

When telephoning, please ask for : Legal Services

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Our Reference :

Your Reference :

Date: 14<sup>th</sup> July 2020



**Rushcliffe**  
Borough Council

Dear Town Councillors, Clerk and Deputy Clerk,

I write as the Borough Council's Monitoring officer regarding recent events at the Town Council. The purpose of this correspondence is to clarify the distinction between the Borough and Town Council, to confirm the Borough Council's role moving forward, and to offer words of advice to support the Town Council in moving forward. I will also set out what appear to me to be the issues at the centre of recent events based on the information available to me. To support the Town Council, I will highlight some areas where the Town Council could look to take action to resolve and address these issues.

I am sure you agree that the convenient and effective administration of all tiers of local government is a core priority for us all, particularly given the continuing challenges we all face at present. To this end I hope you will consider and receive my letter positively and, in the spirit intended.

I want to be clear that my letter does not seek to pass judgement on the Town Council's activities, its Councillors, or the Town Clerk. I think we all recognise that the Town Council, its Councillors and Clerk need to consider what can be done to address the ongoing issues so that it can move forward positively in supporting the residents of Bingham.

I am conscious that within the Town Council there are several different views and standpoints which have likely contributed to recent events. I am also aware that given these differing views, there may be some of you who do not agree with the content of this letter, and whilst I respect this I want to be clear that the ability to resolve the issues rests within the Town Council.

At this point in my letter I wanted to reiterate that Bingham Town Council is a separate and distinct organisation from the Borough Council. Whilst I appreciate many of you will recognise this distinction it is important to remember that:

- The Town Council is a civil local authority representing the first tier of local government. It has 14 Town Councillors and several standing committees.
- Town Councillors are elected periodically in line with the Borough Council's electoral cycle, save for any by-elections which may occur. The last elections were held in May 2019.
- The Town Council appoints its Chair each year at its annual meeting and holds at least three other ordinary meetings in each year, save for any additional extraordinary meetings called. Appointments to the Town Council's existing committees are also made at the Annual meeting.

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In person  
**Monday, Tuesday and Thursday**  
8.30am - 5pm  
**Wednesday**  
9.30am - 5pm  
**Friday**  
8.30am - 4.30pm

Postal address  
Rushcliffe Borough  
Council  
Rushcliffe Arena  
Rugby Road  
West Bridgford  
Nottingham  
NG2 7YG



- It operates its own standing orders<sup>1</sup> and employs its own staff including the Town Clerk and Deputy Town Clerk. The Town Clerk is designated as the Proper officer for the Town Council and is also the Responsible Finance officer.
- The Town Council is an elected corporate body and it can raise taxes through Council tax precepting.

These points demonstrate that the Town Council is distinct from the Borough Council. Whilst the two have a working relationship, the Borough Council does not adjudicate on the Town Council's activities or direct its business.

Please be assured that the Borough Council remains committed to working with the Town Council on important issues for Bingham. As part of this the Borough Council has assigned a Senior Management Team member as a link officer to the Town Council to aid collaboration. Additionally, the Borough Council has supported several Town and Parish Councils in the development of their Parish Plans. The Borough Council also delivers 'Town and Parish Forum' events. I hope these examples demonstrate our commitment to working with the Town and Parish Councils across the Borough whilst maintaining the clear distinction and independency between these two tiers of local government.

A clear area where there appears to be misunderstanding about this relationship is in the purpose of the Borough Council's arrangements for dealing with complaints that Borough, Town or Parish Councillors have potentially breached the Code of Conduct. I expect that you are aware of these arrangements, but I think it is important and would be helpful to summarise why they are in place and their purpose:

- The Borough Council must adopt a code of conduct for its Councillors and co-opted members that applies when they are acting in that capacity
- The Town (or Parish) Council must also adopt such a code and can choose to adopt the code of the principal authority (the Borough Council's Code)
- The Borough Council (as the relevant authority other than a Parish Council) must have in place arrangements under which allegations that a member, or co-opted member of the authority, or of a Parish (or Town) council in its area, has failed to comply with the authority's Code of Conduct can be investigated and decisions made on such allegations<sup>2</sup>

The Borough Council has an adopted Code of Conduct and the Town Council has also adopted a Code. In line with the Localism Act 2011 the Borough Council has in place a Councillor Complaints Procedure, which sets out arrangements for dealing with allegations of a failure to comply with Code. This procedure is well established and has been in place for several years.

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<sup>1</sup> National Association of Local Councils. Bingham Town Council MODEL STANDING ORDERS 2018 (ENGLAND)

<sup>2</sup> Section 28(6) and (7) Localism Act 2011

This Borough Council's Councillor Complaints procedure sets out how to make a complaint and details if, and how a complaint will be investigated, taking into account the 'public interest' test. It also sets out what happens if there is no evidence of a failure to comply with code and the options for dealing with evidence of non-compliance. The role of the Monitoring officer is set out in this procedure which states:

*'The Monitoring officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct'*

I particularly want to draw your attention to these words as I think they illustrate that it is not my role to adjudicate on procedural points where Town Councillors disagree. Furthermore, it is not my role to advise on interpretation of the Town Council's Standing orders or how it conducts its business. These are matters for the Town Clerk as the Proper officer.

