, TfL  
Sinclair Gray (SG), Consultant Property Manager, TfL  
Tom Atkinson (TA), Communication & Engagement Manager, TFL

1. Opening discussion highlighting that the purpose of the meeting is to continue investigations and provide action points regarding the outcome of complaint received by TFL by the Seven Sisters market traders.
2. Discussed the CPO decision. Secretary of State expected to take the full 13 weeks to review and a response is expected by 08 March 2018.
3. Discussion into allegations of treating some traders differently particularly individuals who are vocal.

TFL raised the issue of Fabian Catano, Daniel Martinez and others. WE will look at this matters in turn.

a. Fabian Catano.

- Subletting action against Fabian was heard in court in October 2016 - the court sent both parties away to resolve.
- 8 week resolution period expired on 12 December but no application to court received, and therefore no hearing.
- JO advised that Bindmans has been instructed by Fabian in relation to the Equalities Act, but as this was not initially served by the court this was not part of the claim.

- Credit note given to FC to correct the overpayment.
- MAM have made offer to complete but the offer fell away as Fabain didn't accept.
- As at the date of this meeting there are arrears of c. £800.
- As it stand license will not be reviewed.
- Offer for wife take the unit has not been taken up.

- JO pointed out that the issues over the bill have already been resolved.

c. Other traders

- Yet to have been provided with a breakdown.

d. Flooring issue

TFL raised the perceived unfair approach to payment. He would carry out or pay for works at other locations because he was waiting to decorate the ceiling, and works would happen after that post March 2018.



#### 4. Behaviour

TFL raised a general discussion around behaviour.

- a. TFL raised their ongoing concerns in relation to the tone and aggressiveness of JO's communication style.
- b. TFL advised that he had MAM / JO had an obligation to be courteous and should treat people with respect and with equality in communication.

#### 5. Meters:

JO advised "that MAM put meters in because [he] had evidence that [he / MAM were] being defrauded."

- The 7 traders who had meters installed were the worst offenders.
- There was a token system installed but these 7 traders did not appear to purchase the correct number of token commensurate with their usage at their premises both in term of past usage, and the size of the unit itself.
- JO questioned where their electricity was coming from?
- JO / MAM firmly disputed the allegation proffered that the 7 traders who had meters installed were targeted because they are all Colombian, and stated that the evidence provided prior to taking occupation would support this.
- Agreed that MAM will provide a quote and a schedule of a rolling programme of works ready to start on site by March 2018 - see below.
- Quote already received from new RFID meters. Decided to use more advanced meters in order to be more accurate in the building

#### 6. Climate Change levy - discussion raised a number of questions / points as follows.

Discussed whether this has been corrected for all traders.

- 
- Has not been repaid where appropriate?
- Following programme agreed at this meeting at this meeting:
  1. Calculations would be issued by the 15 January 2018.
  2. 14 day review period for tenants to respond.
  3. Reimbursement on or before 26 January 2018.

#### 7. Utility Bill breakdown:

TFL commented that the current system did not provide enough clarity to traders.

- i. When were these breakdowns provided?
- ii. MAM need to explain the breakdown to traders create confidence.

#### 8. Programme of works:

Discussions moved onto when works would be taking place and the following timetable was agreed at this meeting.

- Roof works: January 2018
- Banners installed: February 2018
- Market ceiling: March 2018
- Meters / programme of works: March 2018
- Flooring / Common Parts: April 2018



9. Subletting:

a. Vicky Alvarez (Colombian)

- VA's father has been trading from the unit for 20+ years, but JO claimed VA does not technically hold a license and VA has never been accepted as a licensee.
- Hairdresser approached VA for subletting.
- VA sought legal advice.
- Issues ongoing see previous minutes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. Dumping:

- MAM pointed out that there has been a spate of unauthorised dumping of cardboard and builders waste in the service road (property of Grainger, not TfL). MAM have reminded Traders of their responsibilities and had the dumping removed. MAM points out that the dumping appear to have been taken with a view to precipitating a dispute.

11. Access:

- JO / MAM advised that he has been in touch with the Supervisor of Seven Sisters Underground Station, and he has requested 24/7 access via the service road gates, and to the roof plant. MAM are providing him with a key to the padlock.



## 12. Arrears

- Discussed the arrears position.
- MAM to revert with proposal to clear the arrears.



## **APPENDIX 6**

### **Seven Sisters Meeting: Friday, 08 June 2018, (2pm)**

**Location:** 55 Broadway, London, SW1

**Attendees:** Jonathan Owen, Director, Market Asset Management (MAM)  
Jonny Kiddle, Senior Development Manager, Grainger PLC

**Transport for London:** Joanna Daly, Senior Property Manager, TfL  
Sinclair Gray, Consultant Property Manager, TfL

#### **Schedule:**

1. Opening statements highlighting the need to continue investigations in respect of the complaints received by TFL from Victoria Alvarez and Mirca Morena and provide updates regarding the action plan.
2. Accusations of 'Rude and Abusive Behaviour' - TFL reiterated a thread from previous meetings.
  - TFL re-iterated their ongoing concerns in relation to accusations surrounding the tone and aggressiveness of JO's communication style.
  - TFL advised that he had MAM / JO had an obligation to be courteous and should treat people with respect and with equality in communication.
  - JO advised Henry Paz and Marisol Lopez now more present at the market. Malcolm Veigas also back and present mean JO can keep away as much as possible.
3. MAM reported on how utility bills, new meters, reimbursements etc.
  - JO advised no feedback since refunds have been issued.
  - Therefore quiet for last 6 months.
4. Update regarding claims with Mr Catano.
  - Still in occupation.
  - No licence fee charged, no licence fee paid but pays electricity.
  - Mediation lined up.
  - FC / MM have not served papers in discrimination case yet threat live.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- JO advised that there are new unauthorised sublettings:

[REDACTED]

- iii. Tony Barber to clothing.
- iv. Needs to identify unauthorised occupier on mezzanine floor and catering.

## 5. Update on Works

- JO advised that H & S is a constant battle.
- Meter installation roll out.
- Repairs to the ceiling
- Decoration
- Flooring: some traders to replace parts of the flooring with a vinyl sheet to which JO can contribute. JO happy to contribute, but not 100% of the cost. Carpet tiles available in storage.
- Banner installation should not wait for the traders any longer, one more request and then progress to design and install.
- Electricity overloading:
  - i. Trips out regularly.
  - ii. Submains overloaded.
  - iii. Looking at digital sub-meters cannot be progressed until sub mains wiring sorted.
  - iv. Discussed possible alternative source upper parts.

## 6. The status of the car wash 'business' - relevant agreements etc.

## 7. Planning enforcement.

- CPO delayed.
- Apex Corner expected to complete 2020, temporary market to be constructed after.
- JO advised: after CPO would like to start using his own version of the license.
- Building at back - JO advised no appeal lodged but letter requesting temporary portacabin to be installed in July. Therefore by the end of July the building at back will be demolished.
- Front unauthorised canopy: JO advised no record of enforcement but some meeting have been had with Haringey Planning.

## 8. Design for the shop front hoardings.

- Advised will start in 2 - 3 weeks time.

## 9. Street party

- 20 – 21 July: 251-253 SSR site to accommodate street party to celebrate Columbian independence. No approval needed from TFL as on Grainger land.

## 10. Rent Review

## 11. AOB

- JO advised in the past the market was largely West Indian and it is really in the last 7 to 10 years that this has taken on a more Hispanic focus.
- JO advised license holder arrears are now circa £40k
- Relationship with the Met Police is very good; good input from them.

## **APPENDIX 7.**

**From:** Mirca Morera [<mailto:mirca@latincorneruk.org>]  
**Sent:** 15 January 2018 09:03  
**To:** Mayor  
**Cc:** John Halford Bindmans;  
Patria;  
[boris.johnson.mp@parliament.uk](mailto:boris.johnson.mp@parliament.uk)  
**Subject:** Mayoral Decision - MD1051 Wards Corner Regeneration

Dear Sadiq,

The Mayors Decision in 2012 delegated to TfL the exercise of the Mayor's power under sections 30 and 34 of the Greater London Authority Act 1999 to provide financial resources and enter into arrangement with the London Borough of Haringey. To provide the traders with financial support (£284,500) as well as a market facilitator, promotion allowance and associated business support. A recent deed of variation to the Section 106 agreement has meant that the traders will not directly receive the planned compensation as it will be managed by a third party.

A race discrimination claim has been filed against the appointed market facilitator. Complaints of victimisation and harassment has been made to the Equalities and Human Rights Commission. Further complaints about the market facilitator have been made to the United Nations office in Geneva (see page 5 of attached UN communication) as part of a larger submission.

The market facilitator instead of facilitating this period of transition has eliminated three market licences and created severe tensions during a difficult period.

On page 4 of the attached Mayoral Decision, it was identified that there were potential reputational risks associated with TfL's provision of financial support as proposed, for example if the funding was not used for the specified purposes or is used ineffectively/inefficiently.

I wish to assert that I do not believe that the financial support for business support workshops for traders has been used efficiently or effectively, as they have been led by the market facilitator who has been subject to many complaints that have been exhaustively presented to TfL with no avail. Attendance by traders has been negatively impacted by this issue and money wasted.

I propose that the business development workshops are led by the charity Latin Elephant who are experienced in delivering these type of workshops to Spanish and non-English speaking traders.

Furthermore, I would like to challenge the appointment of the market facilitator due to the nature of the seriousness of the complaints that have been made against him. His appointment nullifies the section 106 agreement. According the attached Bindmans letter dated 17/11/17 he is the "antithesis" of a market facilitator (page 7). Yet, he has been appointed by Grainger PLC to be the current and future market facilitator in the both the temporary and the new market. TfL also were informed of the seriousness of the allegations and a TfL investigation ensued. Nevertheless, they signed the lease with the market facilitator on the basis of promises, that have not been honoured. As abuses have continued at the market. TfL have been notified of this by the Equalities Advisory Support Service (see attached letter) and numerous communications. Yet TfL have taken no action.

Under section 155 of the Greater London Act 1999 the Mayor may direct TfL to exercise its functions (which include those delegated to it) in any manner specified in a direction.

I hope that the Mayor will intervene in this issues as soon as possible. Please can I arrange a meeting with the Mayor to discuss these issues further.

Best wishes

Mirca

Mirca Morera  
Latin Corner UK CIC  
Latin Village: Pueblito Paisa  
Unit 56 Seven Sisters Indoor Market  
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Our ref: JHL  
Date: 30 July 2018

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cc: [JoannaDaly@tfl.gov.uk](mailto:JoannaDaly@tfl.gov.uk), and [SinclairGray@tfl.gov.uk](mailto:SinclairGray@tfl.gov.uk)

Dear Ms Miller,

## TfL's failure to lawfully conclude its investigation into the actions of Market Asset Management (Seven Sisters) Ltd

1. This firm is instructed by Victoria Alvarez and Fabian Cadavid, who are traders in Seven Sisters Market ('the Market'), along with Mirca Morera, who is an advocate for some of the other traders, including her father. Ms Alvarez, Mr Cadavid and Ms Morera are referred to collectively as 'our clients' below. Please note, we have corresponded with Transport for London ('TfL') in the past as solicitors for El Cafetal Ltd (Ms Alvarez' business) and West Green Road / Seven Sisters Development Trust Limited ('the Trust') (of which she is a Director).
2. The purpose of this letter is to:
  - (1) explain why TfL is obliged to conclude its investigation into serious complaints raised by our clients about Market Asset Management (Seven Sisters) Ltd ('MAM')'s actions, and those of linked companies, and what that obligation entails (see paragraphs 41 to 59 below);
  - (2) seek information (see paragraphs 60 to 61), specifically about:
    - (a) the investigatory steps taken to date; and
    - (b) the sanctions open to TfL under the lease of Seven Sisters Market to MAM ('the Market Lease'), including

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Katherine Gieve  
Stephen Grosz QC\*  
Lynn Knowles

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Tamsin Allen  
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termination of the Market Lease and the criteria for taking such steps;

(c) whether, and if so to what extent, the Contracts (Rights of Third Parties) Act 1999 has been excluded by the terms of the Market Lease; and

(3) request an undertaking that the investigation is completed within the next 35 days with a fully reasoned, evidence-based report that is shared with our clients together with a reasoned decision on the action to be taken against MAM (including, in particular, whether the Market Lease should now be terminated) (see paragraph 62).

3. Please let us have your substantive response within seven days, i.e. by close on 6 August 2018, and with it the information sought.

