

**FOI: 3889065 Correspondence regarding Tower Hamlets 2014/15 account objections re: LOBO Loans**

*Please provide correspondence and meeting minutes relating to 'LOBO*

*loan' objections including, but not restricted to, the Tower*

*Hamlets Chief Accountant, s.151 Officer, Director of Finance, Council Executive,*

*and the following external parties, between 25 February and Friday*

*21 March 2016.*

*1) KPMG – email from KPMG informing Brian Snary of objection to 2014/15 Accounts (item 1 attached). Plus emails from Interim Service Head of Finance and Procurement regarding LOBOs (item 2)*

*2) DCLG - none*

*c) The FCA - none*

*4) Barclays - none*

*5) RBS - none*

*6) CAPITA - none*

*7) HM Treasury - none*

*8) The National Audit Office - none*

*9) KPMG – duplication of item 1*

*10) The Local Government Association - none*

*11) The Chartered Institute of Public Finance and Accountancy - none*

Also, KPMG published their ISA260 report to those charged with Governance. It is on the Council website as part of the Audit Committee agenda on 22 March 2016:  
<http://moderngov.towerhamlets.gov.uk/documents/b18151/Agenda%20Item%203.1%202nd-Mar-2016%2019.00%20Audit%20Committee.pdf?T=9>

Names and contact details of members of staff below service head level have been redacted in accordance with Section 40(2) of the Freedom of Information Act (FoIA). The information is deemed personal data as defined by the Data Protection Act 1998 (DPA). Release of this information would constitute a breach of Principle 1 of the DPA. Principle

1 states that personal data shall be processed (used) fairly and lawfully and, in particular, shall not be used unless at least one of the conditions in Schedule 2 of the DPA is met; in this case none of those conditions have been met.

Item 1

**From:** [REDACTED]  
**Sent:** 31 March 2016 11:57  
**To:** [REDACTED]  
**Subject:** FW: Objection to Tower Hamlets 2014/15 annual accounts - item 1

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**From:** Brian Snary  
**Sent:** 03 March 2016 11:15  
**To:** [REDACTED]  
**Subject:** FW: Objection to Tower Hamlets 2014/15 annual accounts

Did you see this one?

**From:** [REDACTED]  
**Sent:** 02 March 2016 13:27  
**To:** [REDACTED] [kpmg.co.uk](mailto:kpmg.co.uk)  
**Cc:** Final AccountsTeam  
**Subject:** Objection to Tower Hamlets 2014/15 annual accounts

To Whom it may concern

As an elector of the London Borough of Tower Hamlets, I wish to lodge an objection to the accounts prepared for public inspection by Council for the year 2014-2015. I request that KPMG issue a report on these accounts in the public interest and transmit it to the Council.

I wish you to issue this report on the grounds that taking out Lender Option Borrower Option (LOBO) loans was unlawful. Additionally, I request that you apply to the courts for a declaration that item(s) of the accounts, namely LOBO loan borrowing, is unlawful.

The term 'unlawful' applies in this context, I believe, because the decision to sign up to LOBO loans from the Royal Bank of Scotland and Barclays was irrational.

I am concerned that the terms of the LOBO contracts and their implications were not sufficiently understood by council officers; and that the volume and type of borrowing carried such a high risk as to be prejudicial to the interests of Tower Hamlets taxpayers.

The legal status of LOBO loan use is the subject of significant legal ambiguity and debate. Following the *1989 Hazell vs Hammersmith and Fulham* [Goldman Sachs] case, derivatives use was declared "ultra vires" or illegal, for UK local government.

By inserting derivatives into a LOBO loan, it is clear banks intentionally subverted the intent of such protections, to "engineer" around the law.

The London Borough of Tower Hamlets borrowed £77.5m in the form of LOBO loans between August 2007 and September 2009, refer to Section 15, pg 38- 41 [Financial Instruments] of the 2014/15 annual accounts.

The loans are with Barclays (£17.5m) and RBS (£60m) which means that the Borough, which is home to some of London's most deprived areas, and where the Council has just signed off on £30m spending cuts alongside a 4% hike in council tax rates, is paying over £3.5m in interest per annum to the owners of One Churchill Place, Canary Wharf and the former owners of 5 Canada Square, Canary Wharf.

The accounts make note of the fact that: *"In the more than 10 years [i.e. long term borrowing] category, there are £77.5 million of Lender's Option, Borrower's Option (LOBO) market loans, of which £17.5 million have call dates in the less than one year category. The Council uses money market funds to provide liquidity."*

Tower Hamlets are forced to keep treasury reserve cash on hand, to meet annual call options on LOBOs to repay without penalty, should the bank exercise its option to raise interest rates.

It is my view that taking out loans of this type and magnitude constituted a gamble: namely that the Council would gain a short-term benefit if interest rates continued to rise.

However, this did not occur - partly as the result of systemic downward LIBOR interest rate manipulation ("low-balling") by Barclays and RBS, which sold Tower Hamlets LOBO loans.

Abhishek Sachdev, CEO of Vedanta Hedging described LOBO loans to the Communities and Local Government Committee inquiry hearing on local government bank loans as a "lose-lose bet for councils."

Legal opinion regarding LOBOs from City law firm Collyer Bristow states: "if market rates for equivalent lending remain low (and lower than the rate to be paid under the LOBO) the borrower is effectively locked in for the full term – it has no option to exit the arrangement and seek cheaper borrowing elsewhere – it must live with the rate agreed at the time the LOBO was entered into. So from the borrower's perspective, these loans are a very long term commitment to pay the rate agreed at the outset for a term, or higher. So, on the face of it, the borrower is in a "lose/lose" position.

I believe that making such a borrowing commitment under the conditions which the banks imposed, without benchmarking and recording the decisions against comparable PWLB loans or seeking external financial advice, amounted to 'irrational' conduct.

Treasury Management Advisor, CAPITA who recommended LOBO loan products received kickbacks (undeclared to council). when loans were brokered by Tullet Prebon and ICAP.

Treasury Management Advisors, operating under the Chartered Institute of Public Finance and Accountancy (CIPFA) framework, recommend councils borrow no more than 30% of long term debt in 'inherently risky' (refer April 2015 CIPFA bulletin), variable rate, LOBO loans.

Tower Hamlets, by comparison, has 87% of its long-term debt in variable rate LOBOs.

This compares very unfavourably with other London Boroughs. Figures obtained by FOI requests on LOBO loan borrowing show that the mean portion of overall long term borrowing in the form of LOBO loans is 16% for London boroughs. The median is just 3.3%.

I would therefore be grateful if you considered this request to issue a public interest report on Newham Council's LOBO loan borrowing for the year 2014-2015, and request that you apply to the courts for a declaration that item(s) of the accounts, namely LOBO loan borrowing, is unlawful.

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**From:** Barry Scarr  
**Sent:** 09 March 2016 16:44  
**To:** [REDACTED]@kpmg.co.uk'  
**Cc:** Zena Cooke  
**Subject:** LOBO FOI

The Councils response to an FOI received on LOBO loans:

<http://www.towerhamletsfoi.org.uk/documents/12580/FOI%2012580%20LOBO%20loans.pdf>

Barry.

Barry Scarr CPFA MBA  
Interim Service Head of Finance and Procurement

Resources Directorate  
London Borough Of Tower Hamlets  
3rd Floor, Mulberry Place  
5 Clove Crescent  
London  
E14 2BG

Tel: 020 7364 4915

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Item 29  
9/march/15

**FOI 12580 LOBO loans**

**1. How many Lender Option Borrower Option (LOBOs) contracts do you have on your books?**

Three

**2. When were they signed and by whom?**

August 2007 and February 2010 by the presiding responsible officers at the time (S151 and Treasury Manager)

**3. With which financial institutions were they taken out?**

Barclays and Royal Bank of Scotland

**4. Who advised the council to enter the LOBO(s)? Treasury consultant –**

Sector/Capila

**5. Since each Contract has been signed, has the lender exercised their option and changed the interest rate?**

No

**6. If so, please specify the dates of the interest rate changes and the revised interest rates.**

N/A

**7. Please provide a copy of the original, signed LOBO agreements.**



## **Local Authority Loan Agreement**

**London Borough of Tower Hamlets**

**Ref: 461965v1/CDD/MP**

The Royal Bank of Scotland plc is registered in Scotland No 00312  
Registered Office: 38 Gt Andrew Square, Edinburgh EH4 3YB  
806/R1767,1494CP2:135842.6/ysaw

THIS AGREEMENT is made between:-

(1) London Borough of Tower Hamlets; and

(2) The Royal Bank of Scotland plc

It is agreed as follows:-

## **1 DEFINITIONS**

### **1.1 Definitions**

"Backstop Drawdown Date" means the backstop drawdown date(s) specified in Schedule 1

"Bank" means The Royal Bank of Scotland plc and its successors and assigns;

"Borrower" means London Borough of Tower Hamlets;

"Breakage Loss" means the amount the Bank reasonably determines in good faith to be its total loss, cost, liability and expense directly or indirectly resulting from or attributable to any failure to draw or early repayment or recovery of a Loan in whole or in part (other than as permitted by Clause 7.1) or the Bank declaring the Loan repayable following an Event of Default and calculated by reference to the loss of the right to receive interest for the balance of the Term and/or any agreements or arrangements (whether entered into actually with third parties or established internally as between different divisions of the Bank) entered into, recorded or booked in order to manage or protect the Bank in respect of the risk of movements in interest rates.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

"Event of Default" means the event specified in Clause 11;

"Interest Period" means each period for the calculation of interest for the purpose of Clause 6;

"LIBOR" and "LIBOR Related Rate" have the meaning ascribed to them in Schedule 2.

