

CONSTITUTION PRACTICE NOTE

VACATION OF OFFICE BY FAILURE TO ATTEND MEETINGS

1. The legal position for members generally

Section 85 of the Local Government Act 1972 provides:

- (1) Subject to subsections (2) and (3) below if a member of a local authority fails throughout a period of six consecutive months from the date of his/her last attendance to attend any meeting of the authority, he/she shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.*
- (2) Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, or who were appointed to advise the authority on any matter relating to the discharge of their functions and attendance as a representative of the authority at a meeting of any body of persons shall be deemed for the purposes of subsection (1) above to be attendance at a meeting of the authority.*
- (3) [Provides relief from disqualification to members of the armed forces engaged in war or an emergency].

2. Interpretation

There is no definitive legal authority upon whether 'attendance as a member' for the purposes of subsection (2) requires a councillor to be appointed to the committee, sub-committee or body in order for attendance at a meeting to be a qualifying attendance or whether attendance as a member of the local authority regardless of whether or not the councillor is appointed to the committee, sub-committee or body, is sufficient. Some local authorities take the narrow view and others the wider view.

In order to give members the maximum opportunity to preserve their qualification as a councillor, the City Council takes a wide interpretation of the law thereby acknowledging attendance at a qualifying meeting as a qualifying attendance whether or not the member has been appointed to the committee, sub-committee or body. To assist members further, the following are regarded as qualifying attendances for the purposes of Section 85:

1. Attendance as a member of the local authority at a meeting of the Council, any committee or sub-committee of the Council, the Cabinet, or any committee of the Cabinet, whether or not appointed to such body.

2. Attendance as a representative of the Council at any other body to which the Council makes appointments or nominations and to which a member has been appointed or nominated as a full or substitute member.
3. Attendance at any other meeting, the holding of which is authorised by the Council, any committee or sub-committee of the Council, the Leader of the Council, the Cabinet or any committee of the Cabinet including meetings of panels, working groups and task and finish groups.
4. Attendance as a representative appointed by the Council at a meeting of any association of authorities of which the Council is a member.
5. The carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purposes of, or in connection with, the discharge of the functions of the authority or any of its committees or sub-committees.
6. Attendance at training events or briefings in relation to Council business for members organised by the Council.
7. Attendance at conferences and seminars where the Council has been invited to send an official representative or where a member body authorises the attendance.
8. Attendance at appointment panels or other meetings held to short-list candidates for interview.
9. The giving of official evidence on behalf of the Council at judicial hearings or planning inquiries.
10. Attendance of a member of a committee or sub-committee at an official site visit in connection with the discharge of the committee's or sub-committee's functions.
11. Attendance at the Overview and Scrutiny Committee where that committee requires the attendance of that member.

For the purposes of this practice note references to "meeting" will include meetings whether held in person, remotely or a hybrid meeting.

A record of members in attendance will be taken at every meeting clerked by Democratic Services. However, for any other qualifying attendances, members themselves must notify Democratic Services, unless alternative arrangements are made for notification to Democratic Services as to the members attendance (eg it is preferable for the officer who arranges a briefing to send a notification to Democratic Services listing all members who attended a particular event).

3. The legal position for executive members

Section 85 of the Local Government Act 1972 provides:

(2A) Subject to subsections (2B) and (3) if a member of a local authority which are operating executive arrangements, who is also a member of the executive of that local authority, fails throughout a period of six consecutive months from the date of his/her last attendance to attend any meeting of the executive, he/she shall, unless the failure was due to some reason approved by the local authority before the expiry of that period, cease to be a member of the local authority.

(2B) For the purposes of this section:

- (a) The discharge by a member, acting alone, of any function which is the responsibility of the executive; and*
- (b) In respect of ... a leader and cabinet executive, attendance as a member at a meeting of a committee of the executive,*

shall be deemed to be in attendance at a meeting of the executive.

- (3) [Provides relief from disqualification to members of the armed forces engaged in war or an emergency].

4. Interpretation

For executive members the provisions are more stringent. Failure to attend the executive or an executive committee or failure to exercise a delegated executive power for six consecutive months renders an executive member disqualified as a member of the authority. Such member may have attended a Council meeting or a non-executive committee but that would not save the member from disqualification if the member had not attended an executive meeting for the requisite period.

Paragraph 2.7.3 of the Constitution provides that Cabinet Deputies are not to be regarded as Cabinet Members and therefore these particular provisions only apply to Cabinet Members.

A similar approach to interpretation will be taken in relation to Cabinet Members as is applied to other members generally. This will include the examples set out in this procedure note save for the fact that for attendance to count by a Cabinet Member under this specific requirement, the meeting must directly relate to the councillor's role as a cabinet member.

5. Relief from disqualification

In the case of both members generally and executive members the authority has the ability to approve a reason for absence and to extend the time period. This may occur when a member is ill and requires a longer period than the six consecutive months in order to recover and be fit to resume their duties. It could also arise for work, family or caring related reasons such as a work secondment abroad, maternity/paternity leave or caring for a relative in another part of the country. Before

the six consecutive months expire a report will be submitted to the Council stating the reasons for approval of the absence and seeking an extension to the time limit. In genuine circumstances the Council is likely to approve the absence and allow an extension of the time limit usually up to another six months.

6. Assistance to members

Disqualification is not discretionary and occurs by operation of law upon the expiry of the time period. Once a member has been rendered disqualified they must not attend any meeting or participate in any decision-making. To do so would raise questions as to the legality of any decision which could be declared null and void by a court.

Democratic Services maintain a record of attendance at committee meetings and if an absence of around four months occurs the member and their Group Leader will be notified. If a member is concerned about their situation they should contact the Monitoring Officer at the earliest possible moment. The Monitoring Officer will be pleased to advise on actions which a member may take to alleviate their predicament. Members should be mindful that the responsibility to attend meetings rests with each member alone.

This practice note has been produced by the Legal and Democratic Services Manager and Monitoring Officer who has responsibilities for the good governance of the authority and must advise the Council if, as a matter of operation of law, a member is disqualified.

The Chairman of the Governance Committee and the three Group Leaders have been consulted in its production.

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