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Mr Martin Wilson

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Dear Mr Wilson

**River Park Leisure Centre**

At the last meeting of the Council's Audit Committee you asked a number of questions which the committee administrator took down in the form highlighted in bold text below. I have provided answers as requested by the Chairman of the Committee which I have also copied to members of the committee.

- 1. When the contract to operate the River Park Leisure Centre was a repair and maintenance contract, with the Council only responsible for the external fabric of the building, why had the centre cost the taxpayer over £13,000,000 in the last 10 years?**

It is very difficult to answer this question because it appears to be based on a misunderstanding of the contractual obligations of each party; and contains a non sequitur.

The contract for the management of the leisure centre places significant maintenance and repair responsibilities on the management contractor, but it does not require them to repair or maintain the external or structural fabric, nor to replace items of plant and equipment provided by the Council which have reached the end of their operational life. There is nothing unusual in this arrangement under a management contract. The Council therefore has significant maintenance and repair costs on an on-going basis. However, this point appears to have nothing to do with the second part of the question.

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The figure of £13million to which you refer includes items such as NNDR (when the Council was responsible for paying it), depreciation and capital investment costs, management overheads and the Council's maintenance spend. These are not and never have been part of the contractor's obligations under the management contract because they relate to the cost of the Council providing and owning the leisure centre as an asset.

There is no answer to the question 'why' the Council incurs that cost when the management contractor is responsible for repair and maintenance of the building - because they are unrelated statements.

A typical approach for new build facilities is to procure a long term contract with an operator on, say, a 25 year full repairing basis. Even under this arrangement a local authority may have to show the annual capital depreciation and impairment costs on its accounts, and will still have overheads and possibly borrowing costs.

**2. When the contract provided for an income share of total facility income of 10% over a set threshold, why had the Council not received any income in at least the last 10 years from the operator; and had the Council ever audited the income statements (presumably) provided by the operator?**

This is incorrect. The Council has received income share payments in 7 of the last 10 years. The Council has not carried out its own verification of income received at operational level as this would be practically difficult and might be disproportionately expensive. However, in the light of the recent audit report the Council is reviewing what high level cross checking might be proportionate and appropriate.

**3. Why did the Council agree to and finance the conversion to a not for profit operator and support an aggressive strategy to avoid paying Non Domestic Rates and VAT?**

Under the original contract the Council (not the management contractor) was liable to make non-domestic rates payments on RPLC – payments that were made to central government out of local taxation. By amending the contract to make the management contractor liable for non-domestic rates it therefore qualified for the exemption for not for profit organisations expressly provided by Parliament. After this was implemented the Council did not have to pass local tax payers money on to central government and was able to spend it on other local services. This strategy is taken by the majority of local authorities in arranging management contracts and also applies, for example, to the Hampshire Cultural Trust.

There was/is no 'avoidance' of paying VAT –the provisions for VAT payments on goods and services are those set by Parliament. Where VAT is not chargeable on an output, there are also changes in the extent to which it can be reclaimed on inputs. It is therefore wrong to suggest that all of the extra income increases the contractor's profit, as the contractor's costs are also increased. Some of the charges for sports and leisure activities, such as block bookings have always been VAT exempt or zero rated so the new arrangements made no difference in respect of these. Places for People Leisure is now a wholly owned

company within a group which is a not for profit company and its VAT arrangements are wholly in accordance within relevant legislation and accounting practice.

- 4. When River Park transferred to a not for profit and converted to charity status it became VAT exempt. The maintenance of prices at a consistent level represented an increase of 20%, in breach of contract.**

It is not true to say that River Park became 'VAT exempt' at this point. Some charges for sports and leisure activities at the leisure centre had previously been VAT exempt or zero rated and reducing these prices would therefore have reduced total income since no VAT was ever included in these. Where charges had included a VAT element consideration had to be given to the overall position given that input VAT could not be reclaimed. Since the contractor was not obliged to make the amendments to the contractual arrangement it was necessary to accept that they are also satisfied with the contractual and financial basis on which this was done. All of this was fully reported to Members (CAB1717 (Exempt)). There was no breach of contract. Overall prices at River Park Leisure Centre remain highly competitive and in line with other similar local authority facilities.

- 5. Why were prices not reduced to reflect the VAT saving?**

See the answer given above.

***Considering the very poor state of River Park, the numerous reports that have flagged the many serious issues and the responsibility of the contractor for repair and maintenance; over the last 10 years:***

- 6. How what many Rectification Notices have been provided by the Council officers to the contractor to resolve defaults in performance in accordance with the contract?**

It is not possible to be certain that records going back this far are complete but there is no record of any need arising to issue a Rectification Notice.

- 7. How many times had the contractor advised the Council that the financial limit for corrective maintenance would be exceeded and how many times has authorisation been provided by the Authorised Officer to progress?**

Arrangements for the repair or replacement of items by the Property Services team and more latterly by the Estates team are documented in minutes and correspondence some of which are not retained due to age. A search of all available records over the lifetime of the contract to determine the number of number of times on which this has happened would be extremely time consuming and it would difficult to be sure that it was complete due to the passage of time.

8. **How many times had the Authorised Officer determined that any particular item of plant was beyond reasonable economic repair and that the contractor should no longer be responsible for it?**

The same answer as for 7.

I trust that these answers are of assistance to you.

Yours sincerely

Steve Tilbury  
**Corporate Director**