

Going, going, gone: What is the 'six-month strikeout' rule?

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The COVID-19 pandemic has meant that many local council meetings have had to be postponed or cancelled. For parish councils that has meant that the automatic strike out provisions on Section 85 Local Government Act 1972 have taken on a particular and potentially unintended significance. The Coronavirus Act 2020 did not suspend s85, although the regulations enacted in light of the pandemic permitted attendance remotely overriding any prohibitions on such attendance in any standing orders of a council.

It was intended that s85 would promote good attendance by councillors. They are required to show up, or have a good reasons for not doing so. If they fail to attend or have their attendance excused, their membership automatically lapses after six months.

The important section of the legislation surrounding this rule is out 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.

Calculation of the six month “non-attendance” period

Some parish councils, quite reasonably, do not meet all that frequently. It is conceivable that a council may only have one or two meetings in any six-month period [A parish council is legally required to meet annually and at least three other occasions according to s16A, s99 and Sch12 Part II Local Government Act 1972]. The rule can appear to operate harshly because the starting point for the running of the six months is “the date of his last attendance”. So the six-month period will run, to start with at least, during a period in which there is no meeting to attend anyway and so it is hard to see why this time counts as time in which a councillor is treated as having ‘failed’ to attend. Indeed, it might not be until three or four months of the six months have elapsed before there is even an opportunity to attend a meeting.

However, the language of s85 is unambiguous as to the calculation of the six-month period; it is from the ‘date of the last attendance’. The period for which a culpable failure runs is thus arbitrarily dependent to some extent that frequency of meetings.

Approval of non-attendance

The harshness of the above rule is mitigated by the ability of a council to approve non-attendance. This has to be done **before** the expiry of the six-month period (as calculated above). Indeed, it would be good practice for a councillor who is unable to attend any meeting for good reason to write to the clerk with their reasons, and ask the clerk to deal with and minute the request at the meeting.

There is nothing at all in s85 about what reasons may be approved or otherwise, indeed it does not even oblige a councillor to seek to excuse their non-attendance, though plainly this would be good practice and be more likely to lead to an approval. There may however be occasions where unforeseen non-attendance may occur due to circumstances beyond the control of the councillor. The act allows sense to prevail and such absences to be approved.

What criteria should a council apply in consideration of whether to approve a non-attendance? A council must act with the minimum standards of good administration required by public law. In short, they must act reasonably and approve non-attendance if it is for good reason. So some reason or explanation must be known to it, so that it can exercise its power to approve rationally. A reason for non-attendance can be approved in advance. It would be difficult to excuse non-attendance if the councillor failed to attend a meeting [perhaps due to oversight] where no request to excuse non-attendance had been given and no reason was otherwise known by those councillors in attendance at the meeting.

There are also ‘statutory excuses’, in summary military service during war or emergency.

The Public Sector Team at Birketts has recent experience of a judicial review in which issues relating to the effect of s85 were considered. Should you need any specific advice contact Partner Richard Eaton, Trainee Solicitor Chay Clark, or Head of our Public Sector Team, Ruth Neave.

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