

THANET DISTRICT COUNCIL

STATUTORY REPORT OF THE DIRECTOR OF CORPORATE GOVERNANCE AND MONITORING OFFICER

SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989

REQUIREMENT TO DECLARE A VACANCY IN OFFICE

1.0 SUMMARY

On the 15 October 2018, the Council voted against declaring a vacancy in the Margate Central Ward, contrary to Section 86 of the Local Government Act 1972.

2.0 BACKGROUND

- 2.1 Section 5 of the Local Government & Housing Act 1989 requires the Council to appoint an Officer to act as the Council's Monitoring Officer. The Act provides that it is the personal duty of the Monitoring Officer to report formally to the Council on any proposal, decision or omission by the Council which has given rise to, or is likely to, or would, give rise to, the contravention of any enactment, rule of law or statutory code of practice.
- 2.2 In preparing a Statutory Report the Monitoring Officer must formally consult with the Chief Executive, as Head of the Paid Service, and the Deputy Chief Executive (as Chief Finance Officer). As soon as practicable after completion of the report a copy must be sent to each Member of the Council. Members are required by the Act to formally consider the report at a meeting of the Full Council which must be held not more than 21 days after copies of the report have been first sent to them. In the meantime implementation of any proposed unlawful act is suspended. The report itself is not binding on the Council but if Members decline to follow its recommendations this could lead to sanctions for breach of the Code of Conduct, or legal proceedings.
- 2.3 The Council meeting on the 11 October 2018 was due to consider an item concerning the declaration of a vacancy for the Margate Central ward. However as a result of disruption in the public gallery, the meeting was adjourned to consider this item on the 15 October 2018. At the reconvened Meeting of the Full Council on 15 October, councillors, through a majority recorded vote, decided not to declare a vacancy in the office of councillor in the Margate Central Ward as required by Section 86 of the Local Government Act 1972. A copy of the report to council is attached at Appendix B and the record of the individual votes cast at the meeting is at Appendix C.
- 2.4 Regretfully after consultations with the Chief Executive and the Deputy Chief Executive as Chief Finance Officer, I have concluded that in all the circumstances it is incumbent upon me to make a formal statutory report to all Members of the

Council setting out the legal position and my concerns.

3.0 LOCAL GOVERNMENT ACT 1972

- 3.1 The duty to declare a vacancy in the officer of councillor following their disqualification is set out in section 86 of the Local Government Act 1972 , which says:

Where a member of a local authority—

(a) ceases to be qualified to be a member of the authority; or

(b) becomes disqualified for being a member of the authority or

(c) ceases to be a member of the authority by reason of failure to attend meetings of the authority;

the authority shall, except in any case in which a declaration has been made by the High Court under this Part of this Act, forthwith declare his office to be vacant.

- 3.2 The vacancy arose through the disqualification from office of Councillor Venables by reason of him holding paid office with Thanet District Council.
- 3.2 In the case of disqualification, a vacancy in the office of councillor, does not occur until declared by the Council. In the absence of a declaration, a vacancy cannot be published and since no vacancy has been published, no election can be held. The failure to declare a vacancy has the effect of denying an election for the electors of Margate Central Ward and left the ward represented by a single councillor rather than by two councillors.
- 3.3 Due to the elapse of time since the Council meeting, if a vacancy is now declared the 'six month rule' applies and no election can be held until the next ordinary election in May 2019. Without a declaration of vacancy it has not been possible to publish the date of the election.

4. DECISION OF COUNCIL

- 4.1 At the reconvened Council Meeting on the 15 October 2018 Council resolved by 27 votes to 13 votes, against declaring the vacancy in the office of councillor for the Margate Central Ward. A copy of the draft minutes and record of those voting is attached at Appendix C.

5.0 ADVICE

- 5.1 In the report to Council, Members were advised by the Monitoring Officer that the Council was under a statutory duty to declare this vacancy. Members were also advised verbally at the meetings by the Deputy Monitoring Officer and the Monitoring Officer, that once a councillor has been disqualified that the law requires that the council forthwith declare his office to be vacant and that a failure to do so would be a

breach of section 86 of the Local Government Act 1972. It was also stated that if Council failed to declare the vacancy, that it would be necessary for me as Monitoring Officer to consider making a statutory report under Section 5 of the Local Government and Housing Act 1989.

