



16th August 2023

Dear

Todmorden Emergency Support – (Abraham Ormerod Reg Charity no 252036 and Todmorden War Memorial Fund Reg Charity 219673)

You may be aware that the governing document dated 8th November 1920 places the obligation on the Town Council to appoint Trustees with a maximum of 12, with no more than 8 Town Councillors appointed.

Whilst the document is not specific as to why the Town Council was placed with this obligation, it is reasonable and fair to assume that by virtue of representatives of the Town being duly elected to the role of a Town Councillor, such persons would be of good standing and character.

Town Councillors today sign up to a Code of Conduct to reflect the Nolan principles and indeed a Code of Conduct is accepted as good governance practice by the Charity Commission.

Whilst the day-to-day business of the above charities are run by the Trustees, nevertheless by virtue of our involvement in the appointment of Trustees, it is incumbent upon the Town Council, to ensure that good governance arrangements are in place. Even more so where we have a duty of care when Town Councillors are appointed into such positions.

We are aware that processes and policies have been substantively reviewed, again good practice, and proposals to restructure some of the delivery elements have not received the support of all Trustees.

Any Trustee has the right to challenge such actions and under normal circumstances this would be decided through a majority vote. If having followed this process an individual Trustee still has concerns on any matter, they do of course retain the right to refer this to the Charity Commission.

In my letter dated 24th July 2023, I advised that the Town Council having made the decision to appoint specific Trustees, such resolution remains in place for a period of six months unless challenged through the process outlined in the Town Council's Standing Orders.

The governing document in clause 18 advises that "any new trustee who fails or neglects to make such declaration within one calendar month after notification in writing by the Town Clerk of his appointment shall be deemed to have resigned".

There is however no stipulation as to when the "notification in writing" is to be given and likely to have been left to the discretion of the Town Council when to do so subject to their own administrative capacity to carry out such an action.

This is however also open to interpretation as it could be deemed that if notified in any other way and the Declaration is not entered into within a reasonable time, to ensure that the New Trustee would either complete the Declaration or if not then an alternative Trustee be appointed, then the **Town Clerk** would write to them and if then not accepting within one month, then the Trustee shall be deemed to have resigned.

Historically these Declarations are likely to have been actioned quickly following the May Town Council meeting (but not necessarily within one month) and no need for the Town Clerk to then subsequently write as a measure to ensure Trustees take up their role.

However this clause is interpreted, having advised the secretary to the Trust of the New Trustees Appointed, after what appears to have been a delay in Trustees responding with the signed Declaration, this delay did not trigger the action required technically in accordance with clause 18 of the **Town Clerk** formally notifying in writing to the Trustees nominated for appointment of their failure to complete the Declaration and if not returned within one month that they will have deemed to have resigned.

That process will now be followed, with those **New Trustees** appointed in May 2023 formally written to concurrent with this letter enclosing the Declaration of Willingness to Act as a Trustee. Subject to such acceptance, they be appointed as Trustees with effect from the date of such acceptance

For the avoidance of doubt in the future, we will interpret this as formally writing to each Trustee asking that they sign and return such declaration within one month, with the intention being that such written notification be sent within 7 days from the Town Council agreeing to appoint.

Whilst I am aware that four trustees have requested for another Town Council meeting to be convened, the resolution made in May 2023 remains extant. It is simply the process of writing to remind of the need to complete the Declaration that has not been followed.

This issue has also raised the potential that proper process may not have been followed in the past and potentially Trustees in their current term may not have signed a Declaration of Willingness to Act as a Trustee, when appointed as a **New Trustee**, which the governance document requires. After their term has finished, whilst eligible for reappointment, if appointed they are then regarded as a New Trustee. Internal records do not evidence this process being followed.

It would seem sensible at this stage, that unless **Existing Trustees** can evidence that they have signed such a declaration from when last appointed, to regularise matters, they also sign such a Declaration. I have written also to Existing Trustees concurrent with this letter to take this forward.

Whilst this is a matter for the Trustees, it would seem appropriate that at your next meeting of Trustees, Declarations of Willingness to Act as a Trustee are exhibited for all to see and then “appointments of office” made.

I mentioned earlier our duty of care to Town Councillors that the Town Council appoint to the role of Trustee. In my role as Proper Officer of the Town Council I believe the issues raised about governance warrant an external professional review for the benefit of all Trustees.

I will therefore be approaching the Town Council at the September meeting of the Full Council, to fund a review of the trust’s governance arrangement to ensure that these are not only robust and proper and afford a measure of comfort to all Trustees that they can be satisfied that governance arrangements in place provide a sound platform on which to carry out their duties and responsibilities.

Yours sincerely

N Crewe
Town Clerk
Todmorden Town Council