As Monitoring officer, I do have a role in the administration of the Councillor Complaints procedure, but this process is not a mechanism to address differences of opinion within the Town Council or adjudicate on interpretation of its Standing orders. These are matters for the Town Clerk. In simple terms, it is not my role, or the purpose of the procedure to make judgements on how the Town Council, as an elected corporate body conducts its business. The procedure is there to deal with alleged breaches of the Code of Conduct by individuals acting in their capacity as a Borough, Town or Parish Councillor.

You may be aware that a summary of the details of the complaints received under this procedure are reported regularly to the Borough's Councils Standards Committee. This summary information is anonymised of names and the reports are available from the Council website<sup>3</sup>. A high percentage of complaints are made by Bingham Town Councillors, about Bingham Town Councillors, or they are made by a member of the public, or a member of staff about a Town Councillor.

It is clear from these reports that more complaints are made about Bingham Town Councillors than any other Town or Parish Council. This is a fact. However, only one of these complaints has led to any formal action being taken. I believe that this is a point that needs to be reflected on going forward as it would not appear to be conducive to effective and convenient local government.

Please be assured the Borough Council will continue to administer its Councillor Complaints procedure but it should not be used as a 'tit for tat' mechanism to address interpersonal matters or adjudicate on procedural issues. This is not an effective use of the Borough Council's resources and not the intended purpose of the procedure and the Code of Conduct. To this end I do not intend to correspond further with Town Councillors or the Clerk, or Deputy Clerk on procedural matters including its Standing Orders and their interpretation. These are matters for the Town Clerk as Proper officer to deal with.

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<sup>3</sup> <https://democracy.rushcliffe.gov.uk/mgCommitteeDetails.aspx?ID=138>

As set out in the opening of my letter I wanted to also cover briefly what appear to be issues at the centre of these recent events and how the Town Council may choose to resolve these. Having watched the publicly available recordings of the Town Council meetings on 2 and 16 June there appear to be a number of issues which are causing problems and which I would advise are considered further. In summary these are:

- Differing views on the interpretation of the Town Council's Standing Orders namely in relation to Extraordinary meetings of the Council. There appear to be various provisions within the Orders which are interpreted differently, and consequently it may be helpful if these are reconciled. Whilst the Town Council needs governance arrangements reflective of its size as an organisation, it may wish to look at some elements of the Standing Orders that could aid a more common interpretation. In particular, the procedure for calling an extraordinary meeting, motions for meetings and inclusion on the agenda, the publication of public notices and agendas, and decisions of the Chair of a meeting on the application of standing orders. This is something that the Town Clerk, as Proper officer could consider further, and it may be helpful to seek some independent advice and support with this issue. I can support with engaging advisors if this is something the Town Council wishes to take forward.
- The provisions for moving a Town Council meeting into a closed session appears to lead to points being made about the appropriateness of this. The relevant legislative provisions for the Town Council are the Public Bodies (Admission to Meetings) Act 1960. In summary these require consideration to be given to whether publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted. This provides considerable scope for what may, or what may not, be classed as confidential based on interpretation. This is something the Town Clerk may wish to consider further to see if guidance could help clarify why a closed session is necessary so that this maybe clearly explained for the benefit of attendees. Whilst the rules that apply to the Borough Council are set in different legislation the provisions within its Constitution may help. These are set out within the Access to Information Procedure rules at Part of 4 the Constitution which is from the Borough Council's website<sup>4</sup>.
- There appears to be a variety of views in respect of Human Resource and Staffing matters at the Town Council and these may have contributed to relationship issues between several people. This is clearly not a matter the Borough Council can adjudicate or comment on. Given the apparent need for these matters to be resolved consideration could be given as to how best to respond to these views moving forward. Again, this may be an area where the Town Council might find some additional independent support helpful to perhaps review its practices in line with best practice and ACAS guidance.

- Given the high volume of behavioural complaints the Borough Council receives about Bingham Town Councillors it appears there may be some interpersonal issues. These may extend beyond Councillor to Councillor relationships and lead to complexities in relationships with the Town Clerk and Deputy Clerk. If this is the case given the crucial nature of these roles it is only likely to add to any difficulties. I do not make any assumptions as to who is right or wrong in these circumstances, but if these relationships were more positive it would likely help the Town Council's business. This is a further area where external support to aid relationship building may help the Town Council, but this is likely to require considerable and sustained commitment from all parties.

To conclude I trust my letter is clear and helpful in setting out the Borough Council's role moving forward and clarifies the distinction between it and the Town Council. I hope that as Town Councillors you can consider the points in my letter positively and move forward collaboratively. I also hope that the Town Clerk, as the Proper officer can consider the points in my letter and work with all Town Councillors in helping move things forward.

I recognise that my letter may not be the response some of you had hoped for, but the Town Council needs work to address its issues and consider what actions it can take. Given the nature of the current difficulties the Town Council taking practical steps could assist it on moving forward. Whilst this may take time and sustained effort it is my view that to do so is in the best interests of all concerned and would support moving forward positively.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'SS', with a long horizontal flourish extending to the right.

Sanjit Sull  
Monitoring Officer, Borough Solicitor