"Loan" means the loan specified in Schedule 1 or, where applicable, any tranche of it;

"Option Date" means the applicable date specified in Schedule 1;

"Replacement Rate" means each rate of interest agreed between the Bank and the Borrower to apply with effect from an Option Date in place of any previous rate of interest.

"Term" means the term specified in Schedule 1.

## **2 THE LOAN**

This Agreement records the terms on which the Bank agreed, on the date set out in Schedule 1, to make a Loan available to the Borrower.

## **3 CONDITIONS PRECEDENT**

The Loan may not be drawn until the Bank has received the duplicate of this Agreement signed on behalf of the Borrower.



#### **4 DRAWING OF THE LOAN**

4.1 The Loan must be drawn down in one amount by the Backstop Drawdown Date unless Schedule 1 specifies multiple Backstop Drawdown Dates, when the tranches of the Loan specified in Schedule 1 must be drawn on the dates specified. The Borrower shall give the Bank 3 Business Days notice if it wishes to drawdown prior to the Backstop Drawdown Date. Tranches, when drawn, will be consolidated with previous tranches in one Loan account.

4.2 As interest on the Loan will be charged during the Term at the rates specified in Schedule 1 or any agreed Replacement Rates, formal arrangements have been made by the Bank with its Global Banking and Markets Department to book the Loan.

Accordingly, if the Borrower does not draw (or if the Borrower gives the Bank notice that it does not intend to draw) the Loan or any tranche by the Backstop Drawdown Date, it will be an Event of Default and the Borrower shall pay to the Bank the Breakage Loss in accordance with Clause 8.

#### **5 INTEREST**

5.1 During the First Period specified in Schedule 1 interest on the Loan shall be charged at the rates stated in Schedule 1. For the balance of the Term interest will be charged at the rate stated in Schedule 1 or any agreed Replacement Rates.

5.2 The Bank may give the Borrower 2 Business Days notice prior to each Option Date if the Bank elects to change the rate of interest. At any time before 3pm on the second Business Day the Bank and the Borrower may agree a Replacement Rate. This Replacement Rate so agreed will be payable by the Borrower from the Option Date. The Bank will notify the Borrower of the Replacement Rate so agreed.

5.3 If a Replacement Rate is not agreed the Borrower must repay the Loan with accrued interest on the relevant Option Date but without being liable for any Breakage Loss.

5.4 Interest on the Loan shall be calculated on a daily basis and assuming a year of 365 days and shall be paid on the last day of each Interest Period and on final repayment of the Loan. Any interest unpaid when payable shall be compounded.

#### **6 INTEREST PERIODS**

The first Interest Period for the Loan shall begin on the (first) drawdown date and each subsequent Interest Period shall begin on the expiry of the preceding Interest Period. Subject to Clause 14.1 each Interest Period shall be for 3 months. If the Loan is repaid in full the current Interest Period will end on the date of such repayment.

#### **7 REPAYMENT**

7.1 The Borrower shall repay the Loan in full with accrued interest on the expiry of the Term or on any Option Date where the Bank has served notice on the Borrower to change the interest rate and no Replacement Rate has been agreed.

7.2 The Borrower shall give the Bank 3 Business Days notice if it wishes to make a repayment at any other time. Any amount repaid may not be redrawn.

#### **8 BREAKAGE LOSS**

8.1 The Borrower acknowledges that the Bank will enter into, record or book agreements or arrangements on the assumption that its sources of funds will include payments of interest under this Agreement. Those agreements or arrangements may be made with third parties or may be internal agreements or arrangements made between different divisions of the Bank, in reliance on which the Bank may then enter into other agreements or arrangements with third parties.

Accordingly, the Borrower acknowledges that if the Borrower makes any early repayment of the Loan (whether as required by Clause 9.2 or as permitted by Clause 7.2 or otherwise), or the

Borrower commits an Event of Default by failing to draw or by giving notice that it does not intend to draw the Loan by the Backstop Drawdown Date or the Bank declares the Loan repayable following an Event of Default, the Borrower will be required to pay any Breakage Loss the Bank suffers. Breakage Loss is not payable if repayment is made under Clause 7.1

**8.2 The Borrower acknowledges:**

- (a) that, prior to agreeing with the Bank (on the date set out in Schedule 1) to draw the Loan, the Bank explained the risks described in Clause 8.1 to the Borrower and supplied examples of the possible calculations that may arise in such event;
- (b) that such examples were calculated on the basis of assumptions as to movements in interest rates as explained to the Borrower, but that the actual Breakage Loss may be greater, depending on financial market conditions; and
- (c) that it is possible in some financial market conditions for the amount of the Breakage Loss to equal or exceed the Loan.

**8.3 If the Loan is not drawn by the Backstop Drawdown Date or is repaid in whole or in part (other than as stated in Clause 7.1), (including any repayment following the occurrence of an Event of Default,) the Borrower shall pay to the Bank within 7 days of demand, a sum of money representing the Breakage Loss in respect of the failure to draw or the early repayment.**

**8.4 The Bank and the Borrower agree that the Bank will calculate the Breakage Loss by utilising information consisting of relevant market data in the relevant market which may be obtained from a source within the Bank or any third party including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads and correlations and where available the systems and internal models used generally by the Bank for that purpose.**

**8.5 If the Borrower wishes to make an early repayment, it may request a statement from the Bank setting out an estimate (which estimate shall not be binding on the Bank) of the amount of the Breakage Loss in respect of the proposed early repayment and showing in reasonable detail how such amount was calculated.**

**8.6 A notice signed by the Bank certifying the amount of Breakage Loss due shall, in the absence of manifest error, be conclusive and binding on the Borrower.**

**9 PAYMENTS**

**9.1 All payments to be made by the Borrower under this Agreement shall be made to the Bank on the due date.**

**9.2 All payments to the Bank must be made without set-off and without any deduction on account of any tax, duty or other charge. If the Borrower is required by law to make any such deduction or withholding the Borrower shall immediately repay the Loan in full with accrued interest. In that event the Bank may suffer Breakage Loss which the Borrower will be required to pay.**

**10 UNDERTAKINGS**

The Borrower undertakes that:-

**Financial Information**

- (a) it shall place its audited financial statements on its website as soon as they become available but in any event within 270 days after the period to which they relate.

**Limits**

- (b) no financial limits will be exceeded and/or breached as a result of the Bank providing the Loan.

## 11 EVENT OF DEFAULT

11E-

### Failure to drawdown

- (a) the Borrower gives the Bank notice that it does not intend to draw or fails to draw the Loan by the Backstop Drawdown Date

### Non Payment

- (b) the Borrower fails to pay any amount payable under this Agreement on the due date (other than where the Borrower demonstrates to the reasonable satisfaction of the Bank that such failure is due to an administrative or technical payment error, in which case the Borrower shall have 3 Business Days from the due date to make such payment); or

### Breach of Other Obligations and Cross Default

- (c) there is a default or a failure to pay on demand under any liability of the Borrower to the Bank or any other creditor;

then the Bank may by written notice to the Borrower declare the Loan, all interest accrued and all other sums (including Breakage Loss) payable by the Borrower under this Agreement to be immediately due and payable.

## 12 BROKERAGE FEES

The Bank may pay a fee to one or more brokers in consideration for services provided by such broker to the Bank and the Borrower with respect to the pricing of a Loan. The fee shall be calculated by reference to the "value of a basis point" with respect to the applicable Loan. Further details of the amount of the fee paid to the broker by the Bank will be made available upon request to the Bank by the Borrower. The Bank shall have no responsibility for any advice or recommendations made by the broker to the Borrower in respect of the Loan.