## **Background**

### *The Market*

4. As you know, the Market occupies the ground floor of a former Edwardian department store, known locally as Latin Village, Latin Corner and Wards Corner.
5. London Underground Ltd ('LU') holds the freehold in the land. LU is an indirect subsidiary of TfL, being owned by Transport Trading Ltd, a direct subsidiary. As such, LU is a member of what is known as 'the TfL Group' and bound by its policies. We return to this point below.
6. For some years LU has leased the ground floor Market space out to a 'market operator' who, in turn, has granted what purport to be licences to the market's traders (we reserve our position on the precise legal nature of these arrangements). All of the Market traders are BME people and most have Latin American origins. Many also have Colombian national origins and/or nationality.
7. In litigation brought by this firm about the significance of the public sector equality duty then contained in section 71 of the Race Relations Act 1976 to public authorities' decision-making about the future of the Market, *R (Harris) v London Borough of Haringey* [2010] EWCA Civ 703 ('*Harris*'), the Court of Appeal held that the duty was engaged, partly because of the identity of the traders and proprietors of other nearby businesses and partly because of the particular communities they served. Given this, Pill LJ held that the duty demanded an "analysis" of the material about these factors that was before the decision-maker "with the specific statutory considerations in mind", adding "it is necessary to have due regard to the needs specified in section 71(1). There had been no analysis of the material before the Council in the context of the duty", so the decision was unlawful (see [40]).

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*Grainger's development plans*

8. *Harris* came about because Grainger PLC ('Grainger') proposed to develop the site of the Market for retail and private residential purposes. Planning permission to do so was secured in 25 June 2012 (the earlier decision to grant it having been quashed by the Court in *Harris*, and then subsequent applications having been refused by Haringey Council). However, those plans are subject to certain Compulsory Purchase Orders ('CPO's) being made and an unusual section 106 agreement that requires the temporary relocation of the Market, a space to be made available for it in the new development and its support in the meantime. That agreement came about through the direct intervention of the former Mayor, Boris Johnson, in the planning process.
9. As to the CPO process, this was the subject of a lengthy contested public inquiry last year (see <http://seven-sisters.persona-pi.com/>) which has yet to be formally concluded with the publication of the inspector's report and a subsequent decision by the Secretary of State.
10. As to the section 106 agreement, this has yet to be complied with (the terms are here on the Haringey website, updated in July 2017: <http://www.planningservices.haringey.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=311814>).
11. It should also be noted that, on 25 April 2014, planning permission was granted for an alternative, community-led redevelopment plan for the site by the Trust (see the 'Decision Notice' at <http://www.planningservices.haringey.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=272550>).
12. It follows from all of this that the site's development by Grainger is possible, but far from certain.

*The last Market Lease*

13. Meanwhile, the last lease of the Market space expired on 16 September 2015. MAM first held that lease for a very short period, having been assigned it just days before the end of its term by the previous market lessee, Jill Oakley. After that, we understand LU's position was that MAM held the assigned lease 'at will', notwithstanding its term having expired.

*Decision to award the current Market Lease to MAM*

14. In 2016, it emerged that LU intended to enter into a new lease with MAM and draft heads of terms had been agreed. The intention was that the new lease would continue until it lapsed or was terminated on notice to enable Grainger's development of the site to proceed.

15. Various Market traders became concerned about the process by which MAM had been selected as the preferred future leaseholder, despite indications from a TfL employee, Martin Teodorczyk, that there would be an open, advertised process.
16. All of this was the subject of an exchange of pre-action correspondence with this firm culminating in a letter of 29 October 2016 from TfL's solicitors maintaining that decisions over who should hold a future Market Lease were commercial, the assurances given by Mr Teodorczyk were unauthorised, and MAM was the only organisation to make an offer.
17. After further exchanges, the Trust was invited to make an offer and did so, but this was rejected in favour of MAM. The reasons given are significant. In an e mail of 6 May 2016 from Alun Jones to Roger Dunlop (a commercial property agent then acting for the Trust) it was said (our emphasis):

“I regret to advise that we will not be pursuing your clients [sic] offer further.

We appreciate that the proposal has some merits and we understand your clients [sic] reasons for wishing to take responsibility for managing the market.

However, it is our normal practice to give current tenants an opportunity renew their leases, unless we choose to restructure our portfolio, and detailed negotiations have already taken place with Market Asset Management Ltd. Heads of Terms were agreed some time ago and a new lease is close to completion. The current lessee is also linked with Grainger Seven Sisters Ltd who are planning to regenerate this area in partnership with Haringey Council. As you will be aware the market is considered to be an important part of the local community and will be part of the regeneration plans. MAM Ltd are therefore well placed to continue to manage the market, support the regeneration proposals and help with the continuity of the market.”

18. A further letter of 23 May 2016 from Mr Jones makes these points in near identical terms, adding

“MAM Ltd is best placed to continue to manage the market, support the regeneration proposals and help sustain its future”

19. In the same letter, this view is characterised as “TfL's position”.
20. The decision and the materiality of these considerations were defended by TfL in further pre-action correspondence, notably a letter of 15 July 2016.

*The February 2017 complaints*

21. Shortly before LU was about to sign the new Market Lease with MAM, concerns were raised with TfL about a pattern of unacceptable behaviour directed towards the Market traders, in particular by MAM's director, Jonathan Owen. This raised serious questions about whether MAM was indeed "best placed" to "manage the market... and sustain its future". Examples were given in a letter of 23 February 2017 from this firm to TfL.
22. In summary:
  - (1) at a November 2016 meeting of the steering group (which is supposed to make proposals and plans to sustain the market) traders had been threatened with "a fucking war" by Mr Owen;
  - (2) immediately prior to another meeting with traders on 13 February 2017, Mr Owen told Ms Morera he was "getting [my] boxing gloves ready";
  - (3) at that meeting, he announced "if I wanted to, I could get rid of 90% of the traders here";
  - (4) Mr Owen used language at that meeting such as "bloody illegal immigrants" and "not to be Irish" which, although not directed at anyone specific, traders found offensive, distasteful and menacing;
  - (5) responding to traders requesting improved security at the Market at the 13 February meeting, Mr Owen said, "I'm giving you permission, it's my property [sic], grab them by the scruff of the neck and throw them out";
  - (6) then, on 15 February 2017, Mr Owen wrote to say he was "considering closing down" stalls, and reporting them to the Food Safety Officer at London Borough of Haringey Council. Mr Owen suggested that the Council "would be perfectly entitled to do this" i.e. close stalls, and that he "would support such action"; and
  - (7) car parking facilities had been compromised.
23. That letter concluded by requesting "that TfL hold off entering into the proposed market lease, until a proper investigation has been concluded". TfL acceded to that request on 24 February 2017.

*The February to April 2017 investigation*

24. The investigation proceeded by means of requests for information from and meetings with traders and Mr Owen, involving Mr Jones and a colleague, Clive Henman. It concluded on 6 April 2017 with a

report to which was appended a 'statement of reassurance' and 'action plan' from MAM and a letter from Mr Jones to Mr Owen.

25. That letter stated materially (our emphasis):

"During our meetings you accepted that your conduct referred to in the allegations was wrong. You accepted you had caused offence and apologised, and had apologised to the individuals in question."

I have met with Ms Morera, and my colleague Mr Henman has spoken with Mr Khanjary. The impression they gave is that there is a lack of trust between MAM and the market traders. Both confirmed that you had apologised for your actions. We have discussed your commitment to improving relations between MAM and the market traders. I acknowledge the role the Action Plan and the increased involvement of Malcom Veigas will have in this.

The investigation report and appendices are attached. In view of the above I have agreed that the Lease can be renewed."

26. The appended report which is dated 4 April 2017 elaborates on the last of these points as follows:

"Having regard to the discussions during our investigation and the additional information supplied by Jonathan Owen / MAM - including Jonathan Owen's admission of his inappropriate behaviour, Jonathan Owen's apology for said behaviour, and the actions being taken by MAM to work with traders to improve the market - I intend to proceed with the grant of a lease to MAM."

and in its main body, noted (our emphasis):

"In our two meetings with Jonathan Owen, Jonathan Owen accepted that he had previously behaved inappropriately towards some traders and said that whilst he had not intended to cause offence [sic], he acknowledged the offence that his language had caused."

We discussed respect and trust with Jonathan Owen, and whilst we acknowledge the challenging environment of running a market, we asked that he abide by the London Underground Code of Conduct (attached); to which he agreed.

Jonathan Owen presented the MAM Equality and Diversity Policy to us. We welcome that MAM has adopted such a policy and Jonathan Owen confirmed his commitment to the MAM Equality and Diversity Policy in his meetings with us....

In our second meeting with Jonathan Owen, MAM explained the steps that they will take to improve the market and to work with traders to improve their businesses. MAM subsequently sent us an Action Plan (attached). The action plan commits MAM to frequent cleaning of the communal areas. It will help with the promotion of the market, and gives a commitment to improved relations with licence holders."

27. Plainly then, MAM's admissions and promises of changes in behaviour, including adherence to the Code of Conduct, were decisive factors in the signature of the Market Lease (hence the use of the words "[i]n view of the above", "[h]aving regard to"). They were also shared with our clients and other traders by TfL and, in the light of them, a decision was made, despite misgivings, not to challenge the award of the Market Lease to MAM.
28. The Market Lease was signed very shortly afterwards.

*The September 2017 complaints and their investigation*

29. Regrettably, the promises that had been made to TfL by MAM have not been honoured. In a letter of 6 September 2017 addressed to Grahame Craig, Ms Morera gave a series of (non exhaustive) examples as to why that was so.
30. In summary:
- (1) there had been unexplained utility hikes of 300% experienced by 32% of market traders, all of whom are of Latin American origin (and, more specifically, Colombian origins);
  - (2) one of these targeted traders, Fabian Catano (a disabled victim of the London 7/7 bombings), had been issued with what purported to be an eviction order by MAM;
  - (3) Mr Owen had told another trader, Fernando, that he was "very angry" with him and Ms Morera because of evidence given during the CPO inquiry and threats were made against both of them;
  - (4) Mr Owen had described Ms Alvarez and another female trader as "fucking bitch[es]" to another trader;
  - (5) he had also demanded employee information from Ms Alvarez and cancelled the licence of one of her units;
  - (6) the Police had advised the Market traders that security measures taken by MAM were inadequate, no steps had been taken to improve them and a series of crimes had been committed against traders; and
  - (7) parking facilities remained compromised.
31. Ms Morera also highlighted the outcome of the earlier complaints, traders having since passed a no confidence vote in MAM and TfL's Equality Act 2010 duties. Her letter concludes:

"I have tried to resolve the matter formally in a TFL meeting on the 16th March with Alun Jones, Tom Atkinson and Clive Henman in Seven Sisters, and a TFL investigation was initiated.

However, we have not received a satisfactory outcome. I am making a second formal complaint and I would like to arrange a meeting at the TFL offices. In your response please advise me of a date of a meeting.”

32. Responding by letter on 12 October 2017, your colleague Joanna Daly stated:

“After receiving allegations regarding MAM and its director Jonathan Owen, we need to discuss these allegations further with affected parties. Allegations received by us fall into two areas on which we will focus our discussions:

- A. Unfair practices (including allegations of uncompetitive utility prices); and
- B. Inappropriate conduct (including sexist and/or racist language).

We will:

- Arrange meetings with you, Mr Catano and Ms Morera and any other licensee who are able to share specific examples of unfair practices or inappropriate conduct;
- Arrange a meeting with Mr Owen to gather his response to the specific allegations of unfair practices or inappropriate conduct;
- Identify and take appropriate actions; and
- Produce findings in writing and to circulate them to those involved in the discussions and relevant political stakeholders.

Please note that many of the points raised in correspondence that we have received are outside of our remit as landlord and relate to direct contractual obligations between MAM and the traders or that, in the case of harassment, in the first instance ought to be directed to the Citizen Advice Bureau or other entities that are more appropriate to deal with such matters.”

33. Pausing there, we observe that Ms Daly appears not to have been fully briefed on what had happened in the previous investigation, in particular, TfL’s emphatic insistence on MAM’s compliance with LU’s Code of Conduct and Mr Owen’s undertaking that it would do so. Section 3.2 of that Code, headed “Working Relationships”, states that those working for LU must:

- “• treat everyone with whom they come into contact at work with courtesy and respect;
- be aware of and comply with LUL’s policy, standards and procedures on equality and workplace harassment;
- Avoid initiating or provoking violent situations or otherwise behaving in a manner which is offensive, abusive, intimidating, bullying, malicious or insulting to fellow employees, customers and contractors and others with whom they come into contact in the workplace.”

- 
34. The second bullet point refers to policies that include the 2010 document, LU - Harassment and Bullying at Work Policy and Procedure. Its introduction stresses:

“the right to a supportive working environment free from harassment and/or bullying”

and the shared:

“responsibility to create a safe and supportive working environment and this includes behaving in a responsible, moderate and sensitive manner in dealings with others”.

