

**WEST LANCASHIRE BOROUGH COUNCIL**

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**NOTE OF ADVICE**

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**Introduction**

1. I am asked to advise West Lancashire Borough Council (“the Council”) as to whether the urgency powers delegations contained in the Constitution could be used in order to avoid the automatic vacation of office by a Councillor who has not attended Council Meetings since 16 October 2019.

**Background**

2. I am instructed that Cllr Hodson last attended a Council meeting on 16 October 2019. Cllr Hodson has explained she was unable to attend meetings for personal reasons, had sent her apologies and organised a substitute. She was intending to attend the Full Council Meeting scheduled for 1 April 2020. That meeting had to be postponed, in light of the ongoing public health emergency.<sup>1</sup>
3. By s.85(1) of the Local Government Act 1975, if a member of a local authority fails to attend any meeting of a local authority for a six month consecutive period, his (or her) office becomes vacant, unless that non-attendance is dispensed with prior to expiry of the six month period. S.81(1) is in the following terms:

“(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 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.”

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<sup>1</sup> I note, in this regard, that the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 which, importantly, allows for meetings to be held remotely, (did not come into force until 4<sup>th</sup> April 2020

4. I understand from my instructions that requests for dispensation, under s.85(1), would ordinarily need to be considered by Full Council, but that no meeting is currently scheduled, or could be convened, before the end of the 6 month period.
5. Under the Council's Constitution, the Chief Operating Officer is authorised to exercise the following (inter alia) delegated powers:
  - a. *"To take any action on behalf of the Council, following consultation with the Leader and relevant Portfolio Holder or the Chairman of the appropriate committee, in cases of urgency requiring immediate decisions, and where it would be unreasonable or impractical to convene a meeting."* (Proper Officer Provisions and Scheme of Delegation to Chief Officers etc (Constitution 4.2 to 4.2C) para 4.21); and
  - b. *"To take any action, including the incurring of expenditure, in connection with an emergency or disaster in the Borough."* (Constitution 4.2A: Scheme of Delegation to Chief Officers etc Chief Operating Officer, para 1)
6. I am asked to advise whether these powers could be exercised to avoid the automatic vacation of office for Cllr Hodson pursuant to s.85 of the 1972 Act. I am also asked to confirm the date on which the vacation of office would otherwise take effect, and any consultation (etc) requirements that should be observed.

### **Advice**

7. In light of (1) the imminent expiry of the six month period which would result in Cllr Hodson ceasing to be a member of the authority; and (2) the fact that it would be impractical to convene a meeting to consider a dispensation in the time available, I consider that this would be a case where the powers conferred by paragraph 4.21 (para 5(a) above) could be used by the Chief Operating Officer to decide whether a dispensation for non-attendance should be granted.
8. In terms of requirements that would need to be complied with, as set out in paragraph 4.21, it would be necessary for the Chief Operating Office to consult with the Leader and either the relevant Portfolio Holder or Chairman of the appropriate committee (assuming this is not the Leader, in the present case).

9. I would also advise that brief report be prepared, outlining:
- a. The material facts – including (1) the reasons why Cllr Hodson had been unable to attend meetings previously, that she had sent apologies and arranged for a substitute; and (2) that Cllr Hodson had intended to attend on 1 April 2020, but that that meeting had had to be postponed (and noting the point at footnote 1 above);
  - b. The relevant legislative provisions – specifically, s.81(1) LGA 1972, and s.60 of the Coronavirus Act 2020 (extension of terms for councillors, with elections scheduled for May 2020 being cancelled);
  - c. The powers being relied on under the Council’s constitution, and reasons why the situation is urgent, and it is not reasonable/practical to convene a meeting (essentially, the reasons set out in my instructions);
  - d. Confirmation that the Leader/relevant Portfolio Holder / Chairman of the appropriate committee has been consulted; and
  - e. The recommendation.
10. This Report could also then stand as a record of the decision-making process. I am asked about consultation with other Members (for example, leader of other political parties). I would advise that the Council should follow, to the extent possible in the present circumstances, any procedures that might be set out in (for example) Standing Orders regarding urgent delegated decision-making by the Chief Operating Officer, albeit that that might involve notification, as opposed to consultation per se.
11. Whilst the more general power in paragraph 1 of Part 4.2A of the Constitution might also, technically, be available, I consider that this decision would seem to fit more readily within paragraph 4.21 of Part 4.2, as although there is a clearly an emergency situation in the Borough (as with the rest of the country) the decision to dispense with non-attendance of a Member is perhaps less obviously an action “in connection with” that emergency, that a decision which needs to be taken urgently where convening a Full Council meeting is simply not practical.

12. I do not consider it would be problematic, however, if the Report suggested above also made reference to the fact that the Chief Operating Officer enjoyed that more general powers in respect of any actions in connection with an emergency/disaster situation.
13. I am also asked to confirm the date on which Cllr Hodson would cease to be a member of the Council. Unfortunately, there is no clear statement, either in the legislation, commentary or caselaw, as to the calculation of time for the purposes of s.85(1) specifically. I also note that different Councils appear to take a slightly different approach in respect of the same.
14. The starting point is s.85(1) itself. This provides that an individual ceases to be a member if he or she “fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority” (underlining added as emphasis). The general position is that where a statute provides for a period to run “from” a certain date (as opposed to “beginning on” or “with” a certain date) that day is excluded from the calculation – that is, the period begins on the following day: see, for example, *Dodds v Walker* [1980] 1 WLR 1061 (CA), *Zoan v Roumba* [2000] 1 WLR 1509. Applying that general position to the present case, that would mean that the six month period commenced on 17<sup>th</sup> October 2019. Having regard to the ‘corresponding date’ rule<sup>2</sup>, I consider that this would mean the six month period expired on 16<sup>th</sup> April 2020. On the basis that a person required to perform an action within a specified period would usually have until midnight on the last day to perform that action, I consider that the six month period would, technically, expire at midnight on 16<sup>th</sup> April 2020 (ie midnight 16/17 April 2020).
15. However, given that a dispensation from the requirements of s.85(1) needs to be given (if it is to be given) before the expiry of the six month period, that the statute does not, at least in its terms, allow a retrospective dispensation to be granted, and the point I have noted in para 13 above, it would be advisable for any decision on dispensation to be taken on 15<sup>th</sup> April 2020, if at all possible.

## **Conclusion**

16. I trust the foregoing assists. If I can be of any further assistance, please do not hesitate to contact me in Chambers.

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<sup>2</sup> See, for example, the HL judgment in *Dodds v Walker* [1981] 1 WLR 1027

JACQUELINE LEAN

15<sup>th</sup> April 2020

Landmark Chambers

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