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Dear Jim

**GRANGE TRUST
COMELY BANK WALL**

My concern for the Grange causes me to interrupt my holiday to comment on your detailed paper. Many Grange members will not read the whole paper, and, of those that do, many will find some points arcane and esoteric: without doubt many will be confused. Many of the members will look to the Trust for guidance, especially when it is chaired by someone as distinguished as you are. They will wonder on what basis and why you are not actively protecting the assets of the Trust. They will ask: as the Trust is the owner of the land on their behalf, why is the Trust not maximising their interests?

I am sure the Members will be impressed by the magisterial assessment you have attempted, but will question whether this is the correct stance. In this instance surely you should not be summing up as a Judge, as you are one of the parties to the dispute on which you are now attempting this summation. It is not your duty to give even weight, and not, as appears sometimes from the paper, veiled support to a view which is contrary to the Members' long term interests. I grant you there may be some who wish, like Esau, to exchange the Grange's birthright for a mess of pottage, but there is no case for such people to argue, and for the Trust even to imply so may breach their fiduciary responsibility.

I beg you to consider whether a small, socially cohesive cabal, with command of the distribution of information to members and a respect in the Club based largely on their office, is an appropriate group to advise wholly impartially on the Grange's interest. Patently, they are not fully representative yet they have a disproportionate influence on members. It would be most dangerous for the Trust to act against the interests of all the beneficiaries based on a majority so formed, as will necessarily be the case in the present circumstance, as a consequence of such undue influence. On such a large matter, with so much money at stake, the Trust has to be certain of its mandate. I counsel it would be better to take more time now than to spend five to ten years in litigation. Given such litigation, the Accies' programme

would be hindered, as, if external funding is required, none will be forthcoming without a clear title and any attempt to surrender our rights now would be a vacant gesture.

You represent a welcome and fresh addition of legal excellence to the Grange's affairs consistent with the long-standing tradition of eminence of the Grange's advisors. Indeed, a notable example of such eminence is given by the names of the parties to the 1912 "Agreement" and to the 1979 conveyance to the Accies. Incidentally, that eminent legal talent gives the lie to any possible contention that the 1912 or 1979 parties were ill advised or did not intend what they did – this holds no water, as you yourself could make absolutely clear rather than appearing to gloss over it. Indeed, in any case, I think you are remiss in not emphasising sufficiently that, however the intentions are construed, the contract is the contract. Your review could be considered unbalanced in this respect.

I have been involved in the Club administration* for many years, including being responsible, with others, for the amalgamation with Dyvours, the funding and building of the squash courts, the introduction of the Inverleith tennis club, the building of the original all-weather courts and the welcome addition of the Ladies Hockey. Later I initiated the Direct Debit scheme and undertook to guarantee the Bank of Scotland's position to allow its introduction. I promoted and funded the development of the Arbor Green nursery. All these initiatives have proved well judged. My other contributions have been made through the Trust and I hope you will continue that tradition. The Trust position, self-evidently, is different from that of the Grange Committee and the regulation of the interface with the Club is enshrined in the Memorandum of Understanding. Implicit in the Memorandum of Understanding is a role of the Trust as a sounding board, a second chamber, a source of considered reflection while always of course being wholly accountable to all the Members. The Trustees take a longer view: they are not elected on a year-to-year basis and, of the greatest importance, they, unlike the Committee, have personal liability, a point that I urge the Trustees to consider most carefully: there is strict liability under the Trust Deed to act "most judiciously".

These distinctions have materially assisted the Club in the past, and my long experience in the Grange's service gives me insights that are patently not available to you, given your recent entry to the Trust's and the Grange's affairs. For a better outcome your new vigour of freshness should be advised by the lessons of the past. A frighteningly similar experience to our present situation occurred in 1998. At that time the lease of the ground to Tanfield Bowling Club (Arbor Green Nursery site) came to an end. The Grange Committee, for reasons never clear to me, entered into negotiations with the Bowling Club for a long-term lease renewal without "breaks" which they proposed to conclude with the Bowling Club. The Trust, as Landlords, interceded and an appropriate lease was agreed including "breaks" in the lease which subsequently allowed the Trust to take back the land in order to effect the Nursery development. That Trust intervention is now worth over £42,000 a year, an outcome impossible if the Grange Committee's lease proposals had prevailed. In passing I am unhappy to report that a leading member of that 1998 Grange Committee that nearly, very nearly, cost us about £1m in the Nursery revenue is currently at best less than enthusiastic on maintaining the Grange's interests. Indeed, it has been indicated to me privately that the Grange's interest in the "Wall" should not be pursued. Fortunately, the Trust knew then what the Members' interests really were as I am sure the Members know now, provided the case is fairly and widely presented.