35. Essentially, LU was holding MAM to the same standards to which it holds itself. That was underscored by Mr Jones’ minuted discussions with Mr Owen on 6 April 2017, in which it was emphasised the lease renewal was being considered in a context in which compliance with section 3.2 above was behaviour “expected” of MAM by TfL.
36. It follows that harassment was very much a matter to be investigated by TfL when grappling with the 6 September 2017 complaint (rather than something to be discussed with a Citizens’ Advice Bureau, which suggestion is not understood).
37. Ms Morera made this point and others regarding TfL’s policies and duties at a meeting with traders that took place on 13 November 2017. Traders also explained how MAM’s conduct formed a pattern, that it had systematically breached the promises that had been made during the last investigation to secure the Market Lease and all of this needed to be addressed through action by TfL. They were told by Ms Daly and her colleague, Mr Sinclair Gray, that TfL accepted section 149 of the Equality Act 2010 was engaged by the 6 September 2017 letter and other complaints that had been voiced, but they could not say with certainty what action TfL could take. Minutes of this meeting were sent to Mr Gray on 14 November 2017.
38. On 27 Mar 2018 Mr Gray wrote to Ms Morera stating:
- “[p]lease excuse the delay in reverting I just want to let you know that we hope to revert shortly after Easter with a substantive response.”
39. The investigation has yet to be concluded, however, and other than the meeting with traders, it is unclear what, if anything, has been done to progress it.
40. Meanwhile, relations with traders have worsened, as will be apparent when the investigation moves forward. For instance, concerns raised about MAM at the steering group are not being addressed, the utilities charge issue is unresolved, other traders have been required to cease trading by MAM, and Mr Cadavid has issued a County Court claim regarding the discrimination, harassment and victimisation he has experienced.

## Legal framework

41. This is straightforward. TfL is a public authority, as is LU. Whilst both undoubtedly have private functions, they have public ones too, including managing assets and enforcing obligations private bodies owe them in the public interest (see e.g. *R (Prokopp) v London Underground Ltd* [2003] EWHC 960 (Admin)). Such functions are amenable to judicial review. In these respects, TfL and LU are subject to three relevant public law duties.

### *The common law*

42. First, TfL and LU are bound by public law to honour the promises they make to defined groups of the public unless there are compelling public policy reasons not to do so: see *R v. North and East Devon Health Authority, ex parte Coughlan* [1999] EWCA Civ 1871, [2001] Q.B. 213 and *R (Bhatt Murphy) v The Independent Assessor* [2008] EWCA Civ 755, the principles of which were applied to TfL's decision making in e.g. *R (Dolatabadi) v Transport for London* [2005] EWHC 1942 (Admin). Those promises include specific and policy commitments.
43. Here there are two relevant sets of promises. The first were made to Ms Morera in Ms Daly's 12 October 2017 letter. Essentially, the promise was to investigate the concerns raised adequately and, by necessary implication, doing so would include examining whether there had been "unfair practices (including allegations of uncompetitive utility prices)" and "inappropriate conduct" by reference to the standards TfL had set for MAM in the lease and in discussions, including at the 6 April 2017 meeting.
44. The second set is found in TfL's group policies which, unsurprisingly are framed to embrace its subsidiaries such as LU. These include the Action on Equality Plan, published in March 2016, which sets out TfL's equality commitments for 2016-20. Its preamble states:

"as a public authority and in accordance with the Equality Act 2010, we work to show due regard and the need to:

- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not..."

and it notes:

"Our vision for our business partners is that they will ... actively support and participate in our equality agenda.

To achieve this we will...

- Review contract requirements and establish a clear equality and inclusion specification in our contract requirements...
- Promote the benefits of diversity and equality to our partners through communications (eg our website, videos, roadshows, contractor training)
- Include elements of equality and accessibility in the design of business processes

We will measure progress using...

- Clear and consistent equality requirements embedded in our contracts”

45. Given the timing of the signature of the new Market Lease, we assume clear and consistent equality requirements are “embedded” in its terms but ask for details below (see paragraph 61(4)).

#### *The Equality Act 2010*

46. Secondly, as Mr Gray and Ms Daly rightly acknowledged during the 13 November 2017 meeting, section 149 of the Equality Act 2010 is engaged by the traders’ complaints. It provides materially:

“Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1)....
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
  - (a) tackle prejudice, and

(b) promote understanding.”

47. Race, disability and gender are listed amongst the relevant protected characteristics at subsection (7).
48. The duty is engaged when a public authority investigates allegations of racially-motivated conduct by private parties. As much is obvious from its origins in the MacPherson Report.
49. The duty to have due regard is an ongoing one (*R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) at [95]). It has been variously described as “a test of the substance of the matter” which must be discharged with “vigour” (*R (Domb) v London Borough of Hammersmith and Fulham* [2009] EWCA 941 Civ at [52]), “rigour” (*Brown* at [92]), and which imposes “a heavy burden on public authorities...in ensuring that there is evidence available, if necessary, to demonstrate that discharge” (*R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at [59]).
50. “Due regard” necessarily involves a decision maker:
  - (1) appreciating when the duty to have due regard is triggered, i.e. whenever there is an equality issue which needs at least to be addressed (*R (Elias) v Secretary of State for Defence* [2005] EWHC 1435 (Admin) at [98]);

and then:

- (2) taking steps to properly understand any discrimination, equality or good relations problem, its degree and extent (*R (Lunt) v Liverpool City Council* [2009] EWHC 2356 at [44], *Rahman v Birmingham City Council* [2011] EWHC 944 (Admin) at [35] and *R (Green) v Gloucestershire CC*, *R (Rowe & Anor) v Somerset CC* [2011] EWHC 2687 (Admin) at [121]-[127]);
- (3) considering the information it has with the specific statutory considerations in mind (*Harris* at [40]);
- (4) when doing so, identifying any unlawful discrimination and negative (or positive) consequences in terms of equality of opportunity and good relations of the courses of action being contemplated (*Elias* (Court of Appeal) at [274]);
- (5) balancing any consequences for equality of opportunity against the other benefits of proceeding, or not (*R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA (Civ) 141 at [31], *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) at [81]); and

- (6) considering whether, and if so how, any identified negative consequences can be mitigated (*R (Kaur & Shah) v London Borough of Ealing* [2008] EWHC Admin 2026 at [43]).

#### *The Human Rights Act 1998*

51. Thirdly, TfL and LU are bodies “certain of whose functions are functions of a public nature” for the purpose of subsection 6(3)(b) of the Human Rights Act 1998.
52. Section 6(1) makes it unlawful for such an authority to act in a way which is incompatible with a Convention right set out at schedule 1. That schedule includes Articles 3, 8 and 14 ECHR which will be breached if the state permits, including by passively failing to investigate and sanction, racial and other discriminatory treatment by private parties as well as state bodies: see e.g. *B.S. v. Spain*, No. 47159/08, 24 July 2012, *Abdu v. Bulgaria*, No. 26827/08, 11 March 2014 and *R.B. v. Hungary*, 64602/12, 12 April 2016, para. 39.

#### *Private law obligations*

53. LU may owe enforceable private law obligations to the traders under section 1(1) of the Contracts (Rights of Third Parties) Act 1999 read with the Market Lease. We seek information about this below.

#### **Analysis**

54. This section of the letter draws together the threads above.

#### *TfL’s obligation to conclude its investigation*

55. Having committed itself to the investigation described in Ms Daly’s 12 October 2017 letter, TfL must complete that process. Our clients have the clearest of legitimate expectations that will happen and there is no public interest in that not happening, less still one sufficiently compelling to override the commitment given. See *Coughlan* and *Bhatt Murphy* cited above at paragraph 49. As Laws LJ said in the latter case at [30]:

“good administration (“by which public bodies ought to deal straightforwardly and consistently with the public”: paragraph 68 of my judgment in *Ex p Nadarajah* [2005] EWCA Civ 1363) generally requires that where a public authority has given a plain assurance, it should be held to it. This is an objective standard of public decision-making on which the courts insist.”

56. Similarly, having decided in April 2017 to hold MAM to the LU Code of Conduct and the policies referred to therein, TfL was obliged to investigate alleged conduct that, on its face, involved flagrant and systemic breaches of the standards those documents set. It would be an unlawful abdication of power and irrational to do otherwise

because MAM's commitment to TfL would then become hollow and meaningless.

57. Even had there been no such commitments, section 149 of the Equality Act 2010 and section 6 of the Human Rights Act 1998 would create a duty to investigate in the circumstances discussed above. Once TfL became aware of traders' concerns, it was obliged to take the steps set out at paragraph 46 above, beginning with enquiries to properly understand any discrimination, equality or good relations problem, its degree and extent (see *Lunt*). As discriminatory treatment and harassment based on statuses such as race and gender were alleged, and such treatment and harassment had been admitted only months before, Articles 3, 8 and 14 of the European Convention on Human Rights read with section 6 demanded an investigation.

*The content of the investigatory obligation*

58. However an investigatory obligation arises, the resulting investigation will need to have certain basic features including, but also beyond, those Ms Daly identified on 12 October 2017.
59. In particular, the obligations described at paragraphs 43 and 46 to 52 above mean that those investigating must:
- (1) identify:
    - (a) the terms of reference and those matters that have not been investigated, giving reasons why not;
    - (b) the allegations being investigated;
    - (c) the standards they believe are relevant to those allegations, which here will include:
      - (i) the express terms of the Market Lease;
      - (ii) any relevant collateral agreement (such as Mr Owen's 6 April 2017 promises);
      - (iii) the LU Code of Conduct and, in turn, the policies referred to in of the Code including the LU Harassment and Bullying at Work Policy and Procedure;
      - (iv) the statutory needs expressly identified in section 149(1) i.e. elimination of discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act, the advancement of equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and

the fostering of good relations between persons who share a relevant protected characteristic and persons who do not share it;

- (v) Articles 3, 8 and 14 of the ECHR (the enjoyment of which the state has a positive obligation to secure);
  - (vi) health and safety law; and
  - (vii) commonly accepted, fair commercial practices; and
- (d) the factual background;
- (2) then gather and document:
- (a) the evidence relevant to the allegations;
  - (b) MAM's response;
  - (c) the comments of those who have made the allegations on that response;
  - (d) any further evidence that appears potentially relevant because of (2) (b) or (c) above;
- (3) then make and reach:
- (a) evidence-based factual findings including on the question of whether the actual or perceived protected characteristics of traders and others associated with them (including race, gender and disability), affected MAM's actions and failures;
  - (b) conclusions on whether the facts found mean that standards have been breached; and
  - (c) decisions (or if they lack decision-making authority, then recommendations) as to action to be taken.

### **Information sought**

60. Please address the questions and requests for documents using the enumeration below. If you are unable or unwilling to do so, please give full reasons that are specific to the request. Note, these are not Freedom of Information Act 2000 requests and should not be treated as such: our clients are entitled to this information given the public law obligations discussed above and their status as complainants.

## 61. Please:

- (1) confirm the factual background set at paragraphs 4 to 40 above is accepted to be accurate or, if it is not, give details of the disagreement;
- (2) confirm TfL accepts its public law duties in respect of the investigation of the September 2017 complaints are as identified at paragraphs 42 to 52 above or, if that is not accepted, explain why not;
- (3) supply a copy of the Market Lease (note, commercially sensitive information such as lease payments may be redacted if that is thought necessary);
- (4) if equality obligations were not “embedded” into the Market Lease as anticipated by the Action on Equality Plan of March 2016, then explain why not and what, if any, thought was given to doing so;
- (5) state whether TfL continues to expect MAM’s compliance with section 3.2 of the LU Code of Conduct and, in turn, the policies referred to in the Code including the LU Harassment and Bullying at Work Policy and Procedure;
- (6) identify the standards of conduct which TfL expects of MAM (including those expressly set out on the face of the Market Lease and those implied), by stating whether it accepts that the following would be a breach of the Market Lease (or if not the Market Lease, then of a collateral agreement formed during the February to April 2017 investigation):
  - (a) bullying by MAM of traders or others associated with them (note, by ‘bullying’ we mean:

“offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power or authority through means intended to undermine, humiliate or denigrate the recipient or which could be reasonably perceived by the recipient to be so intended”

see paragraph 2.2.1 of the LU Harassment and Bullying at Work Policy and Procedure, examples of which are:

- (i) humiliation or ridicule of a person;
- (ii) making insulting or offensive comments about a person;
- (iii) intimidating behaviour, including threats, shouting, and the use of abusive language or intimidating body language;

- (iv) ostracising, excluding or marginalising a person;
- (v) preventing or impeding a person from doing their job; or
- (vi) threatening or committing physical violence);
- (b) discrimination prohibited by the Equality Act 2010 by MAM against traders or others associated with them;
- (c) harassment by MAM against traders or others associated with them (note, by ‘harassment’ we mean:
  - “... unwanted conduct affecting... dignity... in the workplace. It may be related to age, sex, race, disability, religion, sexuality, nationality and may be persistent or an isolated incident.
  - ... This conduct may be of a physical, verbal or non-verbal nature is unwanted by the recipient and has the purpose or effect of violating another person’s dignity or creating an offensive, intimidating, hostile, degrading or humiliating environment.”
- see paragraph 2.2.1 of the LU Harassment and Bullying at Work Policy and Procedure);
- (d) victimisation prohibited by the Equality Act 2010 by MAM against traders or others associated with them;
- (e) any breach of the Health and Safety at Work Act 1974 or associated legislation by MAM; and
- (f) any, or if not any then systemic or frequent breaches, of the purported licences granted to traders;
- (7) state who is currently responsible for the investigation of the September 2017 complaints and what, if any, experience they have in handing investigations into matters within the scope of section 149 of the Equality Act 2010 and the Human Rights Act 1998;
- (8) list the investigatory steps taken to date in respect of the September 2017 complaints, who took them and their outcome;
- (9) supply any notes taken at, and any minutes of, all meetings in respect of the September 2017 complaints;
- (10) identify planned investigatory steps that have yet to be taken, who is responsible for taking them and when they will occur;

- (11) identify the sanctions open to TfL under the Market Lease for breach of its terms and any collateral agreement, including termination of the Market Lease and identify the criteria TfL applies for imposing such sanctions; and
- (12) state whether, and if so to what extent, the Contracts (Rights of Third Parties) Act 1999 has been excluded by the terms of the Market Lease giving full reasons.

