

Rother District Council

Report to	-	Council
Date	-	18 December 2023
Report of the	-	Chief Executive
Subject	-	Waiver of six-month Councillor Attendance Rule (Section 85 Local Government Act 1972)

Recommendation: It be **RESOLVED:** That:

- 1) Councillor Prochak be granted a waiver in accordance with Section 85 (1) of the Local Government Act 1972 on the grounds of ill-health from the date of her last attendance at a formal committee meeting;
 - 2) the change to Cabinet, Deputy Leader of the Council and Committee Membership be noted; and
 - 3) the arrangements for the outside bodies to which Councillor Prochak is appointed be noted, as detailed within the report.
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Introduction

1. Section 85 (1) of the Local Government Act 1972 requires a Member of a Local Authority to attend at least one meeting of that Authority within a six-month consecutive period, in order to avoid being disqualified as a Councillor. This requirement can be waived, and the time limit extended if any failure to attend is due to a reason approved by the Authority, in advance of the six-month period expiring.
2. A request to waive this requirement has been received from Councillor Prochak on the grounds of ill-health. Councillor Prochak is the Council's longest serving Councillor having first been elected in May 1987 and is currently Deputy Leader of the Council and District Ward Member for Robertsbridge. Councillor Prochak has confirmed that she will waive her entitlement to receive all allowances during her period of absence.
3. The last formal meeting Councillor Prochak attended at the time of writing this report was 6 November 2023.

Background

4. 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 will, unless the failure was due to some good reason approved by the Authority before the expiry of that period, cease to be a Member of the Authority."
5. Attendance can be in person or remote at any committee or sub-committee, or any joint committee, joint board or other body where the functions of the

Authority are discharged or who were appointed to advise the Authority on any matter relating to the discharge of their functions.

6. Following the introduction of formal hybrid meetings, this authority has determined that remote attendance at a formal hybrid meeting of the authority counts as attendance for the purposes of Section 85 (1) of the Local Government Act 1972. Whilst remote participants are unable to vote, the requirement to attend any meeting of the authority where functions of the authority are discharged, requires the Member attending to merely be present and not necessarily have a vote. The inclusion of remote attendance for these purposes is therefore considered acceptable.

Legal Implications

7. Section 85 (1) of the Local Government Act 1972 enables a Local Authority to approve the reason(s) for non-attendance of a Member at any meeting of the Authority throughout a period of six consecutive months, provided that approval is given by the Authority before the expiry of the six-month period.
8. Once any councillor loses office, through failure to attend for the six-month period, the disqualification cannot be overcome by the Councillor subsequently resuming attendance nor can retrospective approval of the Council be sought for an extension in time.

Consequential Matters

Cabinet Membership / Deputy Leader of the Council

9. The Leader of the Council has confirmed that with effect from 19 December 2023, Councillor Prochak will be replaced by Councillor Teresa Killeen, as a Cabinet Member and be assigned the Cabinet Portfolio for Planning, as well as Member Training Champion and all associated duties, including Chair of the Local Plan Working Party and Community Infrastructure Levy Allocations Panel.
10. The Leader of the Council has confirmed that with effect from 19 December 2023 Councillor Field will be assigned as the second Deputy Leader of the Council, alongside Councillor Bayliss.

Committees

11. As a Cabinet Member, Councillor Killeen is no longer able to remain a member of the Overview and Scrutiny Committee. In accordance with Council Procedure Rule 5.3, the named Liberal Democrat Substitute (Councillor Pearce) will attend meetings of the Overview and Scrutiny Committee during this period.
12. Whilst it is recognised that it is not good practice for the Cabinet Portfolio Holder for Planning to be a substantive Member of the Planning Committee, it is not possible to replace Councillor Killeen at this time. Councillor Killeen will therefore remain on the Planning Committee and will take appropriate advice and not take part in any matter where there could potentially be a conflict of interest as the Portfolio Holder for Planning.

13. Unless notified otherwise, the Substitute Member for Councillor Prochak on the Human Resources Committee (Councillor Mier) will attend these meetings in her place.
14. Councillor Prochak will also need to be replaced on the Climate Change Steering Group and Councillor Killeen will be asked to confirm a replacement Liberal Democrat Member in due course.
15. It is also noted that Councillor Prochak is one of two named substitutes for the Joint Waste and Recycling Committee now managed by Wealden District Council and it is noted that she will be unable to act as a substitute should the need arise during this period.

Liberal Democrat Group Leader

16. During Councillor Prochak's absence, Councillor Teresa Killeen will also act as Group Leader for the Liberal Democrat Group.

Outside Bodies

17. Councillor Prochak is the Council's appointed representative on a number of outside bodies, either as a substitute, or as Deputy Leader, or in her own capacity. The arrangements for each are as follows and contact will be made with each organisation to advise on the circumstances and interim arrangements:

Outside Body	Capacity	Arrangements from 19 December
Action in Rural Sussex	Substitute Member	None required
Battle Area Sports Centre Management Committee	Substitute Member	None required
De La Warr Pavilion Charitable Trust	Substantive reserved appointment as Deputy Leader of the Council	Councillor Field
East Sussex Strategic Partnership	Substantive reserved Member as Deputy Leader of the Council (Councillor Oliver Substitute)	Councillor Oliver
Hastings and Rother Task Force	Substitute Member	None required
Romney Marshes Area Internal Drainage Board	Substantive Member	No action at this time as 6 other Members on this board
Rother Local Strategic Partnership	Substantive reserved for the Leader or Deputy Leader of the Council	Councillor Field
Rural Rother Trust	Substantive Member	No action at this time as 7 other Members on this body
Rural Services Network	Substitute Member	None required

Ward Duties

18. Robertsbridge and Salehurst Parish Council have agreed to be the initial contact point for any local Ward work and will assist with local issues where it can in the first instance, with all other matters being referred to District Councillor Teresa Killeen or the East Sussex County Councillor as appropriate.

Conclusion

19. Council is asked to approve Councillor Prochak's non-attendance at meetings of the authority due to ill health and grant a waiver in accordance with Section 85 (1) of the Local Government Act 1972 and note the arrangements in hand to cover this period.

Lorna Ford
Chief Executive