

**SECTION 85 LOCAL GOVERNMENT ACT 1972 –**  
**RECOMMENDATION TO EXTEND SIX MONTH RULE**

*To:* **Constitution and Ethics Committee**

*Meeting Date:* **2ndFebruary 2016**

*From:* **LGSS Director of Law, Property & Governance and  
Monitoring Officer**

*Electoral division(s):* **All**

*Purpose:* **To consider a proposal that Council should consider  
introducing a policy to allow only one extension to the six  
month rule in any four year municipal period.**

*Recommendation:* **Constitution and Ethics Committee is invited to consider  
whether it should introduce a policy to allow only one  
extension to the six month rule in any four year municipal  
period.**

<b><i>Officer contact:</i></b>	
Name:	Quentin Baker
Post:	Director of Law, Property & Governance and Monitoring Officer
Email:	<a href="mailto:quentin.baker@cambridgeshire.gov.uk">quentin.baker@cambridgeshire.gov.uk</a>
Tel:	01223 727961

## 1. BACKGROUND

- 1.1 At the last meeting of Council on 15th December 2015, Council approved the non-attendance of two Councillors at meetings of the Council due to ill-health up to 15th June 2016 pursuant to Section 85 of the Local Government Act 1972.
- 1.2 At the same meeting Councillor Count proposed that the Council should consider introducing a policy to allow only one extension in any four year municipal period, Councillor Hickford undertook to raise this issue at Constitution and Ethics Committee.
- 1.3 The law states that if a member of a local authority fails throughout a period of six consecutive months, from the date of his/her last attendance to attend any meeting of the authority, s/he shall, unless the failure was due to a reason approved by the authority before the expiry of that period, cease to be a member of the Authority.
- 1.4 An authority cannot retrospectively approve an excuse for failure to attend meetings after the six month period has expired.
- 1.5 The legislation does not prevent the Council introducing a policy whereby only one extension will be permitted in any four year municipal period. However, it is important to note that the office becomes vacant only, when the authority declares it to be vacant, which the authority must do, and a casual vacancy arises.
- 1.6 The Council has not been able to identify any other authority which has introduced a similar policy. This is because Councils need to judge each application on its merit in order to prevent fettering its discretion. In other words, an authority will be acting unreasonably where it refuses to hear applications or makes certain decisions without taking individual circumstances into account by reference to a certain policy. When an authority is given discretion, it cannot bind itself as to the way in which this discretion will be exercised either by internal policies or obligations to others. Even though an authority may establish internal guidelines, it should be prepared to make exceptions on the basis of every individual case. It is therefore important to note that the Council could be opening itself up to legal challenge if it introduced a 'blanket policy'.

Source Documents	Location
Minutes of County Council 15th December 2015	<a href="http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/Meeting.aspx?meetingID=1076">http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/Meeting.aspx?meetingID=1076</a>
Section 85 of Local Government Act	<a href="http://www.legislation.gov.uk/ukpga/1972/70/section/85">http://www.legislation.gov.uk/ukpga/1972/70/section/85</a>