



REPORT OF:	CHIEF EXECUTIVE
TO:	COUNCIL FORUM
ON:	6 October 2022

SUBJECT: CASUAL VACANCY – DARWEN SOUTH WARD

1. PURPOSE OF THE REPORT

To provide an update of the current membership of the Council and seek declaration of a vacancy for the Darwen South ward.

2. RECOMMENDATIONS

The Council is asked to:

- 2.1 Note that Councillor Andrew Walker has ceased to be a Member of the Council.
- 2.2 Declare a casual vacancy for the Darwen South ward.
- 2.3 Subject to 2.2 above, note that the Returning Officer shall make the necessary arrangements to hold a by election in the Darwen South ward, in accordance with legislation.
- 2.4 Delegate authority to the Chief Executive to declare the office of a councillor vacant, when any change to the membership of the council occurs in the future.

3. BACKGROUND

Under section 85(1) of the Local Government Act 1972 ('the Act'), if a member fails to attend any meeting of the Council throughout a period of six consecutive months from the date of their last attendance, they cease to be a councillor. An exception to this includes the non-attendance being formally approved in advance by the Council. It has been noted that Andrew Walker had not been able to attend any meetings of the Council since his last attendance at Council Forum on 24 March 2022, and there is no record of an approval being granted by the Council. Therefore, in accordance with legislation Andrew Walker's membership of the Council has ceased.

With reference to section 86 of the Act, the Council now need to declare a casual vacancy for the Darwen South ward before notice of the vacancy is published and a by election is held to fill the vacancy.

Declaration of a vacancy in the office of a councillor should be made immediately when it arises, and in order to prevent delays the Council may wish to consider delegating authority to the Chief Executive to take the necessary action in relation to any other changes in membership that may arise in the future.

4. POLICY IMPLICATIONS

In order to ensure full democratic representation for all communities and areas of the borough, the Council should promptly consider any change in membership and vacancies that may arise outside the normal election period.

5. FINANCIAL IMPLICATIONS

The costs incurred from holding a by election will need to be funded from the 'Conducting Elections' revenue budget.

6. LEGAL IMPLICATIONS

As stated above, section 85(1) of the Local Government Act 1972 ('the Council') states that if a member of a council fails throughout a period of six consecutive months from the date of their last attendance to attend any meeting of the council, they shall, cease to be a member of the Council. The exceptions to this is where:

- the Council has resolved during the period to approve the non-attendance for a particular member, due to some reason;
- the member is serving in the armed forces at a time of war or emergency and the Secretary of State decides they should not lose their seat due to their service
- the member is suspended from office.

Section 86 of the Act requires that where a member of a local authority ceases to be a member due to failure to attend meetings, the authority must forthwith declare their office to be vacant. Delegated authority to a proper officer of the Council to declare vacancies that may occur would assist to fulfil the requirement that the declaration happens in a timely manner and without delay.

The Act also requires a notice of a casual vacancy to be published immediately after the declaration, and an election to be held within 35 working days to fill the vacancy. Any delay in declaring the vacancy would result in the electoral area not being adequately represented.

Paragraph 5 of the 'Rules relating to Access to Information and Decisions and Attendance at Public Meetings' ('the Rules') require publication of agenda and reports at least five clear days before the meeting. The Rules also provide that if an item is added to the agenda later, the revised agenda and related report will be published and open to inspection from the time the item was added to the agenda, and as soon as the it has been sent to all Members. In addition, Section 100B(4) of the Act provides for an item to be considered by Council where the chairman (i.e. the Mayor) is of the opinion that an item should be considered as a matter of urgency. The Mayor has agreed for this report to be included on the agenda, after considering the circumstances and the impact of delays.

7. RESOURCE IMPLICATIONS

The Governance team will support the Returning Officer in administering the by election. Additional staffing will also be needed for the polling stations, postal vote verification process, and for the verification and count.

8. EQUALITY IMPLICATIONS

None.

9. CONSULTATIONS

The former councillor was notified that his membership of the Council had ceased and provided time to make any representations. The timescales for declaring a vacancy, publication of notice, and holding a by election to fill the vacancy are stated in legislation.

Contact Officer: Asad Laher, Deputy Director - Legal & Governance
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Date: 5 October 2022

Background Papers: None