## 13 NOTICES

- 13.1 Every notice or other communication made under this Agreement shall be in writing (by way of letter, e-mail or facsimile transmission) and shall be given:-

- (a) in the case of the Borrower to [redacted] at London Borough of Tower Hamlets, The Town Hall, Mulberry Place, 5 Clove Crescent, London, E14 2BG, Tel 0207 364 4733, Fax 0207 364 4712; and

- (b) in the case of the Bank to its office at 9<sup>th</sup> Floor, 280 Bishopsgate, London, EC2M 4RB or such other office/address as the Bank may notify to the Borrower from time to time

- 13.2 Every notice or other communication shall be deemed to have been received:-

- (a) in the case of a letter when delivered personally or two days after its posting by first class post; and  
(b) in the case of a facsimile transmission when despatched.

## 14 MISCELLANEOUS

- 14.1 If an Option Date, the last day of an Interest Period or any due date for payment is not a Business Day, it will be extended to the next Business Day unless the next Business Day is in the following calendar month in which case the relevant date will be the immediately preceding Business Day.
- 14.2 If Schedule 1 provides for multiple Backstop Drawdown Dates, references to a failure to draw the Loan on a Backstop Drawdown Date mean a failure to draw any tranche of the Loan on the applicable Backstop Drawdown Date specified in Schedule 1.
- 14.3 The Borrower may not assign or transfer any of its rights or obligations under this Agreement.

14.4 The Bank may assign all or any part of its rights or benefits under this Agreement without the consent of the Borrower. The Bank may disclose to a prospective assignee or to any other person who may propose entering into contractual relations with the Bank in relation to this Agreement such information about the Borrower as the Bank shall consider appropriate.

14.5 If the Bank waives any of its rights under this Agreement, it does not mean the Bank will waive that right in future.

14.6 If any of the provisions of this Agreement is determined to be unlawful or unenforceable, the provision will be severed from the remaining provisions which will continue in full effect.

## 15 LAW

This Agreement shall be governed by and construed in accordance with English law and the Borrower hereby submits to the exclusive jurisdiction of the English courts.

### Schedule 1

#### Loan details agreed between the Bank and the Borrower on 21 August 2009

Loan: £60,000,000

Term: the period from the date of this Agreement until 26 February 2060

Backstop Drawdown Date: 26 February 2010

First Period: / From the date of this Agreement to 26 February 2015 (being 5 years commencing on the Backstop Drawdown Date)

Rate of interest for First Period: (i) [redacted] above LIBOR plus Mandatory Costs (LIBOR Related Rate) up to and including 26 February 2010, (ii) for the following 24 months a rate equal to LIBOR (LIBOR Flat Rate) (capped at [redacted]) and (iii) thereafter a rate of [redacted]%

Rate of interest for each Interest Period during the balance of the Term [redacted]%

Option Date: The last day of the First Period and every year thereafter.

Your attention is drawn to the provisions of Clause 8 which apply if the Borrower fails to draw or gives notice that it does not intend to draw the Loan by the applicable Backstop Drawdown Date, makes any early repayment of the Loan or the Loan is declared repayable following an Event of Default.

## Schedule 2

This Schedule applies if interest is to be paid at a rate of the Margin above LIBOR (plus Mandatory Costs ("LIBOR Related Rate")) or at a rate equal to LIBOR ("LIBOR Flat Rate")

### 1. Definitions

"LIBOR" means the British Bankers Association Interest Settlement Rate for Sterling for the relevant Interest Period at 11.00 a.m. on the first day of the relevant Interest Period.

"Margin" means the margin above LIBOR agreed between the Bank and the Borrower

"Mandatory Costs" means such costs (in relation to the Loan) as the Bank determines are necessary to compensate the Bank for complying with any reserve asset and/or special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England, the Financial Services Authority (or any successor or similar regulatory authority) including a requirement for the payment of any fees to the Financial Services Authority (whether or not any such requirements have the force of law)

2. A LIBOR Related Rate will apply from the date the Loan is drawn down until the applicable Backstop Drawdown Date. A LIBOR Flat Rate will apply from the date and for the period specified in Schedule 1.

3. If at any time a LIBOR Related Rate or a LIBOR Flat Rate applies and the Bank is unable (whether due to any change in operation or structure of the London Interbank Market or any other reason), to quote a LIBOR rate or the Bank advises the Customer that the LIBOR rate no longer represents the cost to the Bank of funding the Loan the Borrower shall, in respect of each Interest Period, pay to the Bank interest at a percentage rate equal to the aggregate of:-

- (i) the Margin per annum above the rate representing the cost to the Bank of funding the Loan from whatever source it may reasonably select; and
- (ii) Mandatory Costs (if a LIBOR Related Rate applies)

The Bank shall promptly notify the Borrower of any such amendments and the rate to apply

Your attention is drawn to the provisions of Clause 8 which apply if the Borrower fails to draw or gives notice that it does not intend to draw the Loan by the Backstop Drawdown Date or makes any early repayment of the Loan.

Signed for and on behalf of The Royal Bank of Scotland plc

Signature.....

Date.....

London Borough of Tower Hamlets having decided that the Loan arrangements set out in this Agreement are in its best interests, accepts this Agreement.

Signed: \_\_\_\_\_  
Duly authorised Officer

Office held \_\_\_\_\_

Date.....

Directorate of Law, Probity and  
Governance

Complaints and Information

Town Hall  
Mulberry Place  
5 Clove Crescent  
London E14 2BG

Enquiries to: Louise Manthorpe

Mr Jamie Griffiths  
By email  
request-257400-0aa0517b@whatdotheyknow.com

[www.lowerhamlets.gov.uk](http://www.lowerhamlets.gov.uk)

26 May 2015

Dear Mr Griffiths

**FOI Review : 1-95413680  
12580 – LOBO Loans**

I am writing to let you know that Louise Manthorpe, Complaints and Information Officer has completed the review of your Freedom of Information (FOI) request.

Your initial request dated 9 March 2015 was:

- 1. How many Lender Option Borrower Option (LOBOs) contracts do you have on your books?*
- 2. When were they signed and by whom?*
- 3. With which financial institutions were they taken out?*
- 4. Who advised the council to enter the LOBO(s)?*
- 5. Since each Contract has been signed, has the lender exercised their option and changed the interest rate?*
- 6. If so, please specify the dates of the interest rate changes and the revised interest rates.*
- 7. Please provide a copy of the original, signed LOBO agreements*

The Council's initial response dated 23 April 2015 was:

**1. How many Lender Option Borrower Option (LOBOs) contracts do you have on your books?**

**Three**

**2. When were they signed and by whom?**

**August 2007 and February 2010 by the presiding responsible officers at the time (S151 and Treasury Manager)**

**3. With which financial institutions were they taken out?**

**Barclays and Royal Bank of Scotland**

**4. Who advised the council to enter the LOBO(s)? Treasury consultant –**

**Sector/Capita**

**5. Since each Contract has been signed, has the lender exercised their option and changed the interest rate?**

**No**

**6. If so, please specify the dates of the interest rate changes and the revised interest rates.**

**N/A**

**7. Please provide a copy of the original, signed LOBO agreements.**

**You then requested a review on 4 May 2015 as follows:**

**Specifically, I feel that the response provided to part 7, "Please provide a copy of the original, signed LOBO agreements" is inadequate.**

**Firstly, only one loan contract has been provided when the response to part 1 clearly states that there are three LOBO loans on the council's books.**

**Secondly, references to interest rates within the one loan contract provided have been redacted.**

**No reason has been provided for these omissions.**

**Having reviewed this matter the Council's findings are as follows:**

It is clear the response you received was inadequate, in that you were only provided with one of the three contracts and no explanation for this, or the redaction to this document was provided. Please accept my apologies for this.

Mrs Manthorpe has now been able to obtain copies of all three contracts and after careful consideration no redactions have been applied. This is because a significant amount of time has passed since the agreements were completed. The release of this information is therefore, less likely to prejudice the commercial interests of either the banks or the Council. Therefore, the potential prejudice to these commercial interests does not outweigh the public's interest of having this information disclosed.

If you are still dissatisfied with the Council's response after the internal review you have a right of appeal to the Information Commissioner at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Telephone: 01625 545 700  
[www.ico.org.uk](http://www.ico.org.uk)

Further information about the operation of the act is available from the council's website [www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk) and the information leaflet in public reception areas in Council buildings.

