



## OPEN REPORT COUNCIL

---

**Council – 26 January 2023**

### **S.85 OF THE LOCAL GOVERNMENT ACT 1972 – VACATION OF OFFICE BY FAILURE TO ATTEND MEETINGS**

#### **Report of the Director of Corporate and Customer Services & Monitoring Officer**

##### **Report Author and Contact Details**

James McLaughlin, Director of Corporate and Customer Services  
01629 761281 or james.mclaughlin@derbyshiredales.gov.uk

##### **Wards Affected**

Hathersage and Eyam

##### **Report Summary**

To note the statutory vacation of office by Councillor Claire Raw after not attending a meeting of the Council or its committees for a period of six months

##### **Recommendations**

1. That the vacation of office under S.85 of the Local Government Act 1972 be noted.

##### **List of Appendices**

N/A

##### **Background Papers**

None

##### **Consideration of report by Council or other committee**

No

##### **Council Approval Required**

No approval required, but Council is required to be notified

##### **Exempt from Press or Public**

No

## **S.85 of the Local Government Act 1972 – Vacation of Office by failure to attend meetings**

### **1. Background**

#### **1.1 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].

1.2 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.

1.3 In order to give members the maximum opportunity to preserve their qualification as a councillor, the District 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.

1.4 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.

1.5 Vacation of office is not discretionary and occurs by operation of law upon the expiry of the time period. Once a Member has been rendered to have

vacated the office of councillor 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.

## **2. Key Issues**

2.1 Councillor Claire Raw was elected in May 2019 to represent the Hathersage and Eyam ward on a four-year term office due to end in May 2023. Most recently Councillor Raw served as a Member of the Green and Independent Group.

2.2 Councillor Raw's last recorded attendance at a meeting of the Council or its committees was on 14 July 2022. As six months have now passed since her last attendance at a meeting, the provisions of S.85 of the Local Government Act 1972 took effect on 15 January 2023 and Councillor Raw formally vacated the office of councillor for the district of the Derbyshire Dales. This was confirmed in writing by the Monitoring Officer on 16 January 2023.

2.3 There are just over three months until the whole Council election scheduled to be held on 4 May 2023 and as such the law does not require the vacant seat for the Hathersage and Eyam ward to be filled. This seat will therefore remain vacant until the election to the new Hathersage ward takes place in May 2023.

2.4 The political balance of the Council is now:

Conservatives and Councillors Bright, Elliott, Salt and Statham Group – 22  
Liberal Democrat Group – 7  
Green and Independent Group – 3  
Independent Group – 3  
Labour Group – 3

It is not proposed that the seat entitlement of groups be reviewed given the proximity of the local elections in May 2023.

## **3. Options Considered and Recommended Proposal**

3.1 There are no options to consider as this report is submitted for information.

## **4. Consultation**

4.1 As the subject of this report is the direct operation of the law to vacate the seat previously held by former Councillor Raw there has been no requirement for consultation.

## **5. Timetable for Implementation**

5.1 The vacation of office is already effective from 15 January 2023.

## **6. Policy Implications**

6.1 There are no direct policy implications associated with this report.

## **7. Financial and Resource Implications**

- 7.1 As the Council has now reduced from 39 to 38 Members there will be small saving of £1.1k arising from the basic allowance that would have been payable to former Councillor Raw. As this report is for information, the financial risk is assessed as low.

## **8. Legal Advice and Implications**

- 8.1 The main body of this report details the legal implications associated with the vacation of office of councillor under S 85 of the Local Government Act 1972.

## **9. Equalities Implications**

- 9.1 There are no equalities implications directly associated with this report.

## **10. Climate Change Implications**

- 10.1 There are no climate change implications directly associated with this report.

## **11. Risk Management**

- 11.1 As this report is for information, it is considered that there are no risks that Members need to have regard to in order to note the paper.

### **Report Authorisation**

Approvals obtained from:-

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Paul Wilson	17/01/2023
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	17/01/2023
Monitoring Officer (or Legal Services Manager)	James McLaughlin	17/01/2023