

Contains Confidential or Exempt Information	NO
Title	Dispensations to the Six-month Attendance Rule
Responsible Officer(s)	Helen Harris – Director of Legal and Democratic Services
Author(s)	Sam Bailey – Head of Democratic Services
Portfolio(s)	None – this is not an executive function
For Consideration By	Council
Date to be Considered	19 October 2021
Implementation Date if Not Called In	NA
Affected Wards	All Wards
Keywords/Index	Councillors, Dispensations, Attendance

Purpose of Report:

The Local Government Act 1972 mandates that Councillors who have not attended a meeting for six months are automatically disqualified and their seat becomes vacant. Due to the unprecedented situation due to the COVID pandemic, and the failure of the government to permanently legislate to allow virtual meetings, there are a number of Councillors who are at risk of disqualification. However Council is able to grant a dispensation to prevent disqualification provided it is made before the expiration of the six months.

This report recommends that Council grant a dispensation for all Councillors due to the current unprecedented circumstances.

1. Recommendations

That by reason of restrictions necessitated as a result of the ongoing Coronavirus pandemic, a dispensation to the six month attendance rule, pursuant to Section 85 of the Local Government Act 1972, be granted to all Councillors for the period up until 10th May 2022.

2. Reason for Decision and Options Considered

2.1 Section 85 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. The law does not permit the position to be rectified retrospectively.

- 2.2 In April 2020, the government introduced temporary regulations to allow Councils to continue to meet virtually, and for this attendance to be counted towards Councillors' attendance records. This allowed Council meetings to continue safely, pending a return to in person meetings. However these regulations expired in May 2021, and the government has chosen not to extend the regulations or make them permanent. This means that most meetings must take place in person, if the decisions taken at them are to be valid. It is important to note that it is lawful for some meetings to continue to take place virtually (see para. 2.5 below).
- 2.3 The COVID pandemic is not over, and there remain risks to returning to a fully in person meetings programme as before the pandemic. Since May 2021, Ealing Council has taken a pragmatic and risk-based approach to whether it meets in person or virtually. Although virtual meetings have continued, this has only happened for meetings taking decisions that do not require active implementation, and attendance at these meetings hasn't counted towards members' attendance records.
- 2.4 The Council has also piloted hybrid meetings, where the meeting is officially happening in person but other members (and third parties) are permitted to contribute by dialling in virtually. However, again, participation by any member not attending in person does not formally count towards that member's attendance record, because it is not legally permitted.
- 2.5 Different legislative regimes mean that it remains lawful for Licensing Committee meetings, Licensing Hearings and Schools Forum meetings to meet virtually. Therefore members who have attended these meetings virtually will have their attendance count towards their attendance record.
- 2.6 Since in-person meetings were legally required to resume in May 2021, the council has continued to operate social distancing best practice within in-person meetings, meaning that capacity has been restricted and at some meetings (such as full council) it has not been possible for all those members who would like to attend in person.
- 2.7 However there are a small number of Councillors who have been unable to attend an in person meeting or a virtual meeting that contributes towards their attendance record. It must be stressed that these Councillors have continued to perform their duties as Councillors – for example contributing to virtual meetings, carrying out casework, attending their political group meetings and engaging with residents – but for various reasons have not been able to attend Council meetings that re-set the six month attendance rule.
- 2.8 It is recommended that Council grant a dispensation from the six month attendance rule to all Councillors for the reasons outlined above.

3. Key Implications

The dispensations requested by this report, if agreed, will enable all members to remain members of the council despite not attending (within the legal definition) any council or committee meetings during the period up to the Borough elections in 2022.

4. Financial

None

5. Legal

- 5.1 The six month attendance rule is set out in [Section 85 of the Local Government Act 1972](#). The effect of this rule is that any councillor will by law cease to be a member of the council if they fail to attend any council or committee meeting for more than six consecutive months, unless the failure was due to some reason approved by the council before the end of the period. It is not possible to rectify the position retrospectively.
- 5.2 The virtual meetings regulations that expired in May 2021 were the The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 and were made under the Coronavirus Act 2020.
- 5.3 Licensing Committees, Subcommittees and Hearings are held under the Licensing Act 2000; and Ealing Schools Forum is held under the The Schools Forums (England) Regulations 2012. Both pieces of legislation allow, or have been amended to allow, virtual meetings to continue of these bodies and therefore virtual attendance at these meetings count towards a Councillor's attendance record under Section 85 (2) of the Local Government Act 1972 as they have met in order to discharge the functions of the authority.

6. Value For Money

No impact

7. Sustainability Impact Appraisal

No impact.

8. Risk Management

No impact.

9. Community Safety

No impact.

10. Links to the 3 Key Priorities for the Borough

The council's administration has three key priorities for Ealing. They are:

- fighting inequality
- tackling the climate crisis
- creating good jobs.

Councillors contribute to these three priorities by serving on the Council's committees which work to achieve these priorities.

11. Equalities, Human Rights and Community Cohesion

An Equalities Analysis Assessment has not been carried out on this decision. However some of the Councillors who have been recommended to be granted a dispensation have protected characteristics, as identified in the Equalities Act 2010, which may have prevented them from attending meetings in person due to the ongoing Coronavirus pandemic.

12. Staffing/Workforce and Accommodation implications:

No impact.

13. Property and Assets

No impact.

14. Any other implications:

None.

15. Consultation

Party whips have been consulted with when preparing this report to ensure there is a cross party approach to agreeing these dispensations.

16. Timetable for Implementation

None – once the report is agreed the attendance record will be re-set.

17. Appendices

None.

18. Background Information

No background information. All legislation referred to in the report can be found on www.legislation.gov.uk

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Helen Harris	Director of Legal and Democratic Services	6/10/21	8/10/21	
Cllr Gareth Shaw	Labour Group Chief Whip	6/10/21		
Cllr David Millican	Conservative Group Whip	6/10/21		
Cllr Jon Ball	Liberal Democrat Group Whip	6/10/21		
External				
None				