Yours sincerely



David Galpin  
Service Head – Legal Services





## **Local Authority Loan Agreement**

**London Borough of Tower Hamlets**

**Ref: 461965v1/CDO/MP**

**THIS AGREEMENT is made between:-**

**(1) London Borough of Tower Hamlets; and**

**(2) The Royal Bank of Scotland plc**

**It is agreed as follows:-**

## **1 DEFINITIONS**

### **1.1 Definitions**

**"Backstop Drawdown Date"** means the backstop drawdown date(s) specified in Schedule 1

**"Bank"** means The Royal Bank of Scotland plc and its successors and assigns;

**"Borrower"** means London Borough of Tower Hamlets;

**"Breakage Loss"** means the amount the Bank reasonably determines in good faith to be its total loss, cost, liability and expense directly or indirectly resulting from or attributable to any failure to draw or early repayment or recovery of a Loan in whole or in part (other than as permitted by Clause 7.1) or the Bank declaring the Loan repayable following an Event of Default and calculated by reference to the loss of the right to receive interest for the balance of the Term and/or any agreements or arrangements (whether entered into actually with third parties or established internally as between different divisions of the Bank) entered into, recorded or booked in order to manage or protect the Bank in respect of the risk of movements in interest rates.

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**"Event of Default"** means the event specified in Clause 11;

**"Interest Period"** means each period for the calculation of interest for the purpose of Clause 6;

**"LIBOR"** and **"LIBOR Related Rate"** have the meaning ascribed to them in Schedule 2.

**"Loan"** means the loan specified in Schedule 1 or, where applicable, any tranche of it;

**"Option Date"** means the applicable date specified in Schedule 1;

**"Replacement Rate"** means each rate of interest agreed between the Bank and the Borrower to apply with effect from an Option Date in place of any previous rate of interest.

**"Term"** means the term specified in Schedule 1.

## **2 THE LOAN**

This Agreement records the terms on which the Bank agreed, on the date set out in Schedule 1, to make a Loan available to the Borrower.

## **3 CONDITIONS PRECEDENT**

The Loan may not be drawn until the Bank has received the duplicate of this Agreement signed on behalf of the Borrower.

#### **4 DRAWING OF THE LOAN**

- 4.1** The Loan must be drawn down in one amount by the Backstop Drawdown Date unless Schedule 1 specifies multiple Backstop Drawdown Dates, when the tranches of the Loan specified in Schedule 1 must be drawn on the dates specified. The Borrower shall give the Bank 3 Business Days notice if it wishes to drawdown prior to the Backstop Drawdown Date. Tranches, when drawn, will be consolidated with previous tranches in one Loan account.
- 4.2** As interest on the Loan will be charged during the Term at the rates specified in Schedule 1 or any agreed Replacement Rates, formal arrangements have been made by the Bank with its Global Banking and Markets Department to book the Loan.

Accordingly, if the Borrower does not draw (or if the Borrower gives the Bank notice that it does not intend to draw) the Loan or any tranche by the Backstop Drawdown Date, it will be an Event of Default and the Borrower shall pay to the Bank the Breakage Loss in accordance with Clause 8.

#### **5 INTEREST**

- 5.1** During the First Period specified in Schedule 1 interest on the Loan shall be charged at the rates stated in Schedule 1. For the balance of the Term interest will be charged at the rate stated in Schedule 1 or any agreed Replacement Rates.
- 5.2** The Bank may give the Borrower 2 Business Days notice prior to each Option Date if the Bank elects to change the rate of interest. At any time before 3pm on the second Business Day the Bank and the Borrower may agree a Replacement Rate. The Replacement Rate so agreed will be payable by the Borrower from the Option Date. The Bank will notify the Borrower of the Replacement Rate so agreed.
- 5.3** If a Replacement Rate is not agreed the Borrower must repay the Loan with accrued interest on the relevant Option Date but without being liable for any Breakage Loss.
- 5.4** Interest on the Loan shall be calculated on a daily basis and assuming a year of 365 days and shall be paid on the last day of each Interest Period and on final repayment of the Loan. Any interest unpaid when payable shall be compounded.

#### **6 INTEREST PERIODS**

The first Interest Period for the Loan shall begin on the (first) drawdown date and each subsequent Interest Period shall begin on the expiry of the preceding Interest Period. Subject to Clause 14.1 each Interest Period shall be for 3 months. If the Loan is repaid in full the current Interest Period will end on the date of such repayment.

#### **7 REPAYMENT**

- 7.1** The Borrower shall repay the Loan in full with accrued interest on the expiry of the Term or on any Option Date where the Bank has served notice on the Borrower to change the interest rate and no Replacement Rate has been agreed.
- 7.2** The Borrower shall give the Bank 3 Business Days notice if it wishes to make a repayment at any other time. Any amount repaid may not be redrawn.

#### **8 BREAKAGE LOSS**

- 8.1** The Borrower acknowledges that the Bank will enter into, record or book agreements or arrangements on the assumption that its sources of funds will include payments of interest under this Agreement. Those agreements or arrangements may be made with third parties or may be internal agreements or arrangements made between different divisions of the Bank, in reliance on which the Bank may then enter into other agreements or arrangements with third parties.

Accordingly, the Borrower acknowledges that if the Borrower makes any early repayment of the Loan (whether as required by Clause 9.2 or as permitted by Clause 7.2 or otherwise), or the

Borrower commits an Event of Default by failing to draw or by giving notice that it does not intend to draw the Loan by the Backstop Drawdown Date or the Bank declares the Loan repayable following an Event of Default, the Borrower will be required to pay any Breakage Loss the Bank suffers. Breakage Loss is not payable if repayment is made under Clause 7.1

**8.2 The Borrower acknowledges:**

- (a) that, prior to agreeing with the Bank (on the date set out in Schedule 1) to draw the Loan, the Bank explained the risks described in Clause 8.1 to the Borrower and supplied examples of the possible calculations that may arise in such event;
- (b) that such examples were calculated on the basis of assumptions as to movements in interest rates as explained to the Borrower, but that the actual Breakage Loss may be greater, depending on financial market conditions; and
- (c) that it is possible in some financial market conditions for the amount of the Breakage Loss to equal or exceed the Loan.

**8.3 If the Loan is not drawn by the Backstop Drawdown Date or is repaid in whole or in part (other than as stated in Clause 7.1), (including any repayment following the occurrence of an Event of Default,) the Borrower shall pay to the Bank within 7 days of demand, a sum of money representing the Breakage Loss in respect of the failure to draw or the early repayment.**

**8.4 The Bank and the Borrower agree that the Bank will calculate the Breakage Loss by utilising information consisting of relevant market data in the relevant market which may be obtained from a source within the Bank or any third party including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads and correlations and where available the systems and internal models used generally by the Bank for that purpose.**

**8.5 If the Borrower wishes to make an early repayment, it may request a statement from the Bank setting out an estimate (which estimate shall not be binding on the Bank) of the amount of the Breakage Loss in respect of the proposed early repayment and showing in reasonable detail how such amount was calculated.**

**8.6 A notice signed by the Bank certifying the amount of Breakage Loss due shall, in the absence of manifest error, be conclusive and binding on the Borrower.**

**9 PAYMENTS**

**9.1 All payments to be made by the Borrower under this Agreement shall be made to the Bank on the due date.**

**9.2 All payments to the Bank must be made without set-off and without any deduction on account of any tax, duty or other charge. If the Borrower is required by law to make any such deduction or withholding the Borrower shall immediately repay the Loan in full with accrued interest. In that event the Bank may suffer Breakage Loss which the Borrower will be required to pay.**

**10 UNDERTAKINGS**

The Borrower undertakes that:-

**Financial Information**

- (a) it shall place its audited financial statements on its website as soon as they become available but in any event within 270 days after the period to which they relate.

**Limits**

- (b) no financial limits will be exceeded and/or breached as a result of the Bank providing the Loan.

## **11 EVENT OF DEFAULT**

**If:-**

### **Failure to drawdown**

- (a) the Borrower gives the Bank notice that it does not intend to draw or fails to draw the Loan by the Backstop Drawdown Date

### **Non Payment**

- (b) the Borrower fails to pay any amount payable under this Agreement on the due date (other than where the Borrower demonstrates to the reasonable satisfaction of the Bank that such failure is due to an administrative or technical payment error, in which case the Borrower shall have 3 Business Days from the due date to make such payment); or

### **Breach of Other Obligations and Cross Default**

- (c) there is a default or a failure to pay on demand under any liability of the Borrower to the Bank or any other creditor;

then the Bank may by written notice to the Borrower declare the Loan, all interest accrued and all other sums (including Breakage Loss) payable by the Borrower under this Agreement to be immediately due and payable.

