

QUESTIONS ON ITEM 7, REVIEW OF LEASE RESTRUCTURING WITH HEREFORD UNITED (1939) LTD

The following questions have been received and responses provided by officers.

Questions from Alistair McHarg	Is the question relevant to the report?
<p>Question 1 I have read the Code of Conduct for Members and Co-opted Members adopted by Herefordshire Council on 20th July 2012, is the Council able to confirm it is entirely satisfied that there have been no breaches of Part 1, Section 4, (General Principles of Code of Conduct) para 7 of the Code?</p>	<p>This question does not relate to the report however the Monitoring Officer will provide a separate written response in due course.</p>
<p>Question 2 Where an elected representative of Herefordshire Council also sits on the Board of a private limited company in a personal capacity which is engaged in new or amending existing contractual relationships with Herefordshire Council and further, it is reasonable to expect that the elected representative to be aware and have knowledge of any matters which might bring into question the ability of that private sector company to meet its obligations to the Local Authority, can the Legal Officer confirm that the elected representative has an overriding responsibility to report such matters in detail to the relevant senior officers and Cabinet member of the Authority?</p>	<p>This question does not relate to the report however the Monitoring Officer will provide a separate written response in due course.</p>
<p>Question 3 Is Herefordshire Council completely satisfied that where an elected member sits on the Board of a private limited company in a personal capacity which is in contractual negotiations and/or re-negotiations with that Local Authority, that there are no further implied or tacit burdens on the appointed Council Officers beyond their normal Duty of Care to conclude such a commercial arrangement?</p>	<p>This question does not relate to the report however the Monitoring Officer will provide a separate written response in due course.</p>
<p>Question 4 Is Herefordshire Council minded to amend their Code of Conduct as a result of a review of the documentation and events that took place?</p>	<p>This question does not relate to the report however the Monitoring Officer will provide a separate written response in due course.</p>
<p>Question 5 It was common knowledge, in part through the local media, and in part through statements made by the then Chairman of HUFC (1939) Ltd on behalf of the Board of Directors, that the Club was in "dire financial straits" at the time that the Lease negotiations were being concluded and the Lease documentation completed. Upon reflection, does the Council feel it should be more cognisant in the future of established and authoritative statements in determining how it operates and proceeds in individual negotiations particularly where an elected member has a position on that commercial organization's Board in a personal capacity?</p>	<p>The financial status of the Club was known at the time as an existing tenant of the council. With regard to the second part of this question - this question does not relate to the report however the Monitoring Officer will provide a separate written response in due course.</p>

Question 6	<p>What formal risk management procedures do Herefordshire Council have in place when negotiating commercial arrangements with private sector businesses where those businesses are acknowledged to be operating under financial stress conditions and in particular, where an elected representative is present on that private sector company's Board in a personal capacity?</p>	<p>The usual practice is for the council to assess the financial status of new tenants and this continues to be the case. This transaction concerned an existing longstanding tenant. Their financial status was known. There is a difference between dealing with a known tenant already entitled to occupy and a new entity.</p>
Question 7	<p>If no such formal procedures are currently in place for risk management and control, will this be corrected as a result of the situation Hereford United Football Club (1939) Ltd?</p>	<p>See answers to 5 and 6 above.</p>
Question 8	<p>The Heads of Terms for the transaction covering the lease surrender and the granting of new leases in relation to the Edgar Street Stadium were signed off by representatives of Herefordshire Council , Hereford United Football Club (1939) Ltd and Hereford Futures Ltd in April 2012 , these Heads of Terms were issued in a "Savills Commercial Ltd" document , this company represented the tenant in the negotiations - HUFC (1939) Ltd - Is it normal practice for Herefordshire Council to permit such important documentation to be drafted by an agent of the tenant and as a result of the situation does the Council now feel that this should not happen again?</p>	<p>The issue of the Heads of Terms in a Savills document does not mean that Savills drafted its terms. Any terms would need to be agreed by all parties before being signed.</p> <p>In leasehold transactions of council owned property Heads of Terms are drafted by the council's own surveyors.</p>
Question 9	<p>The Heads of Terms document drafted by the tenant's agent and subsequently signed off by representatives of the Council specifically excludes a "forfeiture on insolvency" provision, upon reflection does the Council believe that this was an error of judgement and that in future commercial transactions this will not include this provision?</p>	<p>The Heads of Terms did not exclude forfeiture on insolvency although reference was made to such term and charges.</p> <p>The leases contained provision for forfeiture on insolvency.</p> <p>This right to forfeit was in fact exercised in order to terminate the leases.</p>
Question 10	<p>Herefordshire Council appear to have "sub-contracted" out the legal work relating to this transaction to Pinsent Masons LLP, can the Council confirm that in their commercial terms of business with Pinsent Masons LLP there is a clause covering the clients contributory negligence, and if so what formal procedures do the Council have for reviewing externally produced documentation to ensure that errors and omissions are identified and corrected?</p>	<p>That would be standard. Where the council pay for external solicitors to act on their behalf liability for that work rests with those external lawyers and contributory negligence could occur by way of the council's lawyers then amending that work.</p> <p>As the council through its operation of the terms of the documentation secured repayment of debts to it and recovery of the properties, it is not considered that any such corrections would have placed the council in a better position than as now.</p> <p>Future leasehold arrangements for the site are being dealt with by the in house legal team.</p>