**Undertaking sought**

62. We request an undertaking that the investigation of the September 2017 complaints will:
  - (1) be completed within the next 35 days;
  - (2) result in a fully reasoned, evidence-based report that is shared with our clients which complies with the basic requirements listed at paragraph 59 above; and
  - (3) prompt a reasoned decision on the action to be taken against MAM (including, in particular, whether the Market Lease should now be terminated).
63. If you are unwilling, or consider yourself unable, to give this undertaking, please explain why not.
64. Last, please confirm receipt of this letter by return.

Yours faithfully,

*Bindmans LLP*

Bindmans LLP



Our Ref: LUL/3002/MF  
Your Ref:

18 September 2018

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Dear Sir

## **Re: TfL's Investigation**

Thank you for your letter of 30 July 2018 to Ms Miller. Ms Miller has asked me to respond on her behalf. As you will see from what follows, I have responded to your points according to the numbered paragraphs in which they appear. However, you will notice that I have given general responses for the most part and otherwise reserved TfL and LU's position.

The investigation into the complaints made on 06 and 07 September (by Ms Morena and Ms Alvarez) is almost complete but, because of annual leave arrangements in the coming weeks, the outcome is not expected to be finalised before 12 October 2018. This is a little later than you requested in your letter of 30 July, and for that I am instructed to apologize. I will forward you the outcome on 12 October – it will be in format of a report with relevant appendices.

## **Your Letter of 30 July 2018**

As you will appreciate, your letter of 30 July is the third letter you have sent to TfL/GLA about the Market. As I have explained previously, neither LU nor TfL is party to the redevelopment of Wards Corner by Grainger, in conjunction with the Council. LU does not operate the Market and does not commission MAM to operate the Market on its behalf. The space in which the Market is located is leased to MAM as a business premises and it is MAM's commercial prerogative (the same as it was for Jill Oakley's before MAM) to decide how and what business to operate from there. You will see that I repeat the point that neither LU nor TfL want any tenant operating any business in any of its spaces to discriminate in any of their dealings with their licensees (that is what the traders are – as I understand it) or the public.

As your letter to the Council of 15 August appears to understand, the future of the Market and the future of the building are in the hands of the Council and its development partner and the protections put in place through the planning process (which TfL and LU are not a part of). It is in that context that the public law issues to which you refer are most clearly engaged. Plainly, your clients do

not think MAM fit to assist in the discharge the planning obligations in the regeneration but that really is a matter for the Council. The commercial relationship between MAM and LU is private in nature and governed by the terms of the lease and the law that governs commercial Landlord and Tenant relationships. As you will see from what I say below, MAM's relationship with Grainger (and in turn the Council) was taken into account when granting MAM the lease (I'm not sure how it could have been ignored in this commercial context) but it was only one of a number of considerations that the chartered surveyors advising LU were entitled to take into account.

Responding to your letter:

## **Background**

### *The Market*

Paragraphs 4 to 7 are noted save for the point I make above about the space being leased to a Market Operator. MAM are a market operator but that is not a service they perform for LU. This is a commercial space which LU leases out for a business use, in the same way that it leases out more than a thousand other spaces in properties above and/or near its stations (Weatherspoon for example is a pub operator – but is not operating pubs in stations as a service for LU). This is a contrast to the position with Grainger – where MAM may (according to commercial arrangements that are nothing to do with LU or TfL) be performing a service as they assist in the regeneration and the future relocation of the market.

Jill Oakley operated a market in the space for commercial reasons of her own. MAM acquired the previous lease through private treaty with Jill Oakley and were entitled to seek a renewal of the lease – which LU granted.

### *Grainger's Development Plans*

Paragraphs 8 to 12 are all noted without comment.

### *The Last Market Lease and its Assignment*

Paragraphs 13 to 20 are all noted. I think the position set out by Mr Jones in the correspondence you refer to is clear but I don't agree with the "materiality" you draw therefrom (and repeat in your letter of 15 August to the Council). It's beyond doubt that the Market is considered an important part of the community. Grainger are the Council's chosen development partner. Grainger (or companies closely associated with them) have given the Council certain commitments about the future of the Market and have reached a commercial agreement with MAM and as I understand it MAM will assist them in discharging those commitments. Whether MAM are a suitable partner for Grainger – who in turn is the Council's partner – is not commented on by Mr Jones and there was no obligation on Mr Jones (or anyone at TfL/LU) to look into that.

Commercially at least, they are well placed to manage the Market and support the (the Council's preferred) regeneration proposals.

#### *The February 2017 Complaints*

Paragraphs 21 to 28 are all noted. I would say that LU believes the investigation carried out by Mr Jones and Mr Henman was fair and it was thorough. It is not right to say the commitments given by MAM were decisive in the decision to renew the lease. As I have explained in previous correspondence, sitting tenants are afforded a chance to renew their leases. That is an established practice that is of commercial benefit to LU and was a part of the decision to offer MAM a renewal of the lease. The commitments given by MAM formed part of the decision making process as to the renewal (which was not challenged by Judicial Review) but you have no factual basis for asserting they were decisive.

#### *The September 2017 Complaints and Investigation*

Paragraphs 29 to 40 are noted but it is not accepted that the promises made by MAM have not been honoured. There have been complaints about MAM's conduct and they are the subject of the investigation.

I am instructed to confirm that the summary at paragraph 30 is a fair summary of the complaints that are being looked into. Likewise, I repeat the point made by Ms Daly in the letter of 12 October 2017 – categorising the complaints and explaining what the investigation would involve. Ms Daly is fully aware of the earlier complaints and the outcome. It is accepted, and Ms Daly is aware, that TfL wants its tenants to demonstrate the behaviours contained in codes and policies as to equal treatment.

#### **Legal Framework**

As I have pointed out in the last correspondence, none of LU or TfL's public functions are engaged in the commercial transaction which is the lease between LU and MAM. This is a private market, operated by a private market operator in a commercial space which is leased from LU. Its status in the community is considered important by the community and its importance – as I understand it – is recognised and protected through the planning process overseen by the Council whose public law functions are engaged in the context of the regeneration.

TfL and LU expect that all of their tenants operate their commercial spaces in a way which is consistent with our corporate values. That point was made by Alan Jones to MAM. Where complaints are made about the conduct of our commercial tenants, they are investigated. That commitment has been made here and the investigation will complete before 12 October 2018.

#### **Analysis**

In addressing your analysis, the question of whether the investigation must be completed doesn't arise because TfL has never refused to investigate (a process you accept is underway) and it has never said it would not finish the investigation. There is nothing in your summary at para 30 which "on the face of it" involved "flagrant and systemic breaches" of the standards that TfL holds itself to and expects of its tenants. They are allegations about aspects of MAM's conduct which are being investigated by Ms Daly.

### **The Investigation**

Ms Daly set out in October 2017 how she intends to oversee the investigation and she is doing so.

### **Information Sought**

The lease is enclosed. You can advise your client on the legal issues around third party rights. The investigation will be made up of a report and will include appendices made up of the relevant information taken into account during the investigation.

MAM is aware of the commitments it has made – in the terms of the lease and in response to the investigation in early 2017. Those are the standards against which it is being investigated. The terms of the lease are typical of those contained in LU's commercial leases and in this case they are broadly the same as those contained in the lease to Jill Oakley (i.e. they have governed the lease arrangements of this commercial space for more than 30 years and nothing of any significance changed between Jill Oakley's lease and the lease to MAM ).

### **Conclusion**

Ms Daly will set out her findings and communicate them to your client before 12 October 2018.

Yours faithfully



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Dear Mr Ejiofor,

## Compliance with planning obligations imposed by the section 106 agreement linked to planning application HGY/2012/0915

1. This firm is instructed by Victoria Alvarez and Fabian Cadavid, who are traders in Seven Sisters Market (**'the Market'**), along with Mirca Morera, who is an advocate for some of the other traders, including her father. You met Ms Morera earlier today and she will have handed over a copy of this letter. Ms Alvarez, Mr Cadavid and Ms Morera are referred to collectively as **'our clients'** below. Please note, we have corresponded with the London Borough of Haringey (**'the Council'**) in the past as solicitors for El Cafetal Ltd (Ms Alvarez' business) and West Green Road / Seven Sisters Development Trust Limited (**'the Trust'**) of which she is a Director.
2. As you know, Grainger PLC (**'Grainger'**) has planning permission to develop the site on which the Market is situated but the development cannot proceed unless certain Compulsory Purchase Orders (**'CPOs'**) are made. Grainger's permission is also subject to obligations to preserve the Market and promote traders' interests which are listed in a section 106 agreement (**'the section 106 Market Obligations'**). One such obligation is to appoint a 'market facilitator' who will, broadly, support long standing traders throughout the planned transition of the Market from its current site, to that of a temporary market, and then back to the current,

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but redeveloped, site. Grainger's agent, Quarterbridge Project Management Limited ('Quarterbridge') has been appointed to this role and another company, Market Asset Management (Seven Sisters) Ltd ('MAM') holds the lease to operate the market. The ownership, control and personnel of Quarterbridge and MAM are near-identical, as their joint website and Companies House records indicate.

3. This September will mark the three year anniversary of MAM's stewardship of the Market and over two years have passed since Quarterbridge was appointed as market facilitator. If the CPOs needed to proceed with the development are granted, Grainger will presumably want to press ahead. However, there are serious concerns about actions and failures by Quarterbridge and MAM that damage traders' interests and imperil the Market's future. Some of these are currently the subject of a second, formal investigation by Transport for London ('TfL') and, in respect of Mr Cadavid, litigation that has been issued in the County Court under the Equality Act 2010.
4. In these circumstances, we write to ask the Council to:
  - (1) gather relevant evidence for, and then undertake, an assessment of the extent to which Grainger has complied with the section 106 Market Obligations;
  - (2) confirm that it accepts that section 149 of the Equalities Act 2010 is engaged by that assessment (for the reasons discussed at paragraphs 16 to 22 below);
  - (3) confirm that the assessment will be concluded with a reasoned decision on:
    - (a) whether there has been compliance with the section 106 Market Obligations or, if there has not been, why not; and
    - (b) the steps, if any, that should now be taken by the Council to enforce the section 106 Market Obligations in the event there has not been compliance; and
  - (4) provide information about the monitoring of compliance with the section 106 Market Obligations, evidence gathered for that purpose and any relevant decisions made to date including on the monitoring process itself.
5. We would be grateful for a response to these four requests within 14 days, i.e. by close on 29 August 2018.
6. The remainder of this letter is structured as follows. First, we summarise the Council's legal obligations to assess Grainger's compliance with the section 106 Market Obligations (see

paragraphs 8 to 22). We then set out the history of the planning permission Granger has and how the section 106 Market Obligations came to be imposed (see paragraphs 23 to 43), then discuss how traders' concerns have arisen, been aired and investigated thus far (paragraphs 44 to 71). We then give non-exhaustive examples of the issues that will need to be examined as part of the assessment (paragraphs 72 to 111). Last (paragraph 114), we give details of the information requests mentioned at paragraph 4(4) above.

7. Mr Hermitage is the Council Officer with overall responsibility for planning enforcement so is copied into this correspondence. It is also being copied to the Rt Hon David Lammy MP, Member of Parliament for Tottenham, Councillors Adje and Blake as they are involved in discussions with Ms Morera about the matters raised below (and to Councillor Berryman as he may be too).

### **The Council's legal duties to assess Grainger's compliance with the section 106 Market Obligations**

8. There are compelling public policy reasons to undertake the assessment requested at paragraph 4(1) above, but in any event Council is legally required to undertake it and, when doing so, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.
9. It may be helpful if we summarise how these duties arise and what they entail.