## **12 BROKERAGE FEES**

The Bank may pay a fee to one or more brokers in consideration for services provided by such broker to the Bank and the Borrower with respect to the pricing of a Loan. The fee shall be calculated by reference to the "value of a basis point" with respect to the applicable Loan. Further details of the amount of the fee paid to the broker by the Bank will be made available upon request to the Bank by the Borrower. The Bank shall have no responsibility for any advice or recommendations made by the broker to the Borrower in respect of the Loan.

## **13 NOTICES**

- 13.1** Every notice or other communication made under this Agreement shall be in writing (by way of letter, e-mail or facsimile transmission) and shall be given:-

- (a) in the case of the Borrower to [REDACTED] at London Borough of Tower Hamlets, The Town Hall, Mulberry Place, 5 Clove Crescent, London, E14 2BG, Tel 0207 364 4733, Fax 0207 364 4712; and
- (b) in the case of the Bank to its office at 9<sup>th</sup> Floor, 280 Bishopsgate, London, EC2M 4RB or such other office/address as the Bank may notify to the Borrower from time to time

- 13.2** Every notice or other communication shall be deemed to have been received:-

- (a) in the case of a letter when delivered personally or two days after its posting by first class post; and
- (b) in the case of a facsimile transmission when despatched.

## **14 MISCELLANEOUS**

- 14.1** If an Option Date, the last day of an Interest Period or any due date for payment is not a Business Day, it will be extended to the next Business Day unless the next Business Day is in the following calendar month in which case the relevant date will be the immediately preceding Business Day.
- 14.2** If Schedule 1 provides for multiple Backstop Drawdown Dates, references to a failure to draw the Loan on a Backstop Drawdown Date mean a failure to draw any tranche of the Loan on the applicable Backstop Drawdown Date specified in Schedule 1.
- 14.3** The Borrower may not assign or transfer any of its rights or obligations under this Agreement.

14.4 The Bank may assign all or any part of its rights or benefits under this Agreement without the consent of the Borrower. The Bank may disclose to a prospective assignee or to any other person who may propose entering into contractual relations with the Bank in relation to this Agreement such information about the Borrower as the Bank shall consider appropriate.

14.5 If the Bank waives any of its rights under this Agreement, it does not mean the Bank will waive that right in future.

14.6 If any of the provisions of this Agreement is determined to be unlawful or unenforceable, the provision will be severed from the remaining provisions which will continue in full effect.

## 15 LAW

This Agreement shall be governed by and construed in accordance with English law and the Borrower hereby submits to the exclusive jurisdiction of the English courts.

### Schedule 1

Loan details agreed between the Bank and the Borrower on 21 August 2009

Loan: £60,000,000

Term: the period from the date of this Agreement until 26 February 2060

Backstop Drawdown Date: 26 February 2010

First Period: *y* From the date of this Agreement to 26 February 2015 (being 5 years commencing on the Backstop Drawdown Date)

Rate of Interest for First Period: (i) 0.25% above LIBOR plus Mandatory Costs (LIBOR Related Rate) up to and including 26 February 2010, (ii) for the following 24 months a rate equal to LIBOR (LIBOR Flat Rate)(capped at 4.25%) and (iii) thereafter a rate of 4.32%

Rate of interest for each Interest Period during the balance of the Term 4.32%

Option Date: The last day of the First Period and every year thereafter.

Your attention is drawn to the provisions of Clause 8 which apply if the Borrower fails to draw or gives notice that it does not intend to draw the Loan by the applicable Backstop Drawdown Date, makes any early repayment of the Loan or the Loan is declared repayable following an Event of Default.

## Schedule 2

This Schedule applies if interest is to be paid at a rate of the Margin above LIBOR plus Mandatory Costs ("LIBOR Related Rate") or at a rate equal to LIBOR ("LIBOR Flat Rate")

### 1. Definitions

"LIBOR" means the British Bankers Association Interest Settlement Rate for Sterling for the relevant Interest Period at 11.00 a.m. on the first day of the relevant Interest Period.

"Margin" means the margin above LIBOR agreed between the Bank and the Borrower

"Mandatory Costs" means such costs (in relation to the Loan) as the Bank determines are necessary to compensate the Bank for complying with any reserve asset and/or special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England, the Financial Services Authority (or any successor or similar regulatory authority) including a requirement for the payment of any fees to the Financial Services Authority (whether or not any such requirements have the force of law)

2. A LIBOR Related Rate will apply from the date the Loan is drawn down until the applicable Backstop Drawdown Date. A LIBOR Flat Rate will apply from the date and for the period specified in Schedule 1.

3. If at any time a LIBOR Related Rate or a LIBOR Flat Rate applies and the Bank is unable (whether due to any change in operation or structure of the London Interbank Market or any other reason), to quote a LIBOR rate or the Bank advises the Customer that the LIBOR rate no longer represents the cost to the Bank of funding the Loan the Borrower shall, in respect of each Interest Period, pay to the Bank interest at a percentage rate equal to the aggregate of :-

- (i) the Margin per annum above the rate representing the cost to the Bank of funding the Loan from whatever source it may reasonably select; and
- (ii) Mandatory Costs (if a LIBOR Related Rate applies)

The Bank shall promptly notify the Borrower of any such amendments and the rate to apply

Your attention is drawn to the provisions of Clause 8 which apply if the Borrower fails to draw or gives notice that it does not intend to draw the Loan by the Backstop Drawdown Date or makes any early repayment of the Loan.

Signed for and on behalf of The Royal Bank of Scotland plc

Signature.....

Date.....

London Borough of Tower Hamlets having decided that the Loan arrangements set out in this Agreement are in its best interests, accepts this Agreement.

Signed: \_\_\_\_\_  
Duly authorised Officer

Office held \_\_\_\_\_

Date.....

## **Loan Instrument**

**LOCAL AUTHORITY LOAN INSTRUMENT CERTIFICATE NUMBER \_\_\_\_\_**

This Loan Instrument records the terms of our agreement relating to the Loan referred to in the Schedule below.

### **THE SCHEDULE**

<b>REGISTERED HOLDER:</b>	<b>BARCLAYS BANK PLC</b>
<b>COUNCIL:</b>	<b>London Borough of Tower Hamlets Council</b>
<b>AMOUNT OF LOAN:</b>	<b>£13,000,000 (Thirteen Million Pounds)</b>
<b>DATE ACCEPTED:</b>	<b>16<sup>th</sup> August 2007</b>
<b>DATE OF DRAWDOWN:</b>	<b>23<sup>rd</sup> August 2007</b>
<b>INTEREST:</b>	<p>Interest on the Loan shall accrue at 4.37% per annum or (if the Registered Holder notifies the Council not less than two Business Days prior to any Lender's Option Date) at the rate so notified with effect from such Lender's Option Date, interest being payable in arrear on 23<sup>rd</sup> February and 23<sup>rd</sup> August in each year.</p> <p>In the event that any date on which interest is due to be paid hereunder is not a Business Day, then such interest shall be paid on the next Business Day unless that Business Day is in the following month in which case such interest shall be paid on the Business Day immediately preceding such interest payment date.</p>
<b>DATE OF REPAYMENT OF LOAN:</b>	<b>23<sup>rd</sup> August 2077</b>
<b>AMOUNT OF REPAYMENT OF LOAN:</b>	<b>£13,000,000 (Thirteen Million Pounds)</b>



**CONDITIONS:**

1. Upon drawdown, the Loan is acknowledged to be a debt payable to the Registered Holder by the Council.
2. Interest on the Loan is payable from the date of drawdown, shall accrue from day to day and shall be calculated on the basis of a year of 365 days (or on such other day count basis as the Registered Holder considers is consistent with the then applicable market practice) and the actual number of days elapsed.
3. Payment default of any part of the Loan or accrued interest thereon shall entitle the Registered Holder to demand immediate repayment of the Loan together with all interest then accrued and any amount payable pursuant to Condition 4 below whereupon on making such demand such sums shall become immediately due.
4. The Council acknowledges that the Registered Holder has agreed the rate of interest on the basis that the Loan will be outstanding until the earlier of the specified date (the "Specified Date") in the Schedule for repayment of the Loan and the date of any repayment made on a Lender's Option Date in accordance with Condition 7 below and if:
  - (i) the Loan is repaid by the Council (other than (i) on the Specified Date or (ii) on a Lender's Option Date in accordance with Condition 7 below); or
  - (ii) the full amount of the Loan is not drawn on the drawdown date for any reason (excluding any default by the Registered Holder); or
  - (iii) the Registered Holder makes a demand for repayment pursuant to Condition 3 above,

the Council will pay to the Registered Holder on demand the Breakage Cost and any broken funding costs.