**Footnote: my work for Grange is well known. These paragraphs are to inform any wider readership*

Now I sense an indecent haste, a rush to get things through, almost a stifling of proper debate – what is wrong with proper consideration as you, I think, advocate? Indeed that very haste should, I think, suggest to you that there is a possible inherent conflict of interest within those advocating not pursuing the Grange's interests, and their own personal, political or social views and ambitions.

More recently the Trust, as is allowed under the Memorandum of Understanding, declined to release £85,000 or thereby to fund the new Tennis Court until the position of that Court in relation to the other sports facilities had been re-measured. It transpired that which the Trust was told was impossible was indeed possible, and as a result that new Court is sited on its present site, so saving £100,000. The Trust provides a steadying hand and a second opinion, a vital check for all who have ever had to make important decisions or judgements, as provided in the Memorandum of Understanding.

The Trust serves a vital function different from Club officials and members. Committee members are elected short term and with no personal liability, usually and quite properly on bases other than their commercial skill; and the Club is very well served by them. However, I am sure that a vast majority would admit the usefulness, if not the need, of additional external advice where they operate in professional fields unknown to them, under pressures of time, on a short appointment with no liability and subject to strong vociferous pressure groups: a small active number can influence a silent majority. That silent majority is protected by the Trust and the Memorandum of Understanding with the beneficiaries.

The Memorandum of Understanding, substantially revised by you, contains one over-riding and particular safeguard. Clause P, your alphabetical hierarchy, requires the Trust to hold a meeting with the Members within its financial year. I do recommend holding such a meeting immediately as I have previously so written to all the Trustees. I am surprised, if I may be critical, that such an important undertaking should be passed over by anyone of your considerable experience in matters of contract. Be that as it may, and I hope it is soon rectified, it does mean, as I have emphasised above that, any action without such a procedure and its authority is flawed and thus invalid.

I am an undoubted friend of the Club: as such I urge you, the Trustees and all Members to take this chance to have a much fuller discussion on the subject. Importantly, I find that the information so far has not been comprehensive and while the position is clear, a thin veiling has been introduced. For instance, I have not seen the latest QC's Opinion. Indeed, why did we need another one – Roddy Thomson QC's Opinion was so clear there must be a risk that another Opinion from a less qualified source was sought in order to dilute it, or possibly because it contained items deemed unfavourable to a particular interest.

The possibility of bias in the decision-making process also creeps in if other aspects of the process are examined. Why would the Grange concede or behave as though their position might be weak; why do officials publicly underplay the facts; and why are there reports of the Accies getting reassurances of the Grange view, however unofficially, of a free transfer? Is someone trying to influence decisions adversely?

The only clear and safe conclusion is to avoid any unnecessarily, hasty, premature and ill-judged decision, so ensuring a proper decision and so obviating possible litigation. I wish to state unequivocally that I have not been given the information necessary to form a decision and, if it is provided shortly, it is not within a reasonable time. The Trust requires to consult all Members fully and timeously. It is important to do the right thing in the right way and not what is easy or expedient or defers to a small effective pressure group. The Grange is where it is today as a result of a few big well-made decisions: for the future we need to act constructively to get this decision right, too. The Club has been well served by the Trust in the past and I ask you to use your considerable influence to ensure that continues to be the case. To this end I request you circularise this reply to all the Members.

I repeat: I sense an indecent haste, a rush to push a programme through and a stifling of informed debate.

Yours sincerely

I D Lowe
Former Chairman, Grange Trust

cc Trustees
Former Trustees
Other(s)