#### *Section 106*

10. As you will know, section 106 of the Town and Country Planning Act 1990 states materially:

“106.— Planning obligations.

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and [sections 106A to 106C] 2 as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—
  - (a) restricting the development or use of the land in any specified way;
  - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
  - (c) requiring the land to be used in any specified way; or
  - (d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the

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Greater London Authority) on a specified date or dates or periodically.

- (1A) In the case of a development consent obligation, the reference to development in subsection (1)(a) includes anything that constitutes development for the purposes of the Planning Act 2008.
- (2) A planning obligation may—
- (a) be unconditional or subject to conditions;
  - (b) impose any restriction or requirement mentioned in subsection (1)(a) to (c) either indefinitely or for such period or periods as may be specified; and
  - (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.
- (3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
- (a) against the person entering into the obligation; and
  - (b) against any person deriving title from that person.
- (4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.
- (5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.
- (6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—
- (a) enter the land and carry out the operations; and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.”
11. The two enforcement options at subsections (5) and (6) are generally known as the injunction and ‘self help’ options i.e. the Council can force a developer to discharge its obligations (which is the conventional approach, see *Avon County Council v Millard* [1986] J.P.L. 21) or it can take responsibility for discharging them

directly at the developer's expense. Of course, where an obligation functions as a precondition to a development progressing, as here, the Council can also indicate that it will not be permitted unless and until the obligation is fulfilled.

*Monitoring compliance with section 106 obligations*

12. This framework would be unworkable if developers' compliance with section 106 obligations was not monitored. As the Council's website explains:

"Implementation and Monitoring

Section 106 Agreements, are legally binding agreements between the council and a developer, which include matters linked to a proposed development that has been granted planning permission. The purpose of planning obligations is to enable any adverse impacts of a development to be offset, to enhance the physical environment or to contribute towards local facilities.

The council monitors the implementation of these agreements by recording the heads of term and amount of financial contribution for the agreement, the date that money is received, spent and when relevant works are completed."

13. Of course, where a section 106 agreement creates obligations beyond the examples given at in the paragraphs quoted immediately above, the Council will monitor those too. Below, we seek information about the Council's monitoring plans in this unusual case.
14. That said, the Council's policy to monitor compliance is reflected in the section 106 agreement that applied to this particular development: see paragraphs 23.1 and 24.5 of schedule 4 which envisage monitoring taking place at Grainger's expense. Further, to assist the Council, clause 24.5 of the agreement provides that Grainger must:

"provide the Council with a report every six (6) months specifying the measures that have been taken pursuant to Paragraph 24 of this Schedule PROVIDED THAT the first report shall be sent to the Council no later than twelve (12) months after the grant of the Planning Permission and this process shall continue until the sixth (6th) anniversary of the grant of the Planning Permission."

15. As with any public function, when monitoring compliance with planning obligations, a local authority is required to gather information necessary to take a rational decision: see *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014. It should also be noted that the beneficiaries of section 106 agreements, such as the traders and

the public they serve in the present case, have a legitimate expectation that the Council will honour its commitments to monitor them, unless there are compelling public policy reasons not to do so: see *R v. North and East Devon Health Authority, ex parte Coughlan* [1999] EWCA Civ 1871, [2001] Q.B. 213 and *R (Bhatt Murphy) v The Independent Assessor* [2008] EWCA Civ 755.

### Section 149

16. The Council's monitoring obligations are enhanced in the present case. We say this because, in *R (Harris) v London Borough of Haringey* [2010] EWCA Civ 703, the Court of Appeal considered the significance of the public sector equality duty then contained in section 71 of the Race Relations Act 1976 to the Council's decision-making about the future of the Market, the Court of Appeal held that the duty was engaged, partly because of the identity of the traders and proprietors of other nearby businesses and partly because of the particular communities they served. Given this, Pill LJ held that the duty demanded an "analysis" of the material about these factors that was before the decision-maker "with the specific statutory considerations in mind", adding "it is necessary to have due regard to the needs specified in section 71(1). There had been no analysis of the material before the Council in the context of the duty", so the decision was unlawful (see [40]).
17. The section 71 duty now appears in an enhanced form in section 149 of the Equality Act 2010. It provides materially:

#### "Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1)....
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) tackle prejudice, and
  - (b) promote understanding.”
18. Race and gender are listed amongst the relevant protected characteristics at subsection (7).

*Compliance with the section 149 duty*

19. The duty to have due regard is an ongoing one (*R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) at [95]). It has been variously described as “a test of the substance of the matter” which must be discharged with “vigour” (*R (Domb) v London Borough of Hammersmith and Fulham* [2009] EWCA 941 Civ at [52]), “rigour” (*Brown* at [92]), and which imposes “a heavy burden on public authorities...in ensuring that there is evidence available, if necessary, to demonstrate that discharge” (*R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at [59]).
20. “Due regard” necessarily involves a decision maker:
- (1) appreciating when the duty to have due regard is triggered, i.e. whenever there is an equality issue which needs at least to be addressed (*R (Elias) v Secretary of State for Defence* [2005] EWHC 1435 (Admin) at [98]);
- and then:
- (2) taking steps to properly understand any discrimination, equality or good relations problem, its degree and extent (*R (Lunt) v Liverpool City Council* [2009] EWHC 2356 at [44], *Rahman v Birmingham City Council* [2011] EWHC 944 (Admin) at [35] and *R (Green) v Gloucestershire CC*, *R (Rowe & Anor) v Somerset CC* [2011] EWHC 2687 (Admin) at [121]-[127]);
  - (3) considering the information it has with the specific statutory considerations in mind (*Harris* at [40]);
  - (4) when doing so, identifying any unlawful discrimination and negative (or positive) consequences in terms of equality of opportunity and good relations of the courses of action being contemplated (*Elias* (Court of Appeal) at [274]);
  - (5) balancing any consequences for equality of opportunity against the other benefits of proceeding, or not (*R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA (Civ) 141 at [31], *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) at [81]); and

- (6) considering whether, and if so how, any identified negative consequences can be mitigated (*R (Kaur & Shah) v London Borough of Ealing* [2008] EWHC Admin 2026 at [43]).
21. In circumstances where the section 106 Market Obligations came about to help fulfil the Council's section 71 duty there can be no sensible argument that monitoring compliance with them will not engage its section 149 duty.
22. It follows that the principles listed at (2) to (6) above will apply to the assessment requested (and any consequential or related decisions). Please confirm you agree when replying to this letter.

## **Background**

### *The Market*

23. As you know, the Market occupies the ground floor of a former Edwardian department store, known locally as Latin Corner, Latin Village and Wards Corner.
24. London Underground Ltd ('LU') holds the freehold in the land. LU is an indirect subsidiary of TfL, being owned by Transport Trading Ltd, a direct subsidiary. For some years LU has leased the ground floor Market space out to a 'market operator' who, in turn, has granted what purport to be licences to the Market's traders (we reserve our position on the precise legal nature of these arrangements). All of the Market traders are BME people, most have Latin American origins. Many also have Colombian origins and/or nationality.

### *Grainger's development plans*

25. *Harris* came about because, as noted above, Grainger proposes to develop the site of the Market for retail and private residential purposes. Note, there will be no social housing on the site or even affordable housing. The purpose of this development is commercial.
26. Planning permission to do so was secured in 25 June 2012 (the earlier decision to grant it having been quashed by the Court in *Harris*, and then subsequent applications having been refused by the Council). However, those plans are subject to certain Compulsory Purchase Orders ('CPO's) being made and an unusual section 106 agreement that requires the temporary relocation of the Market, a space to be made available for it in the new development and its support in the meantime.
27. The 5 May 2012 officer report for the Councillors who ultimately granted planning permission explained the position in this way:

“8.4.3 The proposed development would result in the provision of new shops, including trader’s market...”

8.6.1 A key element of the previous and current schemes is the re-provision of the existing Seven Sisters Indoor Market...

#### Replacement Market

8.6.4 The re-provision of the indoor market is a key element of the scheme. The market has a gross floor area slightly smaller than the existing market but this is due to a more efficient layout. However, the actual stall units are the same size as those in the existing market.

8.6.5 The market will be re-provided subject to reasonable conditions to ensure that the market is provided for the benefit of the current traders and that it will be successful in the long term.

8.6.6 As under the previous scheme, a package of measures is proposed in the s106 agreement to help ensure the market is re-provided successfully.

8.6.7 The s106 agreement requires the replacement market to be run by an experienced indoor market operator; this arrangement is to be in place not less than 12 months prior to the due practical completion date of the proposed development; a Market Lease must be in place not less than 6 months prior to the due practical completion date of the proposed development; and the rent will be for open market A1 use...

8.6.9 In order to assist with a number of practical issues identified relating to the temporary relocation of the market during the redevelopment of the site, the s106 will require Grainger and the Council to work together:

- to facilitate or fund a specialist facilitator to engage with the traders in order to find and provide temporary accommodation;
- to liaise with those existing Spanish-speaking traders to promote their interests in the temporary accommodation; and
- to engage with and provide appropriate business support and advice to all traders to secure the maximum number of expressions of interest to return to the site...

8.6.11 The above package (“Market Facilitator Package”) is intended to assist the market to find a temporary location and to continue functioning. This package

will run for five years from the granting of consent. This package includes a 'market facilitator' to work with traders to identify a temporary location, to work with the Spanish speaking traders to promote their interests in the temporary location and to provide appropriate business support and advice to all traders to secure the maximum number of expressions of interest to return to the site as well funding towards relocation costs and a three month rent free period in the temporary location. The Market Facilitator will also signpost existing businesses and employees towards existing appropriate bodies to assist business to continue trading or individuals to find suitable alternative employment...

#### Indoor Market

8.31.4 The indoor market is to be re-provided as shown on the proposed development drawings on the basis that the applicants undertake to provide a minimum 6 months notice period to the traders for vacant possession and that Urban Space Management and Union Land be employed to assess the opportunities for temporary location for the market as a whole or within an existing market. This re-provision will be subject to four conditions to be contained within the s106 agreements. These conditions are as follows:

- the market must be run by an experienced indoor market operator
- this arrangement must be in place not less than 12 months prior to the practical completion date of the proposed development
- a market lease must be in place not less than 6 months prior to the due practical completion date of the proposed market
- the rent will be open market rent for A1 use class....”

28. The officer report also included a “[s]ummary of Business and Employment Impacts for Affected Groups” in table form which is appended to this letter. This is an important document because it explains the relationship officers identified between “risks” to some of the statutory needs listed in section 149 of the Equality Act 2010 and the ways in which the arrangements described above, in particular the work of the market facilitator, would help “mitigate” those risks.
29. In resolving that planning should be granted on that basis, councillors would have understood that Grainger would be under a clear obligation to secure re-provision of the market on a specified timescale and in a particular way.

*Progress with Grainger's plans*

30. Grainger has made limited progress with its plans in the following six years. As to the CPO process, this was the subject of a lengthy contested public inquiry last year (see <http://seven-sisters.persona-pi.com/>) which has yet to be formally concluded with the publication of the inspector's report and a subsequent decision by the Secretary of State.
31. Elements of the section 106 agreement appear to have been complied with, but it is clear others have not. For instance, there is no temporary market in place (though one is planned for Apex House).
32. It should also be noted that, on 25 April 2014 planning permission was granted for an alternative, community-lead redevelopment plan for the site by the Trust (see the 'Decision Notice' at <http://www.planningservices.haringey.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=272550>).
33. It follows from all of this that the site's development by Grainger is possible, but far from certain.

*A market facilitator is appointed*

34. In late 2015 or early 2016, Grainger decided to appoint Quarterbridge, a company of which Jonathan Owen is a director, to a role described in the section 106 Market Obligations as "market facilitator". At that time, paragraph 24.3 stated that Grainger was obliged to:

"appoint a market facilitator to work with the Traders in order to:

- (a) identify a location for the Temporary Market with the borough of Haringey (or such other location as may be agreed in writing with the Council);
- (b) promote the interests of Spanish-speaking Traders in the Temporary Market;
- (c) provide appropriate business support and advice to all Traders with the objective of maximising the number of Traders who elect to return to the New Market Area;
- (d) assist Traders in continuing to trade from the Market for so long as it is open for trading purposes; and
- (e) assist individuals working at the Market to find suitable alternative employment in the event that they decide not to relocate to the Temporary Market and/or the New Market Area."

35. Strikingly, given the context set out above, traders were not consulted on who should be the market facilitator. It appears the Council may have had some role in the appointment, however. We seek information about this below.

*The last Market Lease*

36. Meanwhile, the last lease of the Market space granted by LU expired on 16 September 2015. At that time MAM, of which Mr Owen is also a director, had held that lease for a very short period having been assigned by the previous market lessee, Mrs Jill Oakley. After that, we understand LU's position was that MAM held the assigned lease 'at will', notwithstanding its term having expired.

