

### Item 10 Appendix 3 – Full Council 20<sup>th</sup> September

#### Interpretation note regarding Clause 18 of the Deed of Trust dated 8<sup>th</sup> November 1920

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“18. The power of appointing new trustees shall be vested in the members for the time being of the Town Council of the Borough of Todmorden hereinafter called the Council and every appointment shall be made at a meeting convened and held as nearly as may be in accordance with the ordinary rules or practice of the Council by a resolution of a majority of the members who are present and vote at such meeting. The number of trustees shall be twelve and members of the Council shall be eligible for appointment but the Council shall exercise their power of appointment in such a manner that the number of trustees who are members of the Council shall not exceed a minimum of two-thirds of the total number of trustees. If such maximum number is exceeded by reason of a trustee becoming a member of the Council subsequent to the date of his appointment each trustee shall vacate office at the expiration of two years and one calendar month from the time of becoming a member of the Council if at the expiration of such period he shall be a member of the Council and the number of trustees who are members of the Council (inclusive of himself) shall exceed the maximum aforesaid but this provision shall not apply to any of the original trustees parties hereto of the 2<sup>nd</sup> part. Every new trustee appointed under this clause shall be appointed to office for a term not exceeding three years the intention being that as soon as may be after all the original trustees parties hereto of the 2<sup>nd</sup> part shall have died or vacated office the ordinary term of office of a Trustee shall be three years and on a day of election in every year to be fixed by the Council one-third of the whole number of Trustees shall go out of office and their places shall be filled by resolution of the Council. The third to go out of office shall be the Trustees who have been longest in office without re-election except that a Trustee who is appointed to fill a casual vacancy shall hold office until the time when the new trustee in whose place he is elected would regularly have gone out of office and he shall then cease to be a Trustee. Any Trustee shall (except as mentioned in Clause 16 hereof) be eligible for re-appointment as a trustee. **Every appointment of a new trustee shall take effect when notice thereof has been given to the Trustees or to their Secretary or Clerk or**

other person appointed by them and such Trustee has signed a declaration accepting the position and undertaking to act in and carry out the terms and conditions of the Trust which declaration shall specifically mention these presents and shall be attached to the Trustees' Minute Book. Any new Trustee who fails or neglects to make such a declaration within one calendar month after notification in writing by the Town Clerk of his appointment shall be deemed to have resigned.

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There are two key passages regarding the appointment of Trustees

The clause "notice given to the Trustees or to their Secretary or Clerk"

Then it refers to "if trustees neglect to make such declaration within one month after notification in writing by the Town Clerk of his appointment shall be deemed to have resigned".

What is noticeable is the difference between "their secretary or clerk" and "Town Clerk"

### Consideration

What needs to be considered is why was the "Town Clerk and one month stipulation" inserted into this clause.

There is no method specified as to how to effect the notice to the trustees or secretary or clerk or any time period specified.

In practice the TES secretary or clerk has been advised by the Town Clerk of new appointments and should then take forward getting newly appointed trustees to sign the declaration of willingness to act as a trustee. Declarations signed and all sorted. That is defined in the first clause but no time period stipulated

Now what happens if after a reasonable time, these declarations were not returned. It cannot be left up in the air whether a Trustee is going to accept or not.

This is then why the clause involving the more formal "Town Clerk" is triggered to write to them to ask for the declaration to be signed and if not within one month of such notification in writing then deemed to have resigned.

This then clears the way for another trustee to be appointed.

This is a logical interpretation and reinforces the documents "spirit" to have the Town Council acting as the appointer of Trustees (duly elected Town Councillors of good standing and democratically elected) and formal administrative appointee (Town Clerk) to formally ensure Trustees appointed take up their positions or if not, then a back-up process is implemented to appoint new ones to ensure the Trust's business can continue.

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That back-up clause is the intention of the separate sentence Any new Trustee who fails or neglects to make such a declaration within one calendar month after notification in writing by the Town Clerk of his appointment shall be deemed to have resigned.

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