

Sent: 24 April 2017 20:59

To: Filey Town Clerk <mail@fileytowncouncil.co.uk>

Subject: EGM and Vote of No Confidence

Dear Madam Mayor, dear Councillors,

In the light of the vote of No Confidence passed by this Council on 13th February, I believe the Council may appreciate an up-date on developments at Scarborough Borough Council since that time.

On 5th April, I and four other Borough Councillors signed and delivered a Requisition to Mr St.John Harris (on behalf of the Mayor of Scarborough Borough Council, Councillor Simon Green) calling for an Extraordinary Meeting of Full Council to table a Motion for a single Item of Business, in accordance with the terms of that Council's Constitution.

That Item of Business is:

"To register a Recorded Vote for or against a Declaration of No Confidence in the Leader and the incumbent Portfolio Holders of his Cabinet, of today's date, Proposed by Councillor Sam Cross and Seconded by Councillor Jonathan Dodds".

The SBC Constitution provides that it is the duty of the Mayor to call the Extraordinary Meeting within seven days of receipt of a Requisition. Should the Mayor fail in his duty, the responsibility then passes to the Chief Executive.

To this day, I have received neither acknowledgement nor response to the Requisition from the Mayor.

However, on 11th April, I was contacted by email by the Monitoring Officer, Mrs Lisa Dixon.

The Monitoring Officer claimed that, due to purdah restrictions pertaining to the North Yorkshire County Council elections on 4th May, the Council was required to circumvent its own Constitution to prevent the Council's 'machinery' from being used for party political purposes.

The Monitoring Officer went on to suggest incorporating the 'No Confidence' Motion into the Agenda for the Full Council meeting scheduled for 8th May, though this contravenes the terms of the Constitution, specifically Item 4.4.2, which reads:

(i) the business to be conducted at an Extraordinary Meeting of the Council shall be limited to the item or items in respect of which the meeting has been called.

The Monitoring Officer concluded her email, dated six days after the Requisition was served, by confirming that the Extraordinary Meeting must be called within seven days of service.

I responded to the Monitoring Officer immediately, pointing out that as there are no elections scheduled at SBC; therefore, the Council was not in a state of purdah. However, since there is no party political element to

the Motion of No Confidence, purdah would not, in any case, be applicable. I drew Mrs Dixon's attention to the government 2017 Guidance on Purdah, which states

"Local government sometimes views this period as a time when communications has^[sic] to shut down completely. This is not the case, and the ordinary functions of councils should continue..."

I also pointed out that, following acknowledgement of the call for the Extraordinary Meeting, a further seven days must elapse following publication of the Agenda, which would have resulted in the Extraordinary Meeting taking place on Wednesday 26th April 2017.

The Monitoring Officer responded to my email out of hours that same day (12th April).

Despite the government 2017 Guidance, the Monitoring Officer repeated her opinion that the Council (SBC) was in a state of purdah. In telephone conversations with Local Government Association officials, I was assured that such was not the case.

The Monitoring Officer stated that the *"availability of the Chamber in May"* was limited.

I was not at all satisfied with the Monitoring Officer's response, so I replied immediately to the effect that her suggestion to include the No Confidence Motion in the 8th May Meeting was contrary to the Constitution. I also pointed out that her actions risked being seen as a deliberate application of bias, seeking to protect the Leader and his Cabinet from any potential future consequences of losing a vote of No Confidence.

I also stated:

"Clearly, the business of Scarborough Borough Council must proceed in accordance with the Constitution, without hindrance and irrespective of whether or not there is an election at another authority. Were this not the case, then Scarborough Borough Council would find itself beset by purdah every time so much as a by-election took place anywhere else in the County, which is patently absurd."

I concluded by insisting that the Extraordinary Meeting and the Motion of No Confidence must proceed in accordance with the Constitution.

The following day, 13th April, the Monitoring Officer responded to my email only to confirm that *"we remain of the opinion that purdah applies..."*. She did not elaborate as to the identity of the "we" - whether she meant herself and the Chief Executive, or herself and the Leader, or all three, we cannot know.

One again, I replied at once, confirming that higher authority holds a different opinion on the application of purdah - which, in any case, is a mere convention and not a statutory requirement - an opinion contrary to that held by Mrs Dixon and whoever she was including in that mysterious "we".

I repeated my advice that candidates for the North Yorkshire County Council election stand as members of the public, and not in their capacity as Scarborough Borough Councillors. However, the Chief Executive Officer, Mr Dillon, as a Deputy Returning Officer in the North Yorkshire County Council elections, does have an

involvement in the North Yorkshire County Council elections; therefore, if the Monitoring Officer continued to insist that purdah was applicable, Mr Dillon would need to declare his interest and absent himself from the Extraordinary Meeting.

I concluded by asking the Monitoring Officer to ensure that the Extraordinary Meeting would take place on Wednesday 26th April, in strict accordance with the Constitution.

The Monitoring Officer's response, an unhurried five days later on 18th April, astonished me. She wrote:

"I stand by the advice provided in previous emails and the Council will proceed accordingly. There is no requirement for the Chief Executive to recuse himself."

This intransigence in the face of the citation of the relevant legal documents was most extraordinary.

The following day, 19th April, I wrote to the Monitoring Officer requesting sight, to which I am entitled under the terms of article 100F of the Local Government Act 1972, of every scrap of correspondence and documentation she had undertaken in the course of arriving at her present position.

Members of File Town Council will imagine my disbelief when the Monitoring Officer responded to my request without making any reference to the requested documents. She merely reiterated that she would proceed, in accordance with her previous intentions, to convene the Extraordinary Meeting at some undisclosed future date, possibly in May.

I trust that Councillors will share my view that the Monitoring Officer's conduct, both in failing to abide by the terms of the Constitution and in her disregard of her legal duty under article 100F of the Local Government Act, and irrespective of whether she was acting on her own initiative or on the undisclosed instructions of the Leader and/or the CEO, is totally unacceptable.

I and my fellow signatories to the Requisition have followed the requirements to the last letter. In doing so, we had every right to believe that the Extraordinary Meeting would be convened in accordance with constitutional and statutory requirement. Such has not been the case. The rules have thus far been swept aside.

I therefore felt it my duty to act in the best interests of the people of the Borough and the Councillors of both Filey and Whitby Town Councils, to lodge a formal corporate complaint against the Monitoring Officer.

I have also lodged a formal complaint against the Mayor of Scarborough, on grounds of his disrespectful failure to acknowledge or act upon the Requisition.

It may be that members are disappointed with the absence of any progress but I regret that I have nothing further to share with Filey Town Council on the subject at this time, though I offer my assurance that I will do my best to keep members and public informed should there be any further developments.

Rgds Sam