

Subject:	AUTHORISED ABSENCE
Meeting and Date:	COUNCIL – 31 OCTOBER 2018
Report of:	DEMOCRATIC SERVICES MANAGER
Classification:	UNRESTRICTED
Purpose of the report:	This report provides seeks to set out the details in respect of the request that Council approve the absence of Councillor N A G Richards under section 85(1) of the Local Government Act 1972.
Recommendation:	That Council determine whether to approve the non-attendance of Councillor N A G Richards' at meetings of the authority due to ill health grounds for the period commencing 16 May 2018 pursuant to the provisions of section 85(1) of the Local Government Act 1972.

1. Summary

A request has been received by the Chief Executive from Councillor M R Eddy, Leader of the Labour Group, for an authorised absence to be approved for Councillor N A G Richards on the grounds that his health problems mean that he will not be able to attend a meeting of the Council or a Committee prior to 16 November 2018.

2. Introduction and Background

- 2.1 Councillor N A G Richards (Buckland Ward) has not attended a Council or Committee meeting since attending a meeting of the Scrutiny (Community and Regeneration) Committee on 16 May 2018.
- 2.2 Section 85(1) (Vacation of office by failure to attend meetings) of the Local Government Act 1972 states that "...if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he 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."
- 2.3 There are some exceptions to this rule set out in Section 85 of the Local Government Act 1972. No claim has been made that any of these statutory exceptions is engaged in the circumstances of Cllr Richards' case and, on the information provided, it is the view of officers that none of the exceptions would apply.
- 2.4 Additionally, there is a further exception to the rule arising from case law (see *Re Neeson's Application (1986) 13 NIJB 24*). The effect of this case is that if there were no meetings that the Member could attend during the period of six consecutive months there would be no grounds to declare his office vacant. However, there has been one meeting of the full Council and five meetings of the Scrutiny (Community and Regeneration) Committee that Councillor Richards could have attended during this period, so this does not apply.
- 2.5 It is important to note that the absence must be approved before the end of the period of six consecutive months of non-attendance. There is no provision to retrospectively authorise absence after the expiry of the period of non-attendance.
- 2.6 On 15 November 2018 Councillor N A G Richards' will not have attended a meeting for six consecutive months and accordingly he will cease to be a member of the authority on that date in accordance with section 85(1) Local Government Act 1972

unless he attends a meeting prior to that date or has his absence approved by Council.

- 2.7 It should be noted that were the Council to approve the absence of Councillor Richards this would apply until it ceases to have effect either through the attendance of the councillor at a meeting or the councillor's term of office has ended.

- 2.8 It is the practice of some authorities to grant an absence for a specified period. It is the view of the Solicitor of the Council that such an approach is not consistent with the provisions of the Local Government Act 1972 but the issue has never been determined in the courts. In any event, it has never been the practice at Dover District Council to seek to time limit a grant of absence.

3. Identification of Options

- 3.1 Option 1: To grant the requested authorised absence for Councillor N A G Richards.
- 3.2 Option 2: To not grant the requested authorised absence for Councillor N A G Richards.

4. Evaluation of Options

- 4.1 Option 1: If the Council were to grant the request for authorised absence it would enable Councillor N A G Richards to resume his duties as a district councillor at a time that he felt able to do so.
- 4.2 Option 2: If the Council were not to grant the request for authorised absence for Councillor N A G Richards at its meeting held on 31 October 2018 and the councillor does not attend a meeting of the authority up to and including the 15 November 2018, he will cease to be a member of the authority on 16 November 2018.
- 4.3 In the event that this were to occur, although Councillor Richards would cease to be a member of the authority, the office of councillor itself would not become vacant until such time as the authority declares it to be vacant. This would be at the next meeting of the full Council following 15 November 2018.
- 4.4 A by-election would not be held due to the reasons set out in paragraphs 5.1 – 5.3 below.

5. Resource Implications

- 5.1 In normal circumstances, were Council to not agree to the authorised absence request there would be a by-election triggered for the Buckland Ward upon the councillor reaching the date of six months of consecutive non-attendance. There would be the resultant costs of holding a by-election in the Buckland Ward resulting from this.
- 5.2 However, due to the proximity to the date of the full council election on 2 May 2019 it should be noted that the provisions of section 89(3) of the Local Government Act 1972 would apply as follows:

"Where a casual vacancy in any such office 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 under subsection (1) above unless on the occurrence of the vacancy (or in the case of a number of simultaneous vacancies, the occurrence of the vacancies) the total number of unfilled vacancies in the membership of the council exceeds one third of the whole number of members; and where an election under subsection (1) above is not held, the vacancy shall be filled at the next ordinary election."

- 5.3 The Team Leader Electoral Services has advised that this date beyond which a by-election would not be held is 7 November 2018. On this basis, there would be no resource implications regardless of whether or not the Council agreed the request for an authorised absence.
- 5.4 Councillor N A G Richards would continue to receive the Basic Allowance during his period of authorised absence as this cannot be removed from him.
6. **Corporate Implications**
None
7. **Appendices**
None
8. **Background Papers**
Request email from Councillor M R Eddy

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