- 5.2 The Council by a majority recorded vote of 27 to 13 (with one abstention) decided not to declare a vacancy for the office of councillor for the Margate Central Ward.
- 5.3 I provided further advice on the requirement to declare a vacancy in a meeting with the Political Group Leaders on the 22 October 2018, during that meeting, the Leaders were offered copies of the Counsel's advice at Appendix A. In order to resolve this matter it was agreed with the Group Leaders that a report would be prepared for an Extraordinary Council by the Monitoring Officer, which recommended the delegation of the declaration of a vacancy under section 86 to the Chief Executive.
- 5.4 An Extraordinary Council meeting was held on the 6 November 2018 where Council considered a report which recommended delegating the declaration of a vacancy under section 86 to the Chief Executive. Members by a majority, voted against that recommendation.
- 5.5 In the circumstances I would formally place on record that not only does the Council itself have a legal responsibility to declare a vacancy and support the electoral process and to ensure the lawful discharge of the Council's functions but in my view Members themselves also have an individual and collective responsibility to ensure there is proper administration of the Council's affairs. Every member has signed a declaration of office stating that he or she will duly and faithfully fulfil the duties of his or her office as councillor according to the best of his or her judgement and ability, and has undertaken to observe the Council's Code of Conduct.
- 5.6 Given the failure to comply with the statutory duty and in these circumstances, I consider it is incumbent upon me to make a formal statutory report to the Council setting out the legal position and my concerns.

6. CONSTITUTION PRINCIPLES OF DECISION MAKING

- 6.1 All decisions of the Council will be made in accordance with the following principles:

- (a) the presumption in favour of openness and transparency;
- (b) the need for due consultation;
- (c) the need to take account of relevant professional advice from appropriate staff;
- (d) the need for clarity of aims and desired outcomes;
- (e) the need to identify the range of options considered;
- (f) the need to give reasons and explanation for a decision;
- (g) the need to ensure that all necessary requirements of legality and confidence are observed.

- 6.2 The Council did not take into account the professional advice of the Monitoring Officer and Deputy Monitoring Officer with regard to the legal requirement to declare a vacancy and did not observe the requirements of legality.

7.0 JUDICIAL REVIEW

- 7.1 The failure to declare a vacancy in office is clearly a breach of statutory duty and exposes the Council to the risk of judicial review proceedings by any resident or local elector who considers themselves prejudiced by the failure, or by a Member of the Council, particularly if failure is prolonged. Advice is also being sought on the grounds for seeking an order from the court by way of judicial review.

8.0 CODE OF CORPORATE GOVERNANCE

- 8.1 Thanet District Council has adopted a Local Code of Corporate Governance in accordance with the core principles of good governance outlined within the CIPFA/SOLACE Delivering Good Governance in Local Government Framework 2016.
- 8.2 There are seven core principles of good governance identified in the CIPFA/SOLACE Delivering Good Governance in Local Government Framework 2016, the first 'core principle' refers to '*Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law*'
- 8.3 The relevant sub-principle of the first principle is 'Respect the rule of law'. This sub-principle should be evidenced by the following:
- Ensure Members and staff demonstrate a strong commitment to the rule of the law as well as adhering to relevant laws and regulations
 - Create the conditions to ensure that the statutory Officers, other key post holders, and Members, are able to fulfil their responsibilities in accordance with legislative and regulatory requirements
 - Strive to optimise the use of the full powers available for the benefit of citizens, communities and other stakeholders
 - Deal with breaches of legal and regulatory provisions effectively
 - Ensure corruption and misuse of power are dealt with effectively

9.0 HEAD OF PAID SERVICE

- 9.1 As required by the Local Government and Housing Act 1989 the Chief Executive as Head of the Paid Service has been formally consulted in relation to this issue and has made the following observations:- I concur with the Monitoring Officers report and reiterate the expectation that members fulfill their statutory duty in respect of the administration of the Council's affairs and declare a vacancy forthwith.

10.0 CHIEF FINANCE OFFICER

- 10.1 As required by the Local Government and Housing Act 1989 the Deputy Chief Executive as Chief Finance Officer has been formally consulted in relation to this issue and has made the following observations:- I as one of the Council's statutory officers am in agreement with the Monitoring Officer's advice and recommendations contained in this report.