"Breakage Cost" shall be the amount determined by the Registered Holder as:

its loss associated with the Loan or proposed Loan, as the case may be. This loss will be the amount that the Registered Holder would need to pay to another financial institution selected by it as consideration for an agreement by that financial institution to:

make the fixed interest payments to the Registered Holder that it would otherwise have been entitled to receive from the Council under the Loan if the Loan had been outstanding until the Specified Date in exchange for receiving LIBOR flat from the Registered Holder in accordance with the same payment profile, on the same terms and including the same features as the Loan (including the rights of the Registered Holder with respect thereto).

5. All payments required to be made by the Council under this Loan Instrument shall be calculated without reference to any set-off or counterclaim, shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim and shall be remitted in cleared funds on the due dates to the Registered Holder's nominated bank account.

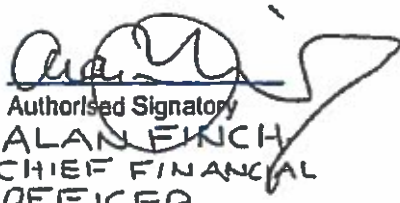
6. The Loan is fully transferable in whole or in part by the Registered Holder by an instrument in writing in accordance with the Stock Transfer Act 1963 delivered to the Council who shall acknowledge and register any such transfer. In the event of a transfer of part of the debt acknowledged by this Loan Instrument, the Council will issue a Loan Instrument to the Registered Holder for the debt under this Loan Instrument as reduced by the amount transferred and will issue a new Loan Instrument to the transferee on the same terms set out in this Loan Instrument for an amount equal to the debt transferred by the Registered Holder. Further, the Council will give effect to and conform to any registration requirements imposed by virtue of statute, practice or otherwise and will provide the Registered Holder with any relevant documentation within the time period imposed by the statute, practice or otherwise.
7. If the Registered Holder notifies the Council by not less than two business days prior notice that an increase in the rate of interest will occur on a Lender's Option Date, then the Council may, if it has given the Registered Holder prior written notice to that effect by no later than 5.00pm on the Business Day preceding such proposed increase, prepay the Loan on the date of such proposed increase together with accrued interest thereon to the day of prepayment.
8. The Council may also, if it has given to the Registered Holder prior written notice to that effect by no later than 5.00pm on the Business Day preceding the proposed day of prepayment, prepay the Loan on the next interest payment date together with (i) accrued interest thereon to the day of prepayment and (ii) any amount payable pursuant to Condition 4 above.
9. The Council shall not be entitled to prepay the Loan except at the times and in the manner expressly provided in this Loan Instrument.
10. In this Loan Instrument, the following terms shall have the following meanings:-


"Business Day" means a day (excluding Saturdays) on which the Registered Holder is ordinarily open to effect transactions of the kind contemplated in this Loan Instrument.

"Lender's Option Date" means 23<sup>rd</sup> August 2014 and thereafter, the last Business Day of each successive period of six months.

EXECUTED on behalf of London Borough of Tower Hamlets Council on the                      day of

By:

  
Authorised Signatory  
**ALAN FINCH**  
**CHIEF FINANCIAL**  
**OFFICER**  
Name and Title of  
Authorised Signatory

  
Authorised Signatory  
**JIM RICKETTS**  
**CAPITAL AND**  
**INVESTMENTS MANAGER**  
Name and Title of  
Authorised Signatory

## **Loan Instrument**

**LOCAL AUTHORITY LOAN INSTRUMENT CERTIFICATE NUMBER \_\_\_\_\_**

This Loan Instrument records the terms of our agreement relating to the Loan referred to in the Schedule below.

### **THE SCHEDULE**

<b>REGISTERED HOLDER:</b>	<b>BARCLAYS BANK PLC</b>
<b>COUNCIL:</b>	<b>London Borough of Tower Hamlets Council</b>
<b>AMOUNT OF LOAN:</b>	<b>£4,500,000 (Four Million Five Hundred Thousand Pounds)</b>
<b>DATE ACCEPTED:</b>	<b>16<sup>th</sup> August 2007</b>
<b>DATE OF DRAWDOWN:</b>	<b>23<sup>rd</sup> August 2007</b>
<b>INTEREST:</b>	<p>Interest on the Loan shall accrue at 4.25% per annum or (if the Registered Holder notifies the Council not less than two Business Days prior to any Lender's Option Date) at the rate so notified with effect from such Lender's Option Date, interest being payable in arrear on 23<sup>rd</sup> February and 23<sup>rd</sup> August in each year.</p> <p>In the event that any date on which interest is due to be paid hereunder is not a Business Day, then such interest shall be paid on the next Business Day unless that Business Day is in the following month in which case such interest shall be paid on the Business Day immediately preceding such interest payment date.</p>
<b>DATE OF REPAYMENT OF LOAN:</b>	<b>23<sup>rd</sup> August 2077</b>
<b>AMOUNT OF REPAYMENT OF LOAN:</b>	<b>£4,500,000 (Four Million Five Hundred Thousand Pounds)</b>

**CONDITIONS:**

1. Upon drawdown, the Loan is acknowledged to be a debt payable to the Registered Holder by the Council.
2. Interest on the Loan is payable from the date of drawdown, shall accrue from day to day and shall be calculated on the basis of a year of 365 days (or on such other day count basis as the Registered Holder considers is consistent with the then applicable market practice) and the actual number of days elapsed.
3. Payment default of any part of the Loan or accrued interest thereon shall entitle the Registered Holder to demand immediate repayment of the Loan together with all interest then accrued and any amount payable pursuant to Condition 4 below whereupon on making such demand such sums shall become immediately due.
4. The Council acknowledges that the Registered Holder has agreed the rate of interest on the basis that the Loan will be outstanding until the earlier of the specified date (the "Specified Date") in the Schedule for repayment of the Loan and the date of any repayment made on a Lender's Option Date in accordance with Condition 7 below and if:
  - (i) the Loan is repaid by the Council (other than (i) on the Specified Date or (ii) on a Lender's Option Date in accordance with Condition 7 below); or
  - (ii) the full amount of the Loan is not drawn on the drawdown date for any reason (excluding any default by the Registered Holder); or
  - (iii) the Registered Holder makes a demand for repayment pursuant to Condition 3 above,

the Council will pay to the Registered Holder on demand the Breakage Cost and any broken funding costs.

"Breakage Cost" shall be the amount determined by the Registered Holder as:

its loss associated with the Loan or proposed Loan, as the case may be. This loss will be the amount that the Registered Holder would need to pay to another financial institution selected by it as consideration for an agreement by that financial institution to:

make the fixed interest payments to the Registered Holder that it would otherwise have been entitled to receive from the Council under the Loan if the Loan had been outstanding until the Specified Date in exchange for receiving LIBOR flat from the Registered Holder in accordance with the same payment profile, on the same terms and including the same features as the Loan (including the rights of the Registered Holder with respect thereto).

5. All payments required to be made by the Council under this Loan instrument shall be calculated without reference to any set-off or counterclaim, shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim and shall be remitted in cleared funds on the due dates to the Registered Holder's nominated bank account.

6. The Loan is fully transferable in whole or in part by the Registered Holder by an Instrument in writing in accordance with the Stock Transfer Act 1963 delivered to the Council who shall acknowledge and register any such transfer. In the event of a transfer of part of the debt acknowledged by this Loan Instrument, the Council will issue a Loan Instrument to the Registered Holder for the debt under this Loan Instrument as reduced by the amount transferred and will issue a new Loan Instrument to the transferee on the same terms set out in this Loan Instrument for an amount equal to the debt transferred by the Registered Holder. Further, the Council will give effect to and conform to any registration requirements imposed by virtue of statute, practice or otherwise and will provide the Registered Holder with any relevant documentation within the time period imposed by the statute, practice or otherwise.
7. If the Registered Holder notifies the Council by not less than two business days prior notice that an increase in the rate of interest will occur on a Lender's Option Date, then the Council may, if it has given the Registered Holder prior written notice to that effect by no later than 5.00pm on the Business Day preceding such proposed increase, prepay the Loan on the date of such proposed increase together with accrued interest thereon to the day of prepayment.
8. The Council may also, if it has given to the Registered Holder prior written notice to that effect by no later than 5.00pm on the Business Day preceding the proposed day of prepayment, prepay the Loan on the next interest payment date together with (I) accrued interest thereon to the day of prepayment and (II) any amount payable pursuant to Condition 4 above.
9. The Council shall not be entitled to prepay the Loan except at the times and in the manner expressly provided in this Loan Instrument.
10. In this Loan Instrument, the following terms shall have the following meanings:-


"Business Day" means a day (excluding Saturdays) on which the Registered Holder is ordinarily open to effect transactions of the kind contemplated in this Loan Instrument.