*The decision to award the current Market Lease to MAM*

37. In 2016, it emerged that LU intended to enter into a new lease with MAM and draft heads of terms had been agreed. The intention was that the new lease would continue until it lapsed or was terminated on notice to enable Grainger's development of the site to proceed.
38. Various Market traders became concerned about the process by which MAM had been selected as the preferred future, despite indications from a TfL employee, Martin Teodorczyk, that there would be an open, advertised process.
39. All of this was the subject of an exchange of pre-action correspondence between this firm and TfL. Ultimately, the Trust was invited to make an offer and did so, but this was rejected in favour of MAM. The reasons given are significant. In an e mail of 6 May 2016 from TfL's Alun Jones to Roger Dunlop (a commercial property agent then acting for the Trust) it was said (our emphasis):

"I regret to advise that we will not be pursuing your clients [sic] offer further.

We appreciate that the proposal has some merits and we understand your clients reasons for wishing to take responsibility for managing the market.

However, it is our normal practice to give current tenants an opportunity renew their leases, unless we choose to restructure our portfolio, and detailed negotiations have already taken place with Market Asset Management Ltd. Heads of Terms were agreed some time ago and a new lease is close to completion. The current lessee is also linked with Grainger Seven Sisters Ltd who are planning to regenerate this area in partnership with Haringey Council. As you will be aware the market is considered to be an important part of

the local community and will be part of the regeneration plans. MAM Ltd are therefore well placed to continue to manage the market, support the regeneration proposals and help with the continuity of the market.”

40. A further letter of 23 May 2016 from Mr Jones makes these points in near identical terms, adding

“MAM Ltd is best placed to continue to manage the market, support the regeneration proposals and help sustain its future”

41. In the same letter, this view is characterised as “TfL’s position”.

*The Steering Group is established*

42. A Future of Seven Sisters Market Steering Group (**‘the Steering Group’**) was then established to focus discussions between the Market traders, Grainger, Mr Owen and the Council.
43. It is instructive to compare the market facilitator role as envisaged by paragraph 24.3 with the way Mr Owen described his role at the inaugural meeting of that group on 27 October 2016. The minutes record him stating:

“JO continued to say that firstly he was a businessman like everyone else at the meeting and that he wanted to improve and add value to the business in order to increase rents and to get a better return. He explained that he was buying in a product (which was the market) and trying to invest in it and add value to it and then see an increased return. He said that was his starting point after he had invested a considerable amount of money in buying the market as a going concern from the previous owner.”

*The traders raise concerns with the Steering Group*

44. At the same meeting, the traders present (who had been selected to represent traders as a whole) gave all attendees a letter expressing concerns about his management of the Market to date. A copy is appended.
45. In summary, the letter says:
- (1) Mr Owen’s management style was frustrating and humiliating, and was ‘top down’ with no consultation;
  - (2) he “ruled by fear” and was abusive;
  - (3) a trader’s unit had been taken away;

- 
- (4) there were persistent unresolved maintenance problems in communal areas (for which MAM is responsible under the lease) including in the toilets;
  - (5) there were, similarly, pest control problems;
  - (6) there had been no heating for a year and some lights were not working;
  - (7) car parking arrangements had been compromised (in the past, facilities had been provided to traders for a nominal fee); and
  - (8) no-one had been identified to deal with complaints.
46. Note, these concerns cannot be characterised as the normal ‘back and forth’ between market traders and a market operator. They were being raised collectively, at the end of a year of MAM’s involvement and were significant. The letter concluded:
- “Demolition is not the excuse to allow the market to decline  
we pay rent our living depends on the market.  
  
What we want moving forward is a solution to these issues  
  
A neutral point for mediation to resolve internal issues not to  
be dismissed with no action taken  
  
We want to be part of the decision makers for our market  
now and in the future.”
47. Mr Owen’s reaction was not constructive. At the next meeting of the Steering Group, in November 2016, traders were threatened with “war” (a statement that tellingly does not appear in the minutes). Mr Owen added that he considered he had been “blindsided”.

*Traders’ concerns are raised with TfL*

48. The traders’ concerns were not assuaged by Mr Owen or the Steering Group more generally so, shortly before LU was about to sign the new Market Lease with MAM, they were raised directly with TfL in a letter of 23 February 2017 which is appended.
49. That letter discusses what happened at the initial Steering Group meetings, adding that:
- (1) immediately prior to another meeting with traders on 13 February 2017, Mr Owen told Ms Morera he was “getting [his] boxing gloves ready”;

- 
- (2) at that meeting, he announced “if I wanted to, I could get rid of 90% of the traders here”;
  - (3) Mr Owen used language at that same meeting such as “bloody illegal immigrants” and “not to be Irish” which, although not directed at anyone specific, traders found offensive, distasteful and menacing;
  - (4) responding to traders requesting improved security at the Market at the 13 February meeting, Mr Owen said, “I’m giving you permission, it’s my property [sic], grab them by the scruff of the neck and throw them out”;
  - (5) then, on 15 February 2017, Mr Owen wrote to say he was “considering closing down” stalls, and reporting them to the Food Safety Officer at London Borough of Haringey Council. Mr Owen suggested that the Council “would be perfectly entitled to do this” i.e. close stalls, and that he “would support such action”; and
  - (6) car parking facilities had been compromised.
50. That letter concluded by requesting:

“that TfL hold off entering into the proposed market lease, until a proper investigation has been concluded”.

51. TfL acceded to that request on 24 February 2017.

*TfL February to April 2017 investigation*

52. TfL’s investigation proceeded by means of requests for information from and meetings with, traders and Mr Owen involving Mr Jones and a colleague, Clive Henman. It concluded on 6 April 2017 with the issue of a report to which was appended a ‘statement of reassurance’ and ‘action plan’ from MAM and a letter from Mr Jones to Mr Owen, all of which are appended.
53. The 6 April 2017 covering letter to Mr Owen stated materially (our emphasis):

“During our meetings you accepted that your conduct referred to in the allegations was wrong. You accepted you had caused offence and apologised, and had apologised to the individuals in question.

I have met with Ms Morera, and my colleague Mr Henman has spoken with Mr Khanjary. The impression they gave is that there is a lack of trust between MAM and the market traders. Both confirmed that you had apologised for your actions. We have discussed your commitment to improving relations between MAM and the market traders. I acknowledge the

role the Action Plan and the increased involvement of Malcom Veigas will have in this.

The investigation report and appendices are attached. In view of the above I have agreed that the Lease can be renewed.”

54. The appended report which is dated 4 April 2017 elaborates on the last of these points as follows:

“Having regard to the discussions during our investigation and the additional information supplied by Jonathan Owen / MAM - including Jonathan Owen's admission of his inappropriate behaviour, Jonathan Owen's apology for said behaviour, and the actions being taken by MAM to work with traders to improve the market - I intend to proceed with the grant of a lease to MAM.”

and in its main body, noted (our emphasis):

“In our two meetings with Jonathan Owen, Jonathan Owen accepted that he had previously behaved inappropriately towards some traders and said that whilst he had not intended to cause offence, he acknowledged the offence that his language had caused.

We discussed respect and trust with Jonathan Owen, and whilst we acknowledge the challenging environment of running a market, we asked that he abide by the London Underground Code of Conduct (attached); to which he agreed.

Jonathan Owen presented the MAM Equality and Diversity Policy to us. We welcome that MAM has adopted such a policy and Jonathan Owen confirmed his commitment to the MAM Equality and Diversity Policy in his meetings with us.

In our second meeting with Jonathan Owen, another MAM representative, Malcolm Veigas, attended. MAM intend that Malcolm Veigas will take over more of the day-to-day running of the market from Jonathan Owen. In our meeting with Mirca Morera and Victoria Alvarez, Victoria Alvarez had indicated that she felt Malcolm Veigas was more positive towards the traders than Jonathan Owen.

In our second meeting with Jonathan Owen, MAM explained the steps that they will take to improve the market and to work with traders to improve their businesses. MAM subsequently sent us an Action Plan (attached). The action plan commits MAM to frequent cleaning of the communal areas. It will help with the promotion of the market, and gives a commitment to improved relations with licence holders.”

55. Plainly then, MAM's admissions and promises of changes in behaviour, including adherence to the Code of Conduct, were decisive factors in the signature of the Market Lease (hence the

use of the words “[i]n view of the above”, “[h]aving regard to”). The Market Lease was signed very shortly afterwards.

*The July 2017 variations to the section 106 agreement*

56. Then, following a short and problematic consultation, changes were made to the section 106 agreement in July 2017. In place of paragraph 24.3 quoted above, it now provides:

“Schedule 3 - Variation...

2.1 Market Facilitator and Temporary Market

To procure that the Market Facilitator works with the Traders in order to:

- (a) promote the interests of non-English speaking traders in the Temporary Market and the New Market Area;
- (b) provide appropriate business support and advice to:
  - i. all Traders;
  - ii. all other persons working at the Market;
  - iii. such other local independent traders who may express an interest in trading from the Temporary Market and the New Market Area;
- (c) assist Traders in continuing to trade from the Market and the Temporary Market for so long as the Market and the Temporary Market respectively are open for trading purposes;
- (d) advertise the proposed relocation from the Market to the Temporary Market and from the Temporary Market to the New Market Area (as the case may be) so as to raise awareness about the proposed location and opening of the Temporary Market and the New Market Area, respectively;
- (e) advertise the Temporary Market and the New Market Area once each facility has been opened to the public; and
- (f) assist individuals working at the Market to find suitable alternative employment in the event that they decide not to relocate to the Temporary Market or the New Market Area (as the case may be),
- (g) with the objective (in each case) of maximising the number of Traders and other independent local traders who elect to trade from the Temporary Market and the New Market Area.”

57. These changes were approved at officer level. The officer report recommending them indicates that the intention was to bring about “improvement in the terms for current traders” and “clarification”, rather than reduce in any way the protection originally identified as necessary (see paragraph 11 above).

*The September 2017 complaints and their investigation*

58. Meanwhile, however, the promises that had been made to TfL by MAM in April 2017 and those Grainger was reaffirming in the varied section 106 agreement were being honoured in the breach.
59. In a letter of 6 September 2017 addressed to Grahame Craig, Ms Morera gave a series of examples as to why that was so. This letter is appended.
60. In summary:
- (1) there had been unexplained utility hikes of 300% imposed upon 32% of market traders, all of whom are of Latin American origin (and, overwhelmingly, of Colombian origins);
  - (1) one of the targeted Colombian traders, Mr Catano (a disabled victim of the London 7/7 bombings), had been issued with what purported to be an eviction order by MAM (the latest in a series of evictions of long-standing traders);
  - (2) Mr Owen had told another trader, Fernando, that he was “very angry” with him and Ms Morera because of evidence given during the 2017 CPO inquiry and reprisals were threatened;
  - (3) Mr Owen had described Ms Alvarez and another female trader as “fucking bitch[es]” to another trader;
  - (4) he had also demanded employee information from Ms Alvarez and cancelled the licence of two of her units (21/22 which were taken in October 2015 on the basis that Mr Alvarez had been subletting without authorisation, which she denies as she had permission from the former Market leaseholder, Ms Oakley);
  - (5) the police had advised the Market security measures taken by MAM were inadequate, no steps had been taken to improve them and a series of crimes had been committed against traders; and
  - (6) parking facilities remained compromised.
61. Ms Morera also highlighted the outcome of the earlier complaints, traders having since passed a ‘no confidence’ vote because of

them and the significance of TfL's Equality Act 2010 duties. Her letter concludes:

"I have tried to resolve the matter formally in a TFL meeting on the 16th March with Alun Jones, Tom Atkinson and Clive Henman in Seven Sisters, and a TFL investigation was initiated. However, we have not received a satisfactory outcome. I am making a second formal complaint and I would like to arrange a meeting at the TFL offices. In your response please let me advise me of a date of a meeting."

62. Responding by letter on 12 October 2017, TfL's Joanna Daly stated:

"After receiving allegations regarding MAM and its director Jonathan Owen, we need to discuss these allegations further with affected parties. Allegations received by us fall into two areas on which we will focus our discussions:

- A. Unfair practices (including allegations of uncompetitive utility prices); and
- B. Inappropriate conduct (including sexist and/or racist language).

We will:

- Arrange meetings with you, Mr Catano and Ms Morera and any other licensee who are able to share specific examples of unfair practices or inappropriate conduct;
- Arrange a meeting with Mr Owen to gather his response to the specific allegations of unfair practices or inappropriate conduct;
- Identify and take appropriate actions; and
- Produce findings in writing and to circulate them to those involved in the discussions and relevant political stakeholders.

Please note that many of the points raised in correspondence that we have received are outside of our remit as landlord and relate to direct contractual obligations between MAM and the traders or that, in the case of harassment, in the first instance ought to be directed to the Citizen Advice Bureau or other entities that are more appropriate to deal with such matters."