11.0 SUMMARY AND RECOMMENDATIONS

- 11.1 In August 2018 through taking up an appointment to a paid office which is or may be made or confirmed by the Council, Councillor Venables became disqualified from being a member of the authority by virtue of Section 80(1)(a) of the Local Government Act 1972.
- 11.2 Section 86 of the Local Government Act 1972 requires that where a member becomes disqualified for being a member of the authority, the authority shall, except in any case in which a declaration has been made by the High Court, forthwith declare his office to be vacant.
- 11.3 The Council is in breach of its statutory duty to declare a vacancy for the office of councillor for Margate Central ward.
- 11.4 It is therefore recommended that Members declare a vacancy for the office of councillor for Margate Central ward forthwith.
- 11.5 In accordance with section 3 (8)(a)(x) of the Council Procedure Rules (the six month rule) I confirm as Monitoring Officer that it is appropriate for Council to reconsider this matter to comply with the law.

Timothy Howes, Solicitor

Director of Corporate Governance & Monitoring Officer
November 2018

Appendices

Appendix A: Counsel's advice re disqualification

Appendix B: Report to Council on the 11/15 October 2018

Appendix C: Draft Minute of the Council meeting and record of the votes cast at the meeting on the 11/15 October 2018

Appendix A: Counsel's advice re. disqualification

IN RE THE WORKING RELATIONSHIP WITH A COUNCILLOR DISQUALIFIES
HIM FROM BEING A MEMBER OF THE LOCAL AUTHORITY

ADVICE

Introduction

1. I am asked to advise as a matter of urgency as to whether a Councillor may continue to be a member of the Council in the following circumstances.
2. The Councillor is a Thanet District Councillor. In his private life, he is employed by the East Kent Community Drug and Alcohol Service.
3. Thanet District Council are funding the East Kent Community Drug and Alcohol Service. The funding provides a specialist worker to support the Council's rough sleeping work, and the East Kent Community Drug and Alcohol Service advertised a secondment opportunity internally. The Councillor applied for the secondment and was appointed.
4. The Councillor is therefore working with the Council within the Housing team (in his personal work capacity) in a 'virtual team' in relation to rough sleeping. His employer will not change during the secondment, but his job content will change to be focused on drug and alcohol issues for rough sleepers.
5. The Council queries the appropriateness of a councillor working with officers in his personal capacity.
6. The Council is also concerned that the arrangement described above falls foul of section 80 of the Local Government Act 1972.

The Secondment Agreement

7. I have been provided with a copy of the relevant Secondment Agreement. By that agreement the Councillor was the seconded to an employer the Forward Trust ("FT") under a project – the Thanet Rough Sleeper Project - sponsored by the Council.
8. By clause 1.1 FT agreed to second to the Council the services of the Seconded. It was for the Council to agree with the Seconded the responsibilities they would be required to undertake as part of the Drug and Alcohol Worker role. An outline copy of the likely role was attached to the Secondment Agreement. By clause 1.2 it was made clear that for the duration of the secondment the Seconded would remain an employee of FT and report accordingly to FT line management. However, clause 1.2 goes on to provide and additionally project supervision would be provided by the Rough Sleeper Project Manager ("RSPM"). By clauses 1.3 and 1.4 the Seconded's existing contract of employment would be varied so far as necessary to facilitate the additional duties contained in the outline of duties attached to the Secondment Agreement.
9. Clause 2.1 provided that the period of the secondment would be 9 months and that termination of the Secondment would not terminate the Seconded's employment with FT. By clause 3 the hours of the Secondment were typical working hours. By clause 4 proposed leave had to be sanctioned by the RSPM, and clause 5 provided that in case of sickness the RSPM should be contacted.

10. By clause 9.2 the Seconded agreed to abide by the Council's code of conduct for staff. By clause 9.4 any disciplinary sanctions were to be agreed between FT and the Council. Clause 9.6 provided that grievances related to the Secondment should be resolved through the Council's grievance procedure.
11. By clause 12 the Seconded was obliged to carry out all reasonable instructions given by the Council and would be managed by the Council's project supervisor.
12. By clauses 13.1 and 13.2 the mechanism for payment was that the Council would pay a grant to FT and FT would continue to pay the Seconded's salary. Out of pocket expenses and agreed additional costs were to be paid by the Council.
13. By clause 19.1 the Secondment Agreement could be terminated at any time by FT or the Council giving notice in writing. No such power was given to the Seconded, who could only terminate the agreement on material breach (clause 20).

