

Background papers 1



Council

Mon 27 Feb
2023
7.00 pm

Council Chamber,
Redditch Town Hall,
Walter Stranz Square,
Redditch
B98 8AH

REDDITCH BOROUGH COUNCIL



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Council

Monday, 27th February, 2023

7.00 pm

**Council Chamber, Redditch
Town Hall, Walter Stranz
Square, Redditch B98 8AH**

Agenda

Membership:

Cllrs:

Ann Isherwood
(Mayor)
Tom Baker-Price
(Deputy Mayor)
Salman Akbar
Imran Altaf
Karen Ashley
Joe Baker
Juliet Barker Smith
Joanne Beecham
Juma Begum
Juliet Brunner
Michael Chalk
Brandon Clayton
Luke Court
Matthew Dormer

Peter Fleming
Alex Fogg
Andrew Fry
Lucy Harrison
Bill Hartnett
Sharon Harvey
Joanna Kane
Sid Khan
Anthony Lovell
Emma Marshall
Nyear Nazir
Timothy Pearman
David Thain
Craig Warhurst

7. Constitutional Review Working Party - Recommendations (Pages 5 - 8)

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Casual Vacancy – Failure to attend meetings

1 Introduction

- 1.1 This paper sets out the appropriate actions to take when a member fails to attend any meeting for six consecutive months.
- 1.2 [Section 85 \(1\) of the Local Government Act 1972](#) states that if a member of a council (both principal area and parish/community) fails throughout a period of six consecutive months from the date of their last attendance to attend any meeting of the council,^{1 2} they shall, unless the failure was due to some reason approved by the council before the expiry of that period, **cease to be a member of the council**.
- 1.3 The wording highlighted in bold clarifies that while failure to attend any meetings for six consecutive months leads to that person ceasing to be a member of the council, it does not automatically create a casual vacancy for electoral purposes at that point.

2 When does the vacancy occur?

- 2.1 [Section 86 of the Local Government Act 1972](#) makes clear that where a member of the council ceases to be a member by reason of failure to attend meetings, the council shall forthwith declare their office to be vacant.
- 2.2 Therefore, a casual vacancy does not occur until the council declare the office to be vacant which should happen forthwith³ after the person has ceased to be a member of the authority.

3 Who can declare the vacancy and how?

- 3.1 Provided the council's constitution has granted the proper officer of the council the power to declare the office of councillor vacant, they can do so immediately after the person has ceased to be a member. We believe they should do this immediately after the six-

¹ For this purpose, meetings include not only meetings of the full council but also committees and meetings of bodies of which the member is the council's representative.

² It is also important to note an executive member of the council taking an individual executive action is deemed to be 'in attendance' for the purposes of the six-month rule (Section 85 2(B) of the Local Government Act 1972).

³ Forthwith means immediately; promptly; without delay.

month deadline has passed advising, as a minimum, all remaining council members and posting confirmation on the council's website.

- 3.2 Where the council's constitution has not granted any such powers to the proper officer, the vacancy must be declared at a council meeting that has the relevant authority to do so. Where a vacancy needs to be declared in this manner, there can potentially be a delay between the person ceasing to be a member and the vacancy occurring as it is dependent on the date of the next council meeting.
- 3.3 Where the vacancy is declared at a council meeting, this can take the form of a report highlighting the fact such a vacancy has occurred due to a member's failure to attend meetings.
- 3.4 We believe it is good practice for the council's constitution to provide delegated authority to the proper officer of the council to declare vacancies that occur in relation to [Section 86 of the Local Government Act 1972](#). The requirement for the council to forthwith declare the office to be vacant places an expectation that this will happen without delay. By delegating authority to the proper officer, any such vacancies can be declared in the timely manner anticipated by the legislation.
- 3.5 Once the council has declared the office to be vacant, they are required to immediately give public notice of the casual vacancy.⁴ The notice of vacancy must be posted in some conspicuous place or places within the area of the council and in such other manner, if any, as appears to the council to be desirable for giving publicity to the notice.⁵

4 When does an election take place for the vacancy?

- 4.1 An election to fill a vacancy in a **principal area** must be held within **thirty-five days** (excluding dies non) from the date that the vacancy has been declared by the local authority.⁶
- 4.2 There are no grounds for two local government electors for the local authority area to give written notice to the proper officer requesting the election where the vacancy is the result of a member's failure to attend meetings. There are also no grounds for two local government electors to request an election to fill the vacancy during the period between the councillor ceasing to be a member and the council declaring the vacancy. The reason being

⁴ [Section 87 \(2\), Local Government Act 1972](#)

⁵ [Section 232 \(1\), Local Government Act 1972](#)

⁶ [Section 89 \(1\)\(a\), Local Government Act 1972](#)

that there is no vacancy to be filled until the council have declared it.

- 4.3 An election to fill a vacancy in a **parish/community council area** must be held within **sixty days** (excluding dies non) of public notice of vacancy being given, subject to a request for an election by ten electors from the parish/community (or where applicable, the parish/community ward) being received within fourteen days (excluding dies non) of the notice of vacancy.⁷
- 4.4 Unlike for a principal area, even where the parish/community council have declared the vacancy and published the notice of vacancy, they cannot proceed with holding an election until the election is requested by ten electors from the parish/community within fourteen days (excluding dies non) of the notice of vacancy being published.
- 4.5 If no election request is received within the required time, the parish/community council must fill the vacancy by a co-opting a member who is duly qualified.⁸

5 Implications where vacancy occurs within six months of ordinary day of retirement

- 5.1 For **principal area councils**, where a casual vacancy occurs within six months before the day on which the councillor whose office is vacant would regularly have retired, an election shall not be held unless the total number of unfilled vacancies exceeds one third of the total membership of the authority.⁹
- 5.2 For **parish/community councils**, where a casual vacancy occurs within six months before the day on which the councillor whose office is vacant would regularly have retired, an election shall not be held.¹⁰ The parish/community council may however fill the vacancy by co-opting a member who is duly qualified.¹¹

⁷ [Rule 5, The Local Elections \(Parishes and Communities\) \(England and Wales\) Rules 2006](#)

⁸ [Rule 5 \(5\), The Local Elections \(Parishes and Communities\) \(England and Wales\) Rules 2006](#)

⁹ [Section 89 \(3\), Local Government Act 1972](#)

¹⁰ [Rule 5 \(3\), The Local Elections \(Parishes and Communities\) \(England and Wales\) Rules 2006](#)

¹¹ [Rule 5 \(6\), The Local Elections \(Parishes and Communities\) \(England and Wales\) Rules 2006](#)

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- 5.3 It is important to note a vacancy does not occur until it has been declared by the council. Even if a member ceases to be qualified due to non-attendance more than six-months before their ordinary day of retirement, there would be no requirement to hold a casual vacancy election if the council declare the vacancy within six-months of the date of the councillor regularly retiring.¹²

This guidance was drafted by the Association of Electoral Administrators and has been endorsed by Lawyers in Local Government and the Association of Democratic Services Officers.

¹² For example, a councillor ceases to be qualified on 1 November. They are due to retire on 8 May. If the council declares the vacancy on 5 November, there will need to be a casual vacancy election as the vacancy has occurred more than six months before the date of retirement. If they declare on 10 November, there will not need to be a casual vacancy election, as this is within six months before the date of retirement.