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First by e mail to joseph.ejiofor@haringey.gov.uk

cc.: the Rt Hon David Lammy MP, Member of Parliament for Tottenham casework@davidlammy.co.uk (ref. ZA24212), Councillors Adje (charles.adje@haringey.gov.uk), Blake (mark.blake@haringey.gov.uk), Berryman (patrick.berryman@haringey.gov.uk) and Dean Hermitage, Head of Development Management and Planning Enforcement, London Borough of Haringey (dean.hermitage@haringey.gov.uk)

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 he Market from its current site, to that of a temporary market, and then back to the current,

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

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 a 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 repost 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. <u>As you will be aware the market is considered to be an important part of</u>

> 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):

> "<u>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.</u>
>
> 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 office, 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 27to 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 ben 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

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

Bindmans LLP