Part V LGA 1972

14. Section 80 and its related provisions are contained in Part V LGA 1972. So far as material, s.80 provides as follows:

"(1) Subject to the provisions of section 81 below, a person shall be disqualified for being elected or being a member of a local authority. . if he— (a) holds any paid office or employment (other than the office of chairman, vice-chairman or deputy chairman or, in the case of a local authority which are operating executive arrangements which involve a leader and cabinet executive, the office of executive leader or member of the executive) appointments or elections to which are or may be made or confirmed by the local authority or any committee

or sub-committee of the authority or by a . . . joint committee or National Park authority on which the authority are represented or by any person holding any such office or employment . . . " (Emphasis supplied)

15. Section 82 deals with the validity of acts done by unqualified persons. It provides, so far material, as follows:

"(1) The acts and proceedings of any person elected to an office under this Act . . . and acting in that office shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified."

16. Section 86 deals in part with the consequences of disqualification. It provides, so far as material, as follows:

"Where a member of a local authority— (a) ceases to be qualified to be a member of the authority; or . . . the authority shall, except in any case in which a declaration has been made by the High Court under this Part of this Act, forthwith declare his office to be vacant."

Discussion

17. Whilst the council are not 'employing' the Councillor – FT is his employer – the Council is funding his employment by a payment to the East Kent Community Drug and Alcohol Service (clause 13 above).

18. This secondment has already commenced.

19. The first question is whether the secondment amounts to "*holding any paid office or employment*" with the Council.

20. The effect of s.80 LGA 1972 in cases where a relevant paid office or employment is taken up was discussed by McCullough J. in *R v. LB Tower Hamlets ex p. Jalal* (CO/510/94, 27 April 1994). In that case he found that s.80(1)(a) did not apply to the facts, but observed that the effect of disqualification would apply regardless of whether or not the acts were done in good faith and/or with knowledge of the effect of s.80: Section 80 simply operates to disqualify someone who falls within its terms as a matter of law.

21. In *Islington LBC v Camp* (unreported, July 20, 1999, QBD), an issue arose as to whether Camp, a research officer employed by Camden LBC and seconded to a joint committee (the London Housing Unit), held a paid office or employment appointment to which "[is] or may be confirmed" by the joint committee. She had been appointed by a panel of officers from the Unit (all probably seconded from Camden). Richards J. concluded that the words "may be confirmed" referred to a legal entitlement to confirm, not the practical likelihood of the joint committee itself acting in the matter. Furthermore, the joint committee was legally entitled to confirm this appointment. On that basis the judge expressed the view, without deciding the matter, that Camp was disqualified from being a councillor for Islington, another council represented on the joint committee.

22. In the course of his judgment the judge dealt with this point at some length. In light of its closeness to the current situation I have set out the reasons in full. The judge said:

"If it is accepted that secondment is an arrangement lawfully open to Camden and the LHU, it seems to me to fit the facts very well. There is a strong case on the evidence before me that the defendant,

although employed by Camden, was immediately seconded to the LHU to act as its Senior Policy and Research Officer under the direction of the LHU. It is true that in practice she reports to officers — to the Joint Heads of Policy and occasionally to the Head of the LHU — rather than to the joint committee itself. Under her contract of employment it is also the Head of the LHU who is to determine matters such as place of work and hours of work. But I think it unrealistic to suggest that the defendant would be "under the direction of" the LHU only if she were supervised directly by, and reported directly to, the members of the joint committee itself. In my view it is sufficient that she is subject to the ultimate direction of the joint committee, which exercises its power of direction through a normal system of line management whereby e.g. the Head of the LHU reports to the joint committee, the Joint Heads of Policy report to the Head of the LHU, and the defendant reports to the Joint Heads of Policy, Section 80(2)(b) must have been intended to apply to a situation of that kind.

If the defendant is employed under the direction of the LHU, then she is disqualified under section 80(2)(b) and it is unnecessary to decide whether she is also disqualified under section 80(1)(a). Again, however, it may be helpful for me to cover the relevant ground.

[Counsel's] starting point on section 80(1)(a) is that the defendant's appointment was not in fact "made or confirmed" by the joint committee within the terms of the subsection. On the evidence it was made by a panel of three officers (the Head of the LHU and the acting Joint Heads of Policy), all of whom were probably Camden employees. The question then arises whether the defendant's office or employment is one which, in the terms of the subsection, "may" be made or confirmed by the joint committee. [Counsel] submits that in deciding whether a joint committee "may" make or confirm an appointment, the question is not just whether it is legally entitled to do so but whether there is a practical likelihood of it doing so. As to that, I see no reason for reading "may" in this context as referring to anything other than legal entitlement. I do not think that the court can have been intended to embark upon an assessment of the practical likelihood of the joint committee making or confirming appointments to a particular office or employment.

