

APOLOGIES FOR ABSENCE AND DISQUALIFICATION

The six-month rule

Section 85 of the Local Government Act 1972 says that a member will cease to be a member if they fail to attend any meeting of the authority for six months unless the failure was due to some good reason approved by the authority before the six months had ended.

A meeting of the authority means any committee or sub-committee meeting as well as meetings of the full council.

❖ What does 'prior approval' mean?

The member does not become automatically disqualified if the absence has received formal prior approval from the council. This approval has, however, to be conscious and properly documented and cannot be taken by default. For example, a member who expects to be unable to attend meetings on grounds of ill health for longer than six months may request the council to approve a further leave of absence or the council itself may pass a resolution approving the waiving of the six-month rule by authorising the absence. If the council does not approve the absence (or does not record it in the minutes as approved) the six-month clock starts ticking.

The law also makes it clear that this approval must happen before the six months has passed so approval cannot be given retrospectively as the disqualification occurs automatically and cannot be over-ridden.

❖ How to give approval for absence

There are normally two ways in which prior approval is given. The simplest way would be a recording in the minutes as to whether an absence was authorised or not authorised – it is sometimes expressed as apologies 'with consent' or 'without consent'.

If the minutes say that the apologies were accepted with consent this in effect re-sets the six-month clock. However, if this is not explicit in the minutes – for example simply noting an apology does not amount to the council consenting to that absence – then it cannot be said that the absence has been authorised as the Act requires the absence to be for 'some good reason approved by the authority'. Inherent in that is that a reason must be given and discussed and accepted by the authority. If no reason for the absence is given in the minutes or there is no sign that the reason has been discussed then approval has not been given and the six-month clock continues to tick.

The second way would be for a more formal report to be considered by the council at a meeting prior to the six months elapsing. This would involve a report going to council setting out the reasons for the absence, the proposed duration of the absence and arrangements for covering that absence (for example through substitutions onto a committee) and, if approved, an agreed timeframe for reviewing the approval should the member not return to meetings in the meantime. This would give much greater certainty that there had been proper consideration of the reasons and that they had been formally approved by the council as a whole.

❖ Can we withhold approval?

Yes. If the council does not believe the reason for absence is for a good reason. Good reasons may include for example health issues, caring responsibilities or being away from the area for work or family reasons. If a councillor simply sends

apologies without a reason or simply does not turn up for a meeting their absence should be recorded as simply noted or 'absent without consent'.

❖ Does the six-month rule lapse at the end of the term of office?

Yes. If a member has been absent without consent for four months but there is then an election and they are re-elected, the clock is effectively re-set, and the six months starts from the date of the first meeting after the election.

❖ Responsibility of the clerk

The clerk has no legal requirement to notify a member about their absences. However, the clerk should keep their own record so that they know if the six-month deadline is approaching as they will need to trigger a vacancy. Best practice would say that, prior to the six-month period ending, the clerk should write to the member drawing the matter to their attention and saying that, if they felt they would not be able to attend the next meeting within the six-month period, they may want to put forward an application for approval to be considered by the council at its next meeting before the six-month deadline.

❖ Other grounds for disqualification

There are other grounds under which a councillor may be disqualified from office beside the six-month absence rule. These are if they:

- are in the paid employment of the local authority
- are employed by a company which is under the control of the local authority
- are subject to bankruptcy orders
- have, within 5 years before being elected, or at any time since being elected, been convicted of an offence and sentenced to imprisonment (suspended or not) for at least three months without the option of a fine or subject to a sexual offences order or notification
- are disqualified under Part III of the Representation of the People Act 1983 for corrupt or illegal practices



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