63. Ms Daly's letter is appended.

64. Pausing there, we observe that Ms Daly was clearly unfamiliar with what had happened in the previous investigation, in particular, TfL's emphatic insistence on MAM's compliance with LU's Code of Conduct and Mr Owen's undertaking to do so. Section 3.2 of that Code, headed "Working Relationships", states that those working for LU must:

- treat everyone with whom they come into contact at work with courtesy and respect;

- be aware of and comply with LUL's policy, standards and procedures on equality and workplace harassment;
- Avoid initiating or provoking violent situations or otherwise behaving in a manner which is offensive, abusive, intimidating, bullying, malicious or insulting to fellow employees, customers and contractors and others with whom they come into contact in the workplace.”

65. The second bullet point refers to policies that include the 2010 document, LU - Harassment and Bullying at Work Policy and Procedure. Its introduction stresses:

“the right to a supportive working environment free from harassment and/or bullying”

and shared

“responsibility to create a safe and supportive working environment and this includes behaving in a responsible, moderate and sensitive manner in dealings with others”.

66. Essentially, LU was holding MAM to the same standards to which it holds itself. That was underscored by Mr Jones’ minuted discussions with Mr Owen on 6 April 2017, in which it was emphasised the lease renewal was being considered in a context in which compliance with section 3.2 above was behaviour “expected” of MAM by TfL.

67. It follows that harassment was very much a matter to be investigated by TfL when grappling with the 6 September 2017 complaint.

68. Ms Morera made this point and others regarding TfL’s policies and duties at a meeting with traders that took place on 13 November 2017. Traders also explained how MAM’s conduct formed a pattern, that it had systematically breached the promises that had been made during the last investigation to secure the Market Lease, and that all of this needed to be addressed through action.

69. They were told by Ms Daly and her colleague, Mr Sinclair Gray, that TfL accepted section 149 of the Equality Act 2010 was engaged by the 6 September 2017 letter and other complaints that had been voiced, but they could not say with certainty what action TfL could take. Minutes of this meeting were sent to Mr Gray on 14 November 2017 and are appended to this letter.

70. On 27 March 2018 Mr Gray wrote to Ms Morera stating:

“[p]lease excuse the delay in reverting I just want to let you know that we hope to revert shortly after Easter with a substantive response.”

71. The investigation has yet to be concluded, however. We have recently written to TfL inquiring about progress and a time scale for its completion.

### **The focus of the assessment of Grainger's compliance with the section 106 Market Obligations**

72. Given this this background and the legal duties summarised at paragraphs 10 to 22 above, the Council's immediate task now will be to gather relevant information, including direct from traders, Quarterbridge and Grainger and then to assess the extent to which each of the section 106 Market Obligations has been met having due regard to the needs listed in section 149. Note, the Council cannot lawfully refuse to undertake the assessment because TfL is undertaking a parallel investigation. Its duties under section 106 and 149 are its alone to discharge.
73. Regrettably, there is every indication that Grainger has completely failed to meet its obligations. In fact, it is hard to conceive how Quarterbridge could have behaved less like the market facilitator which the Council believed was vital to the protection of traders' interests.
74. Examples of the current issues are as follows. Note, this is not intended to be an exhaustive list, not least because we are not instructed by all traders

### *Bullying, intimidation and harassment*

75. Mr Owen has repeatedly threatened, intimidated, abused, offended and insulted Market traders, including when they have raised concerns with external bodies: see the examples at paragraphs 45, 49 and 60 above. When this "rule of fear" was first complained about to the Steering Group in moderate language accompanied by proposals on improving relations in future, including mediation and identification of a person to whom complaints could be made, his reaction was to threaten "war": see paragraphs 46 to 47 above.
76. Denigrating and sexist comments have been made by Mr Owen towards female traders: see, for example, paragraph 60(3) above. To similar effect, on 7 July 2016, Mr Owen told Ms Alvarez' partner to "fuck off" after she complained about electricity being cut off without warning, and then in response to a complaint about this, Mr Owen replied:

"if you do not enjoy a robust response I suggest in future you don't ignore my previous warnings about breaches of your licence terms..."
77. When a formal complaint was made about such conduct to TfL, Mr Owen admitted it and undertook that there would be no

reoccurrence: see paragraphs 53 and 54 above. This behaviour persists, however, and aspects of it are now the subject of a second, formal TfL investigation.

78. All of this is completely incompatible with the section 106 Market Obligations to “assist Traders in continuing to trade from the Market for so long as it is open for trading purposes” and of “maximising the number of [existing] Traders and other independent local traders who elect to trade from the Temporary Market and the New Market Area” see paragraphs 34 and 56 above.
79. The Council needs to make findings about this as part of the requested assessment and about what the consequences should be. When doing so, like TfL, it should keep firmly in mind the standards it sets for the workplace, such as those in its 2003 Harassment and Bullying Policy. That document provides:

“2. What is harassment and Bullying?

Harassment/bullying is defined as inappropriate action, behaviour, comments or physical contact that causes offence or is objectionable. This includes inappropriate behaviour, which makes the recipient feel threatened, humiliated or patronised, and/or creates an intimidating working environment. It can be direct or indirect, verbal or physical.

Harassment is unacceptable behaviour, which focuses on a person’s race, religion or belief, gender, ethnic origin or nationality, sexual orientation, disability, age, marital status, health status, membership of a union or personal dislike. This is not an exhaustive list.

Anyone who is perceived as different, who is in a minority, or who lacks organisational power, runs the risk of being harassed/bullied. Harassment can occur between people of the same or opposite sex.

Harassment is conduct, which: -

- is unreasonable and offensive and causes the recipient to feel threatened humiliated, intimidated or distressed. Such conduct may be persistent or a one-off incident of a serious nature.
- is unreasonable and offensive and leads to undermined confidence, interfere with job performance, and undermine job security and/or personal safety.
- Can create a threatening or intimidating environment.

Bullying is an abuse of power against an individual or groups of individuals, which undermines confidence and effectiveness. Power tends to be conferred by organisational structure, personal qualities, or by group dynamics. It

follows that bullying may involve the misuse of power in any of these circumstances. Bullying at work is repeated abuse or harassment that destroys self-confidence and creates harmful stress.”

80. We accept this is directed at Council employees. However, the traders are no less entitled to dignity in their workplace. Confirmation that the Council will take into account these standards when undertaking the assessment is therefore requested below.

*Discriminating, and undermining good relations, between persons of different racial groups*

81. Racially charged comments have been made in the presence of traders, as Mr Owen has admitted to TfL: see paragraph 49(3) above. Mr Cadavid and other Colombian traders have been targeted for increased utilities charges, but traders who are not Colombian have not been treated similarly. The differences in treatment between these groups are unexplained and complaints about this have been unresolved: see paragraph 60 above. Mr Cadavid has issued a County Court claim regarding the discrimination, harassment and victimisation he has experienced including in respect of the utilities hike and being asked to give up his unit.
82. Colombia Independence Day celebrations were organised without consultation with Colombian traders and some were not invited to participate. The celebrations were then aborted when concerns were raised.
83. None of this behaviour is compatible with the obligation to “assist Traders in continuing to trade from the Market... for so long as it is open for trading purposes” and “maximising the number of [existing] Traders and other independent local traders who elect to trade from the Temporary Market and the New Market Area”. It is also a complete subversion of a key purpose of these objectives, as discussed above at paragraphs 27 to 29 above.
84. Again, the Council has policies identifying factors relevant to assessing such conduct. For instance, section 2 of its Equality and Diversity Staff Handbook states that:

“The aim of [the Council’s equality] policy, which applies to

- residents and service users in Haringey
- visitors to Haringey
- council employees and contractors
- anyone who uses council services

is to create

‘A council which ensures the provision of services appropriate to local need, valued by all and delivered by staff who reflect the diverse communities we serve’.

This aim will be achieved by promoting and demonstrating fairness and equality of opportunity in the provision of services by ensuring employees, residents and service users have

- Fair access to services
- Fair treatment while accessing and receiving services
- Equal quality of service offered
- Fair outcomes for all service users...”

85. Section 149 is then quoted followed by this:

“We demonstrate our commitment to the [section 149] Duty by

- Undertaking Equality Impact Assessments, which more details can be found on the Equalities pages...
- performance reviews, scrutiny reviews and community engagement to challenge our service delivery models to check that all sections of the community are receiving fair access and improving outcomes;
- Using training, briefings etc., to ensure that Members and employees at every level of the organisation understand what equality in service provision means and apply it in their respective roles;
- Involving and listening to all sections of the community when making needs assessments and when making decisions about how services are designed, planned and delivered;
- Providing through our corporate complaint procedure, facilities and opportunities for members of the public to complain if they are dissatisfied with a service they have received or the way they were treated when accessing a service.”

and in part 6:

“Procedures are in place to enable residents, service users, job applicants or employees to raise a formal complaint if they believe that they have been unfairly treated.”

86. We trust these procedures encompass unfair treatment in the discharge of section 106 agreements. Confirmation is sought below.

*Obliging longstanding traders to leave the market, or give up units*

87. Traders have been required to cease trading or give up units see paragraphs 45(3), 60(4) and 81 above.

88. This behaviour is also incompatible with the obligation to “assist Traders in continuing to trade from the Market... for so long as it is open for trading purposes” and with the obligation of “maximising the number of [existing] Traders and other independent local traders who elect to trade from the Temporary Market and the New Market Area”.
89. A key issue that needs to be examined under this heading is whether the Market lessee and market facilitator can be, effectively, the same person, or group of people, or whether there is an irreconcilable conflict of interests between these two roles.

*Failures to advertise and publicise the market (and positive discouragement of publicity)*

90. Commitments have been made to advertise and publicise the market which have not been honoured. For example, on 11 February 2016, Mr Owen informed traders of plans to install a large illuminated “Seven Sisters Market” sign on the building exterior, a commitment that was repeated on 15 April 2016. On 12 February 2017, Mr Owen stated that the new sign would be installed by spring 2017. This commitment has not been fulfilled. On 04 April 2018, Mr Owen advised that a banner (not a large electric sign) would go up by the end of February. It did not.
91. Mr Owen has discussed advertising and promotion extensively with traders, for example on 3 August and 26 November 2017, but nothing has been done.
92. Conversely, when traders and others have attempted to publicise the market, they have been told not to do so. For example, in 2015 Ms Morera was told to take down a banner outside the market that said “Save Our Market” as it was not ‘projecting a positive image’ to funders. On 18 February 2017, all traders with signs on the front of the market were told to remove them as the market signage would be installed. They did this, but the sign was not installed.
93. These actions are incompatible with the obligation to “assist Traders in continuing to trade from the Market... for so long as it is open for trading purposes” and with the obligation of “maximising the number of [existing] Traders and other independent local traders who elect to trade from the Temporary Market and the New Market Area”.

*Failure to work with traders*

94. MAM became the leaseholder in September 2015. Quarterbridge was appointed as market facilitator soon afterwards, but did not organise a Steering Group meeting until October 2016. Steering Group members have been so frustrated by the way those meetings have been managed and their effectiveness that they have

boycotted some meetings. Little or no progress is made with commitments made to the Steering group by Quarterbridge and MAM (examples are given below).

95. These actions are incompatible with the obligation to “assist Traders in continuing to trade from the Market... for so long as it is open for trading purposes” and transition to the temporary market.

#### *Other forms of divisive and arbitrary behaviour*

96. Some traders have been permitted to change their use whereas others have not, for example La Esquina de Blanca was permitted to change use from café to restaurant and was given use of the old customer toilets (which were converted into a kitchen). Other traders have been refused changes of use and have been threatened with having parts of their units taken away.
97. On 20 December 2017, traders were told that they must get Mr Owen’s permission to have any meetings, or to do any photography or filming or press work at the market. This edict was reiterated on 5 January 2018.
98. These actions are incompatible with the obligation to “assist Traders in continuing to trade from the Market... for so long as it is open for trading purposes”.

#### *Security issues*

99. Given police and traders’ concerns (see paragraph 60(5) above), there have been repeated commitments to improve security at the Market, in particular by upgrading the security alarm system and CCTV coverage, for instance commitments to do so were made on 11 February 2016 and 16 March 2016. On 24 April 2017 traders were told that the CCTV and alarm system were complete. However, on 7 December 2017, they were told that no new alarm system had been installed as it would cost £10,000 so was “more an inspiration rather than a necessity”. On 22 March 2018 it was confirmed that there is no security alarm system in the market. Security guards appointed have only been for short periods. A proposed “mosquito deterrent” was never installed.
100. These failures are incompatible with the obligation to “assist Traders in continuing to trade from the Market... for so long as it is open for trading purposes”.

#### *Maintenance and facilities issues*

101. The market suffers from fairly regular electrical power outages which have extremely detrimental effects on the business interests

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of the traders. Sometimes units are without power for a full day, with substantial losses.