[Counsel] submits further that, if the test is one of legal entitlement, then the LHU is not entitled to make or confirm an appointment of an employee of Camden. That, too, seems to me to be a difficult submission to sustain. The LHU has express power under its constitution to make arrangements for the secondment of staff. It must be able to exercise a power of decision over who is to be seconded to it; and as a matter of law it must be able to exercise that power itself, i.e. as a joint committee, even if in practice it chooses to arrange for the discharge of its functions by its officers (see generally section 101 of the 1972 Act, and in particular section

101(5) , for the powers of joint committees). On that basis it can properly be said that appointments of those seconded "may be made or confirmed" by the joint committee.

A yet further submission of [Counsel] is that it is the widespread practice, and best practice, of local authorities to provide that appointments to posts below the level of at least first and second tier as defined within the National Joint Council Scheme are to be made by the Head of Paid Service and not by councillors. That stems from a recommendation of the 1986 Report of the Widdicombe Committee into the Conduct of Local Authority Business. The recommendation was not given statutory effect, though [Counsel] has referred to a number of provisions of the Local Government and Housing Act 1989 which are said to bear upon the point (in a way that is sufficiently remote for me to believe it to be unnecessary to go into further detail). In any event, the point made is that Camden follows the practice and there is nothing to suggest that the LHU does not observe the practice. Accordingly the joint committee would not themselves make or confirm an appointment to a post of the level held by the defendant, which is below first or second tier. In so far as that point relates to what the LHU might do in practice. I consider it to be irrelevant, since I have already expressed the view that the correct test is one of legal entitlement. [Counsel] advanced a brief argument to the effect that it would be unlawful for the LHU to depart from the practice, but the basis for the argument is obscure and I would reject the argument. I take the view that this point does not assist the defendant's case.

For the reasons set out above, on the evidence before me I would be strongly inclined to accept [the] submission that the defendant is disqualified both under section 80(1)(a) and under section 80(2)(b) . However, as I have sought to make clear, I do not think that it would be right for me to express a concluded view on the subject, let alone to make any declaration in respect of it." (Emphasis supplied)

23. Whilst the analysis in Camp is not binding, it is persuasive. In my view it is correct. The facts of that case are similar to the facts here which are, if anything, clearer in terms of the Council's ability to make or confirm the secondment. The sections I have emphasised above show, in my view, essential similarities between the position in Camp and the current situation.

24. It does not appear to have been argued in Camp that the secondment role was not a "*paid office or employment*". Nor was the point raised by judge. In my view that is because it is clear that such a secondment is a paid office or employment for the purposes of section 80. In terms of the risks that section 80 was intended to guard against, there does not appear to me to be any difference between the case where a member is directly employed by the relevant council, and the case where they may be appointed to discharge exactly the same functions as an employee, but through the mechanism of a seconding arrangement. I note that the statute makes express provision for those (limited) categories of case which are to be excluded from the effect of s.80. The case of secondment is not excluded.

Conclusions

25. For those reasons I have reached the conclusion that the Secondment Agreement does in this case call foul of s.80 LGA 1972.

26. It seems, applying the observations of McCullough J. in *Jalal*, that disqualification has occurred as a matter of law.

27. The application of section 82(1) means that the decisions in relation to which the Councillor has participated are not rendered unlawful by the operation of s.80 alone.

28. I would be glad to assist further as required.

WAYNE BEGLAN

CORNERSTONE BARRISTERS

28 AUGUST 2018

Appendix B: Report to Council on the 11/15 October 2018

DECLARATION OF VACANCY - MARGATE CENTRAL WARD

COUNCIL	11 October 2018
Report Author	Director of Corporate Governance and Monitoring Officer
Status	For Decision
Classification:	Unrestricted
Ward:	Margate Central Ward

Executive Summary:

To note that Ian Venables has become disqualified for being a member of the authority under section 80 of the Local Government Act 1972, by virtue of his holding a paid office or employment or appointment with Thanet District Council.

Council is therefore required to formally declare a vacancy in the Margate Central Ward.

Recommendation(s):

1. Council notes that Ian Venables has become disqualified for being a member of this authority;
2. Council declares as vacant the office held by Ian Venables as a councillor for the Margate Central ward

CORPORATE IMPLICATIONS

Financial and Value for Money	There will be additional costs associated with any by-election, which will be contained within existing budgets.								
Legal	The Council is under a statutory duty to declare this vacancy.								
Corporate	There are no specific corporate implications. The disqualification will also impact on political proportionality.								
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td></tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td><td></td></tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td><td></td></tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td><td></td></tr> </table>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it		Foster good relations between people who share a protected characteristic and people who do not share it.	
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Advance equality of opportunity between people who share a protected characteristic and people who do not share it									
Foster good relations between people who share a protected characteristic and people who do not share it.									