"Lender's Option Date" means 23<sup>rd</sup> August 2010 and thereafter, the last Business Day of each successive period of six months.

EXECUTED on behalf of London Borough of Tower Hamlets Council on the

day of

By:

  
\_\_\_\_\_  
Authorised Signatory  
ALAN FINCH  
CHIEF FINANCIAL  
OFFICER  
\_\_\_\_\_  
Name and Title of  
Authorised Signatory

  
\_\_\_\_\_  
Authorised Signatory  
JIM RICKETTS  
CAPITAL AND INVESTMENTS  
MANAGER  
\_\_\_\_\_  
Name and Title of  
Authorised Signatory

[REDACTED]

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**From:** Barry Scarr  
**Sent:** 09 March 2016 16:37  
**To:** [REDACTED]@kpmg.co.uk  
**Cc:** Zena Cooke  
**Subject:** LOBO Loans - query 1

[REDACTED]

Below is the first query on LOBO loans sent to the Mayor and the Council's response.

Barry.

-----Original Message-----

**From:** [REDACTED] @ [REDACTED]  
**Sent:** 06 July 2015 20:09  
**To:** Mayor  
**Subject:** re LOBO Loans

Dear Mr John Biggs

Having just seen channel 4 dispatches about LOBO loans, I saw Tower Hamlets has bought into these ridiculous loans.

Please can you explain what you will be doing about these loans in our Borough.

Yours sincerely

[REDACTED]

Response

The Council has three LOBOs loans, one with Royal Bank of Scotland (RBS) and two with Barclays Bank.

When these long-term loans were entered into, they were cheaper than equivalent fixed interest rates on offer from the PWLB at that time, and offered value for money. These long term loans were selected to give some certainty of interest rate costs for the Council over the lifespan of the assets within the capital schemes they were funding at the time. This included funding the 40 year HRA business plan.

At each option date, the Council has the option of repaying these LOBO (lender's option, borrower's option) loans if the banks ask for an increase in the interest rate payable. The Council would consider repaying these loans without penalty if the banks ask for a rate increase (and other funding represented better value at that time), however the banks have not requested any interest rate change

At present the Council is continuing with these loans whilst they still represent value for money.

Below are details of the three LOBO loans that the Council has. They include details of the comparable PWLB interest rates available at the time.

Royal Bank of Scotland (RBS)

This is a £60m loan from 26th February 2010 for 50 years. It had an initial variable interest rate of 0.25% plus 3 months LIBOR for 2 years (this worked out to be 0.8925% in year one and 1.3145% in year two) and 4.32% for the

rest of the loan. RBS have an option to request an interest change at six monthly intervals. A comparable PWLB loan for 50 years in February 2010 was more expensive at 4.69%.

#### **Barclays Bank**

Two loans were taken in August 2007. One loan is for £4.5m for 70 years at an interest rate of 4.25%. The other loan is £13m for 70 years at an interest rate of 4.37%. The bank has six monthly options to request a rate change.

The PWLB rate for 50 years in August 2007 was 4.55%, therefore the rates being offered by Barclays was more competitive than PWLB rates at the time and they had a longer maturity dates closer to the life of the assets being financed.

In conclusion, the LOBO structure has been cost effective as the interest payable on maturity loans is less than the equivalent PWLB rate at the time the loans were taken out. Current equivalent PWLB 50 year rates are 3.54%, so there is still headroom for cheaper borrowing if base rates increase by 0.5% and lenders exercise their option.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 31 March 2016 11:57  
**To:** [REDACTED]  
**Subject:** FW: Objection to Tower Hamlets 2014/15 annual accounts - item 1

**From:** Brian Shary  
**Sent:** 03 March 2016 11:15  
**To:** [REDACTED]  
**Subject:** FW: Objection to Tower Hamlets 2014/15 annual accounts

Did you see this one?

**From:** [REDACTED]  
**Sent:** 02 March 2016 13:27  
**To:** [REDACTED]@kpmg.co.uk  
**Cc:** Final AccountsTeam  
**Subject:** Objection to Tower Hamlets 2014/15 annual accounts

To Whom it may concern

As an elector of the London Borough of Tower Hamlets, I wish to lodge an objection to the accounts prepared for public inspection by Council for the year 2014-2015. I request that KPMG issue a report on these accounts in the public interest and transmit it to the Council.  
I wish you to issue this report on the grounds that taking out Lender Option Borrower Option (LOBO) loans was unlawful. Additionally, I request that you apply to the courts for a declaration that item(s) of the accounts, namely LOBO loan borrowing, is unlawful.

The term 'unlawful' applies in this context, I believe, because the decision to sign up to LOBO loans from the Royal Bank of Scotland and Barclays was irrational.

I am concerned that the terms of the LOBO contracts and their implications were not sufficiently understood by council officers; and that the volume and type of borrowing carried such a high risk as to be prejudicial to the interests of Tower Hamlets taxpayers.

The legal status of LOBO loan use is the subject of significant legal ambiguity and debate. Following the 1989 Hazell vs Hammersmith and Fulham (Goldman Sachs) case, derivatives use was declared "ultra vires" or illegal, for UK local government.

By inserting derivatives into a LOBO loan, it is clear banks intentionally subverted the intent of such protections, to "engineer" around the law.

The London Borough of Tower Hamlets borrowed £77.5m in the form of LOBO loans between August 2007 and September 2009, refer to Section 15, pg 38- 41 (Financial Instruments) of the 2014/15 annual accounts.

The loans are with Barclays (£17.5m) and RBS (£60m) which means that the Borough, which is home to some of London's most deprived areas, and where the Council has just signed off on £30m spending cuts alongside a 4% hike in council tax rates, is paying over £3.5m in interest per annum to the owners of One Churchill Place, Canary Wharf and the former owners of 5 Canada Square, Canary Wharf.



The accounts make note of the fact that: *"In the more than 10 years [i.e. long term borrowing] category, there are £77.5 million of Lender's Option, Borrower's Option (LOBO) market loans, of which £17.5 million have call dates in the less than one year category. The Council uses money market funds to provide liquidity."*

Tower Hamlets are forced to keep treasury reserve cash on hand, to meet annual call options on LOBOs to repay without penalty, should the bank exercise its option to raise interest rates.

It is my view that taking out loans of this type and magnitude constituted a gamble: namely that the Council would gain a short-term benefit if interest rates continued to rise.

However, this did not occur - partly as the result of systemic downward LIBOR interest rate manipulation ("low-balling") by Barclays and RBS, which sold Tower Hamlets LOBO loans.

Abhisek Sachdev, CEO of Vedanta Hedging described LOBO loans to the Communities and Local Government Committee inquiry hearing on local government bank loans as a "lose-lose bet for councils."

Legal opinion regarding LOBOs from City law firm Collyer Bristow states: "if market rates for equivalent lending remain low (and lower than the rate to be paid under the LOBO) the borrower is effectively locked in for the full term - it has no option to exit the arrangement and seek cheaper borrowing elsewhere - it must live with the rate agreed at the time the LOBO was entered into. So from the borrower's perspective, these loans are a very long term commitment to pay the rate agreed at the outset for a term, or higher. So, on the face of it, the borrower is in a "lose/lose" position.

I believe that making such a borrowing commitment under the conditions which the banks imposed, without benchmarking and recording the decisions against comparable PWLB loans or seeking external financial advice, amounted to 'irrational' conduct.

Treasury Management Advisor, CAPITA who recommended LOBO loan products received kickbacks (undeclared to council), when loans were brokered by Tullet Prebon and ICAP.

Treasury Management Advisors, operating under the Chartered Institute of Public Finance and Accountancy (CIPFA) framework, recommend councils borrow no more than 30% of long term debt in 'inherently risky' (refer April 2015 CIPFA bulletin), variable rate, LOBO loans.

Tower Hamlets, by comparison, has 87% of its long-term debt in variable rate LOBOs.

This compares very unfavourably with other London Boroughs. Figures obtained by FOI requests on LOBO loan borrowing show that the mean portion of overall long term borrowing in the form of LOBO loans is 16% for London boroughs. The median is just 3.3%.

I would therefore be grateful if you considered this request to issue a public interest report on Newham Council's LOBO loan borrowing for the year 2014-2015, and request that you apply to the courts for a declaration that item(s) of the accounts, namely LOBO loan borrowing, is unlawful.

Yours sincerely

[REDACTED]

[REDACTED]

**From:** Barry Scarr  
**Sent:** 09 March 2016 16:43  
**To:** [REDACTED]@kpmg.co.uk  
**Cc:** Zena Cooke  
**Subject:** LOBO query 2  
**Attachments:** MayorLOBOresponse.docx

Response to additional questions.

