

COUNCIL		
Report Title	SECTION 85(1) LOCAL GOVERNMENT ACT 1972 – REQUEST TO EXTEND ‘SIX MONTH RULE’	
Key Decision	No	Item No.
Ward	Forest Hill	
Contributors	Chief Executive	
Class	Part 1	Date: 20 January 2021

Parental Leave - Councillor Sophie Davis

1 Summary

- 1.1 The purpose of this report is to enable the Council to consider a dispensation of the ‘6 month rule’ for Councillor Davis on the grounds of parental leave.

2 Purpose of this report

- 2.1 To approve the reason for Councillor Davis’s non-attendance at Council meetings between 17th February 2021 and the 16th February 2022, so that she may lawfully continue to be a Member of the Authority.

3 Recommendation

- 3.1 That the Council in accordance with Section 85 of the Local Government Act 1972, approves Councillor Davis’ non-attendance at meetings between 17th February 2021 until the 16th February 2022 so as to accommodate her parental leave.

4 Background

- 4.1 Section 85(1) 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 [their] last attendance to attend any meeting of the authority, [they] 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 that authority.”
- 4.2 Section 85(1) of the Act therefore provides that an authority may grant dispensation for such absence providing the dispensation is granted before the 6 month period of absence has expired.
- 4.3 Councillor Davis’ last attendance at a Council meeting before she takes parental leave is scheduled to be on 17th February 2021 at an Overview and

Scrutiny Business Panel meeting. Under the circumstances it is requested that Council approve a dispensation of the 6 month rule for this Councillor until the 16th February 2022. By agreeing to this request, it would not prevent the Councillor from returning to meetings at any time before this date should she decide to do so.

- 4.4 The councillors' ward duties, during any Council approved period of parental leave for her would be undertaken by her ward colleagues.
- 4.5 Were the Council not to approve the reason for absence, a vacancy would then arise on expiry of the six month period of absence.

5 Legal implications

- 5.1 Section 85 of the Local Government Act 1972 ('LGA') states that if a member of a local authority fails throughout a period of six consecutive months from the date of their last attendance to attend any meeting of the authority, they shall cease to be a member of the authority. (This is also known as the "6 month rule".)
- 5.2 The only exception is if their non-attendance has been approved by the authority before the expiry of that period. Attendance can be at any committee or sub-committee, or at any joint committee, joint board or other body where the functions of the authority are discharged. Section 85(1) of the LGA allows an authority to grant dispensation for such absence providing the dispensation is granted before the 6 month period of absence has expired.
- 5.3 This report is to enable the Council to consider a dispensation of the 6 month rule for the Councillor on the ground of parental leave.

6 Equalities Implications

- 6.1 The Equality Act 2010 (the 2010 Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 6.3 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality

of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

- 6.4 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 6.5 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 6.6 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- [The essential guide to the public sector equality duty](#)
 - [Meeting the equality duty in policy and decision-making](#)
 - [Engagement and the equality duty: A guide for public authorities](#)
 - [Objectives and the equality duty. A guide for public authorities](#)
 - [Equality Information and the Equality Duty: A Guide for Public Authorities](#)
- 6.7 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>
- 6.8. The request and recommendation as set out within this report are compliant with

the provisions of the Equality Act 2010.

7 Financial implications

7.1 There are no additional financial implications arising from this report

8 Crime and Disorder implications

8.1 There are no relevant crime and disorder implications arising from this report

9 Conclusion

9.1 Council is asked to approve dispensation of the 6 month rule the reason for Councillor Davis's absence as set out with in this report.