	There are no specific equalities considerations in relation to this report.
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CORPORATE PRIORITIES (tick those relevant)✓	
A clean and welcoming Environment	
Promoting inward investment and job creation	
Supporting neighbourhoods	

CORPORATE VALUES (tick those relevant)✓	
Delivering value for money	
Supporting the Workforce	
Promoting open communications	X

1.0 Introduction and Background

- 1.1 Under section 80(1)(a) of the Local Government Act 1972 a councillor is disqualified from holding office if they hold any paid office or employment or appointment which are or may be made or confirmed by the local authority.
- 1.2. Section 86 of the Local Government Act 1972 requires an authority to declare a vacancy in such circumstances.
- 1.3. Mr Venables applied for and has taken up a secondment with the council as a specialist to assist within the council's housing team in relation to rough sleeping. He took up this secondment position on the 1 August 2018.
- 1.4 This arrangement disqualified Cllr Venables from being a Thanet District Councillor, under Section 80(1)(a) of the Local Government Act 1972 with effect from 1 August 2018. Under the Act a councillor is disqualified from holding office as councillor, if they hold 'paid office or employment or an appointment' which is made or confirmed by the council. Advice has been sought from counsel and he confirms that the secondment arrangement is caught by Section 80(1)(a) of the Act and cited a similar situation which was considered by the High Court in 1999.
- 1.5 Section 86(1)(a) of the Local Government Act 1972 provides that where a councillor becomes disqualified for being a member of the authority, the authority shall, except in any cases in which a declaration has been made by the High Court, forthwith declare the office to be vacant. This is a statutory duty on the Council. Officers recommend that Council declares the vacancy.
- 1.6 Under section 87(1) (f) of the Local Government Act 1972 the vacancy is deemed to be the date on which Council declares the vacancy. Following this declaration, a notice of vacancy will be published.

Contact Officer:	Tim Howes, Director of Corporate Governance and Monitoring Officer
Reporting to:	Madeline Homer, Chief Executive

Background Papers

Title	Details of where to access copy
Section 80 Local Government Act 1972	http://www.legislation.gov.uk/ukpga/1972/70/contents

Corporate Consultation

Finance	Matt Sanham Finance Manager
Legal	Sophie Nartey Interim Head of Legal Services

Appendix C: Draft Minute and record of the votes cast at the meeting on the 11/15 October 2018

13. DECLARATION OF VACANCY MARGATE CENTRAL WARD

Ms Nartey, Interim Head of Legal Services and Deputy Monitoring Officer, advised Members of the Council's legal obligation to declare the vacancy for the Margate Central Ward.

It was proposed by the Chairman and seconded by the vice Chairman that Members agree the recommendations within the report, namely that:

'1. Council notes that Ian Venables has become disqualified for being a member of this authority;

2. Council declares as vacant the office held by Ian Venables as a Councillor for the Margate Central ward.'

Members agreed to hold a recorded vote on the proposal. Before a vote could be taken the meeting was adjourned due to disruption from the public gallery. The Chairman advised that the meeting would reconvene on Monday 15 October 2018. Meeting adjourned at 20:20. Meeting reconvened at 19:00 Monday 15 October 2018

Mr Howes, Director of Corporate Governance and Monitoring Officer, reminded Members of the Council's legal obligation to declare the vacancy for the Margate Central Ward. In response to a question, Mr Howes advised Members that if an unlawful decision was made, he would have to consider his duty to prepare a report under Section 5 of the Local Government and Housing Act 1989. Mr Howes conducted the recorded vote.

13 Members voted in favour the motion:

Councillors Ashbee, Bayford, K Coleman-Cooke, Dexter, Gregory, Martin, Parsons, Rogers, D Saunders, M Saunders, Savage, Tomlinson, Wright.

27 Members voted against the motion:

Councillors Braidwood, Brimm, Buckley, Campbell, Connor, Constantine, Crow-Brown, Dellar, Dennis, Dixon, Evans, J Fairbrass, L Fairbrass, Falcon, Fenner, Grove, Hillman, Jaye-Jones, Johnston, L Piper, S Piper, L Potts, R Potts, Rusiecki, Shonk, Townend, Wells.

1 Member abstained from voting on the motion:

Councillor Taylor.