Barry.

-----Original Message-----

**From:** [REDACTED] (mailto:[REDACTED])  
**Sent:** 22 July 2015 13:14  
**To:** Mayor  
**Subject:** Re: re LOBO Loans

FAO Mayor Briggs

Dear [REDACTED]

Thank you for this information, although it does raise additional questions.

1) What actions are you taking with respect to potentially biased advice offered to you on the basis of these loans? The allegations made on Channel 4 dispatches suggest that any advice you had, may have not been unbiased, and indeed led to big commission payments to the providers of this advice. Do you have any intention of taking these matters further to recover commissions from the providers.

2) With respect taking a commercial loan, over a loan from the PWLB. Any profit made from the supply of the loan has gone to private shareholders, rather than back into the public purse. So the cost of these loans to the tax payer is even higher than the interest rates offered, and indeed with the BoE rate at just 0.5% still, the cost of these loans seems enormous. The advice you received in taking this route has surely led to huge losses for the tax payer, where as a loan with PWLB would have ensured any profit could be ploughed back into the country's coffers. Do you intend taking any action to renegotiate these loans to recover the losses being endured from these commercial banks?

Thank you for your time in this important matter, as I believe at a time when money is very difficult for many in the borough, proactive attempts on cost savings are critical, and ensure trust in public bodies.

Yours sincerely

[REDACTED]

On 22/07/15 12:31, Mayor wrote:

> Dear [REDACTED]  
>  
> Thank you for your email to Mayor John Biggs, Executive Mayor of Tower Hamlets.  
>  
> Please find attached letter.

>  
> I hope this satisfactorily answers your query.  
>  
> However, if there is anything further that I can assist you with please do not hesitate to contact me.  
>  
> Kind regards,  
>  
> [REDACTED]  
>  
> -----Original Message-----  
> From: [REDACTED]  
> Sent: 06 July 2015 20:09  
> To: Mayor  
> Subject: re LOBO Loans  
>  
> Dear Mr John Biggs  
>  
> Having just seen channel 4 dispatches about LOBO loans, I saw Tower Hamlets has bought into these ridiculous loans.  
>  
> Please can you explain what you will be doing about these loans in our Borough.  
>  
> Yours sincerely  
>  
> [REDACTED]  
> [REDACTED]  
>  
>  
>  
> .....  
> \*\*\*\*\* Working Together for a Better Tower Hamlets Web site :  
> <http://www.towerhamlets.gov.uk>  
>  
> London Borough of Tower Hamlets E-Mail Disclaimer.  
>  
> This communication and any attachments are intended for the addressee only and may be confidential. It may contain privileged and confidential information and if you are not the intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this E-Mail in error please notify us as soon as possible and delete this E-Mail and any attachments. This message has been checked for viruses, however we cannot guarantee that this message or any attachment is virus free or has not been intercepted or amended. The information contained in this E-Mail may be subject to public disclosure under the Freedom of Information Act 2000. Unless the information is legally exempt from disclosure, the Confidentiality of this E-Mail and your reply cannot be guaranteed.  
>  
> If your request relates to a Freedom of Information enquiry, please  
> resend this to [foi@towerhamlets.gov.uk](mailto:foi@towerhamlets.gov.uk)  
> .....  
> .....  
>  
> Please consider your environmental responsibility: Before printing this e-mail or any other document , ask yourself whether you need a hard copy.

**1) What actions are you taking with respect to potentially biased advice offered to you on the basis of these loans?**

The allegations made on Channel 4 dispatches suggest that any advice you had, may have not been unbiased, and indeed led to big commission payments to the providers of this advice. Do you have any intention of taking these matters further to recover commissions from the providers.

**2) With respect taking a commercial loan, over a loan from the PWLB.**

Any profit made from the supply of the loan has gone to private shareholders, rather than back into the public purse. So the cost of these loans to the tax payer is even higher than the interest rates offered, and indeed with the BoE rate at just 0.5% still, the cost of these loans seems enormous.

The advice you received in taking this route has surely led to huge losses for the tax payer, where as a loan with PWLB would have ensured any profit could be ploughed back into the country's coffers. Do you intend taking any action to renegotiate these loans to recover the losses being endured from these commercial banks?

Dea [REDACTED]

The allegations made in the dispatches programme are yet to be substantiated. Our advisors, Capita, have been quoted in the Municipal Journal as follows:

"Capita strongly refutes any allegations of inappropriate business activities. We provided generic, factual, comparative information to local authorities regarding their funding options to meet their capital funding requirements. We did not and do not direct local authorities to seek funding from any specific organisation as the choice of funding provider is that of the local authority alone."

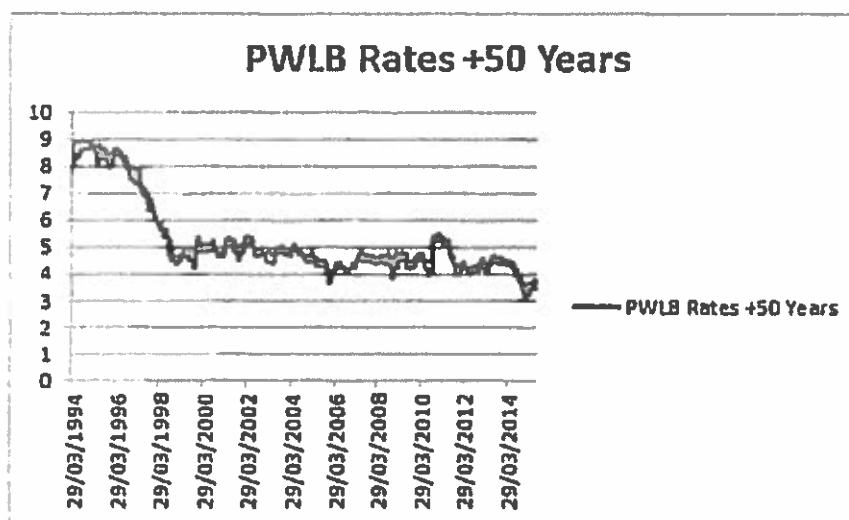
The Council is examining its contract with Capita, and if necessary, will be writing to its brokers in order to clarify their position in relation to the specific LOBO loans the council has entered into. The council will then decide what, if any action needs to be taken. The council will also be engaging with the wider local authority sector in order to share information and co-ordinate any potential action.

The council has a duty under Best Value to consider value for money. Councils in general have been under pressure for many years to reduce costs as much as possible and the Government has expected councils to consider new opportunities for borrowing and investments for the benefit of the community. In this context, the council will always aim to choose the loan option that offers best value, regardless of whether or not the lender is a public or private sector organisation.

In funding long term schemes, it is appropriate to borrow at long term rates to roughly match the life of the assets being funded. It is important to note that these loans were taken out to meet the Council's underlying need to borrow at that time, and our previous analysis supplied to you clearly showed that the LOBO route offered a cheaper interest cost than equivalent PWLB rates. In 2007, when the LOBO loans were entered into, base rates of 0.5% were not predicted by anyone. No economic expert is able to forecast short term interest rates with certainty, let alone the long term nature of a council's capital financing requirement. Market rates do not need to move much (0.75%) for long term interest rates to rise back above the rates on the Council's LOBO loans. It is likely that longer term interest rates will increase over the remaining term of the loans the council has taken out. The council is not looking to renegotiate these loans at this point, however if the lender requests a rate increase, the council is likely to use its option to repay the loan at no penalty – a

similar PWLB loan would attract a penalty for early redemption. When the LOBO loans were taken, they comprised only 25% of the council's debt portfolio and were considered a useful way of diversifying debt, especially with the low initial interest rates. If rates had increased steeply in the initial years of the loans, the banks could not have requested a rate increase despite having received very low interest.

The council was able to obtain lower borrowing costs during the early part of the loan compared to borrowing from the PWLB, so the loans offered good value for money, especially in the initial years where extremely low interest rates of around 1% were charged before reverting to rates lower than the PWLB were offering when the loan was taken. The chart below shows that when the loans were taken, the rates on these loans were much lower than in previous years.



The financial crash of 2008 and subsequent credit crunch have meant that the previous convergence between base rate, LIBOR and market rates are no longer valid. A comparison with current BOE rates is therefore not meaningful. Additionally, because these are very long term loans, future rate rises will be priced in. For example current PWLB long term rates are still well above 3.5% even though the base rate is 0.5%.

Thank you for taking the time to raise this matter. I agree that trust is important and the council should proactively attempt to reduce costs in all of its financial affairs, which is what we aim to do.