102. Traders have been told that the outages are their fault because of “unauthorised and uncertified alterations to kiosks” (for example on 27 February 2016). However, they have also been told that a survey will be conducted to establish the underlying causes. The traders believe that the wiring of the market is severely outdated and the issues are not caused by overloading, but if they are caused by overloading then it is incumbent on MAM identify where the problem arises rather than apportion blame collectively.
103. To date, no effective action to either rewire the market or prevent overloading has been taken. Promises to do so have not been honoured. For instance, traders were told on 25 April 2016 that rewiring was happening but works did not take place. They were then told on 6 April 2017 that investigations into the overloading issue were ongoing. Evidently, they have yet to be concluded.
104. Traders have longstanding complaints regarding the cleanliness and maintenance of the communal toilets. The locks are often broken and the toilets are regularly vandalised. On 23 March 2016, the customer toilets were closed, initially in order for a plumbing survey to take place. The toilets were never reopened, but rather given to La Esquina de Blanca (see above). Instead the trader toilets became available for customer use.
105. On 6 April 2017 traders were told that there was no point in investing in the toilets as the market might be demolished. On 22 April 2018 Mr Owen stated repairs will not continue.
106. Ms Alvarez complained that the market carpets were dirty and the flooring was uneven on 20 October 2015. Mr Owen has stated at numerous points that he would replace the flooring, for example on 22 February 2018 he stated that new carpet would be installed within a month. This has not happened.
107. Commitments were made to survey the plumbing system and find a solution to persistent drainage problems on 21 March 2016, but these have not been resolved.
108. Traders were alerted to fire safety concerns on 23 October 2015 telling them simply to “make sure you know your nearest exit point”. On 6 April 2016, traders were told that work on the fire protection system was ongoing. On 5 May 2017, they were told that the fire system was now operational and there would be precautionary fire drills (which have never happened). On 7 December 2017, traders were told the fire protection system was “now” replaced.

### *Car parking facilities*

109. There have been ongoing problems regarding the car park including a lack of security, the introduction of parking fees, the imposition of fines during periods when the ticket machine was not working, and maintenance. There are documented instances of parking tickets have been issued when vehicles are not even present in the car park. On other occasions, tickets have been issued but not placed on cars.
110. These problems were first raised by Ms Alvarez on 20 October 2015. Permits were introduced on 23 May 2016 - £5 per day or £210 for 7 weeks. This was reduced “after feedback from traders” to £100/£150 for 8 weeks, but then increased to £240 for 8 weeks on 13 May 2017. Ms Oakley’s long standing practice had been to provide facilities and charge a nominal fee to traders.
111. Worse still, traders have been told that no car park is being provided in the temporary market. Mr Owen’s response to their concerns about this was to say that that traders “need to learn to adapt their business to change”.

### **Requests**

112. Please ensure address requests (1), (2) and (3) at paragraph 5 above in the Council’s substantive reply to this letter. As regards request (1), evidence gathering from traders will need to be done in a way that means they can be confident there will not be reprisals, given what has happened in the past (see, for example, paragraphs 46, 47 and 60(2) above). Please set out your proposals for doing so when addressing request (1).
113. As regards request (4), please ensure each of the questions and requests for documents are addressed using the enumeration below. If you are unable or unwilling to do so, please give full reasons that are specific to the request. Note, these are not a Freedom of Information Act 2000 requests and should not be treated as such: our clients are entitled to this information given the public law obligations discussed above and their status as beneficiaries of the section 106 agreement.
114. Please confirm:
  - (1) the Council accepts its public law duties are as identified at paragraphs 8 to 22 above or, if that is not accepted, explain why not;
  - (2) the principles listed at (2) to (6) of paragraph 20 will apply to the assessment requested (and any consequential or

related decisions), as will those set out in the policies identified at paragraphs 79, 84 and 85;

- (3) the factual background set at paragraphs 23 to 71 above is accepted to be accurate or, if it is not, give details of the disagreement or lack of knowledge;

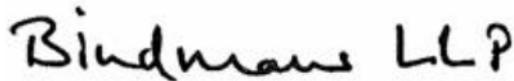
and please:

- (4) provide a copy of any internal guidance used by the Council to assist officers in implementing its monitoring policy (described at paragraph 12 above) and on the enforcement of section 106 obligations through injunctions and 'self help' (as discussed at paragraphs 10 and 11 above);
- (5) provide copies of any documents setting out how the Council originally planned to undertake its section 106 monitoring obligations in this unusual case and, if changes have since been made to those plans, the documents that reflect them;
- (6) state what role the Council had in the appointment of Quarterbridge as market facilitator and supply details of the criteria used and any documentation of the selection process and reasons for the decision;
- (7) supply copies of the six monthly reports (if any have been produced) required by clause 24.5 of the section 106 agreement;
- (8) provide copies of the documents that record any decisions made on Grainger's compliance with the section 106 Market Obligations to date.

#### Concluding remarks

115. Last, please confirm receipt of this letter by return. We look forward to hearing from you substantively by 29 August 2018.

Yours faithfully,



Bindmans LLP

ACTION PLAN: Seven Sisters Market	ACTION COMPLETION TARGETS		
	Projected	Last Update	Completed
<b>Background / Actions</b>			
This response constitutes a letter of comfort to TFL confirming MAM (Seven Sisters) Ltd commitment to collegiate working with all partners involved in the delivery of the Wards Corner Masterplan which includes the traders at Seven Sisters Market.			
MAM advised in July 2017 that the Management priorities continues to be Fire Safety, Means of Escape, Electrical Safety and Food Hygiene issues.			
<b>Operational Improvements</b>			
Introduce enhanced cleaning regimes providing afternoon and evening cleaning of the public aisles and toilets during hours of operation.	July 2017	May 2018	Not completed
Renew entry system on gents' toilets, replace hand dryer and flush mechanisms	July 2017	July 2017	Completed
Renew uneven flooring and carpet in central aisles, seek costs to renew all flooring in public areas	March 2018	May 2018	Not completed
Relocate P&D machine into the building and seek to introduce permit parking for traders.	July 2017	July 2017	Completed
Investigate and introduce recycling schemes for card board, bottles & cans.	July 2017	May 2018	Completed
Change opening times of the market to 8.00am to allow food traders to prepare for the day and encourage cleaning and closure between 7.00pm and 8.00pm to improve hygiene levels in the market.	July 2017	July 2017	Completed
Review electrical wiring and equipment for traders, leading to annual PAT tests, energy efficiency certificates and compliance with current regulations for wiring, in partnership with traders at the market.	July 2017	May 2018	Ongoing
<b>Improve trader/management interaction and relationships</b>			
<b>General Comments:</b> Regular Trader Steering Group meetings take place with active input and reporting by MASSL. Traders attendance is sporadic. Traders currently hold sporadic Traders Meetings which MAMSSL have attended. These have been disorganised and uncontrolled and unrecorded therefore MAMSSL has withdrawn in favour of the Steering Group.			
Introduce a trader newsletter that will update on management actions and collective improvement issues such as better hygiene regimes within food businesses at the market.	July 2017	May 2018	Ongoing
Introduce informal, confidential 'surgery sessions' for traders to discuss bespoke and personal business issues with market management.	July 2017	May 2018	Ongoing
Work with traders by completing collective business rate appeals and other actions to reduce business rate liabilities.	July 2017	May 2018	Ongoing
<b>Training sessions for traders</b>			
Sign post traders towards training sessions provided by LB Haringey Environmental Health on food hygiene.	Sept 2017	May 2018	Ongoing
Organise training sessions for traders on business planning via the LB Haringey economic development team.	Sept 2017	May 2018	Ongoing
<b>Marketing and Promotions</b>			
Develop and populate Seven Sisters Market website by providing help with micro site development for trader businesses.	July 2017	July 2017	Ongoing
Organise a photographer to help with trader content and micro biographies on their websites.	July 2017	May 2018	Completed
Procure and deliver an improved frontage to the market by replacing signage across the front of the market building and working with TFL to enhance the upper floor (corner building) with new vinyl advertisements promoting the market.	April 2018	May 2018	Ongoing
<b>Police Recommendations:</b>			
<b>General Comments:</b> MAMSSL Director sits on LB Haringey / Met Police 'Safer Neighbourhoods' South Tottenham Ward panel. Action taken to curtail antisocial behaviour in the locality, remove drunks and loitering youths. Regular contact with Met Police. Private contractor engaged to provide periodic security patrols for service yard and emergency attendance when required. Regular contact with and co-ordination with Met. Police			
Please report Crime and Anti-social behaviour to police via 999, 101 or via online reporting at met.police.uk.	Ongoing	May 2018	Ongoing
Please contact SNT regarding on-going issues so we can work together on long-term problem solving.	Ongoing	May 2018	Ongoing
Implement private security within the marketplace. Having marked private security will be a significant deterrent, assist with trader's safety and assist with removal of unwelcome individuals from the site.	Ongoing	May 2018	Ongoing
Increased signage regarding to the CCTV in location.	Ongoing	May 2018	Ongoing
CCTV of incidents to be downloaded as soon as possible so it can be collected by police.	Ongoing	May 2018	Ongoing
If unauthorised persons continue to use service yard, management to look at possibility to restrict times in which the service yard is opened.	Ongoing	May 2018	Pending
<b>TFL Action</b>			
<b>General Comments:</b> TFL actions generally relate to repair issues in respect of the wards corner building and upper parts.			
TFL to remove graffiti	June 2017	August 2017	Completed
TFL to remove fly posters	May / June 2017	June 2017	Completed
TFL to clear RWGs & repair concealed gutter	November 2017	February 2018	Completed
TFL to decorate window frames at first floor.	Not required	Not required	Not required
Roof works to complete	January 2018	May 2018	Completed
<b>Request for TFL approval to MAMSSL works:</b>			
After ELMO graffiti removed MAMSSL to apply vinyl-cut graphics onto inside of glass to publicise the Market.	July 2017	N/A	N/A
Remove Maria's signage panel and fluorescent light and install vinyl fabric signage for Market over the existing white + blue border panel running full width of building frontage (see Spec. attached). Not illuminated. I	July 2017	May 2018	Not completed
Install 1 no. additional CCTV camera at top of white/blue border above entrance to provide coverage of pavement (discussed / agreed with Metropolitan Police)	July 2017	May 2018	Not completed
Install 6 no flagpoles 2000mm long projecting from brickwork at first floor level (see pic) with national flags Chile, Colombia, Ecuador, Guyana, Peru, Venezuela - subject to LB Haringey planning consent if required	July 2017	May 2018	Pending
Remove Currency Exchange signage panel and fluorescent light and install vinyl fabric signage for Market over the existing white + blue border panel running full width of building frontage (see Spec. attached). Not illuminated.	July 2017	May 2018	Not completed
Install 1 no. additional CCTV camera at top of white/blue border above RHS entrance to provide coverage of pavement (discussed / agreed with Metropolitan Police)	July 2017	May 2018	Completed
<b>Action points agreed in conference call of 05 July 2017, and as per email of 06 July 2017.</b>			
MAM to investigate how current utility bills compare to the rates achieved in the wider market.	20 July 2017	May 2018	Completed
MAM to provide evidence to the tenants' of the outcome of your investigations into current electricity costs, and revert to TFL and the traders including Mr Castano with findings by cop on Thursday 20 July 2017.	20 July 2017	May 2018	Completed
Please confirm with Mr Castano that any action has been suspended until at least Thursday 27 July 2017, pending the results of your investigation. This will allow you 7 days in which to revert to Mr Castano and agree an appropriate course of action.	27 July 2017	May 2018	Ongoing
<b>Action points agreed in meeting of 11 December 2017.</b>			
MAM to communicate new findings.	27 Feb 2018	May 2018	Completed
MAM to provide evidence to the tenants' of the outcome of investigations into current electricity costs, and revert to TFL and the traders.	July 2017	May 2018	Completed
Banners installed	February 2018	May 2018	Ongoing
Market ceiling	March 2018	May 2018	Pending
Meters installation programme of works to be confirmed	March 2018	May 2018	Pending
Flooring common parts - replacement and repair	April 2018	May 2018	Pending
Dumping	April 2019	May 2018	Ongoing

Also the Equality Act under harassment places a duty on TFL to ensure they do not engage in unwanted conduct relating to race, disability and gender which has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Lastly, the Equality Act 2010 (the Act) states that trader Fabian Catano is protected against unlawful discrimination because of his disability. The Act places a duty on TFL to ensure they do not treat someone unfavourably because of something arising in consequence of their disability and they cannot show that the treatment is a proportionate means of achieving a legitimate aim.

I have tried to resolve the matter formally in a TFL meeting on the 16th March with Alun Jones, Tom Atkinson and Clive Henman in Seven Sisters, and a TFL investigation was initiated. However, we have not received a satisfactory outcome. I am making a second formal complaint and I would like to arrange a meeting at the TFL offices. In your response please let me advise me of a date of a meeting.

Please provide your response in writing within 14 days from receipt of this letter.

Yours sincerely  
Mirca Morera

