

REPORT TO FULL COUNCIL

DISCHARGE OF FUNCTIONS DURING PANDEMIC



Report Reference C-20-03
Meeting Date 5th May 2021
Agenda Item 11
Prepared by Town Clerk

1.0 BACKGROUND

Under the Coronavirus Act 2020, regulations were introduced to provide flexibility for councils to determine how to meet during the pandemic by enabling the holding of virtual council and committee meetings. The regulations enabling virtual meetings were time limited with an expiry date of 7th May 2021. The government did not provide parliamentary time to enable primary legislation for the regulations to be extended.

An application was submitted for a court declaration as to whether the existing legislative framework for councils would allow meetings to be held virtually when the express permission under the regulations expire. On 28th April the High Court determined that for virtual meetings to be lawful new primary legislation would be required and that the Local Government Act 1972 could not be construed to allow meetings where members were not present together in one geographical place. The court has not yet ruled on whether public access to meetings (under the Public Bodies (Admission to Meetings) Act 1960) can be by virtual means.

Any physical meetings of the council must be held in accordance with current guidance on ensuring safety during the pandemic; this would involve ensuring social distancing, contact tracing, mask wearing and minimising numbers in attendance. This would require the council to hire large meeting venues and, in order to minimise public attendance whilst retaining open access to democracy, the purchase or hire of suitable audio-visual equipment. It is noted the court has not yet ruled on whether public attendance under the 1960 Act can be virtual only.

The current roadmap out of coronavirus restrictions suggests that from 21st June, requirements for social distancing will be removed.

Lawful decisions can only be made by Full Council or in accordance with section 101 of the Local Government Act 1972, which allows for the majority of functions to be delegated to a committee, sub-committee or officer. It is not lawful for members to exercise a function on behalf the council outside a lawfully convened council, committee or sub-committee meeting.

The Town Clerk contacted all members to seek guidance on options for ensuring council business is not affected during any period where the council is unable to hold virtual meetings. Three options were presented:

- a) Return to fully in person meetings
- b) Hybrid meetings with a quorum of members present to make decisions. Other members would connect remotely but not lawfully be present or able to vote.
- c) Delegation of authority to the Town Clerk to take decisions with guidance from members

through virtual meetings

The majority of members expressed a preference for the third option. Section two of this report suggests how this could be implemented.

2.0 PROPOSED FRAMEWORK

The below framework has three key tenets:

1. The council should operate as closely to normal as possible without interruption to the delivery of its services or its role in the community.
2. The policy direction of the council should be driven by members and based on open and democratic discussion
3. Council decisions should be open and accountable to the public

It is recognised that whilst some members have received their first (and in some cases second) vaccinations, it will be some time before all members and officers are fully vaccinated and feel comfortable attending in person meetings. It is also recognised that it would be inappropriate to incur significant expenditure on temporary technology solutions for hybrid meetings which are greater when social distancing is required than it would be if it was not¹. It is therefore proposed that the council cease holding formal meetings until one of the following:

- a) The majority of members express a wish to return to physical meetings
- b) The requirement for social distancing in meetings is removed
- c) Legislation is passed to enable formal meetings to be held virtually

During this period, the Town Clerk would be granted temporary delegated authority to exercise any function (i.e. make any necessary decision) to enable the council to continue operating as normal. This would be subject to a requirement to have first received counsel from members. The resolution would also allow the Town Clerk to designate a deputy e.g. the Planning and Facilities Officer for planning matters or a named officer for a period of absence.

Council would create a series of working groups which shadow the council's formal committee structure. The working groups would hold virtual meetings which would be open to the public and discuss matters in order to provide counsel to the Town Clerk to inform his decision making. It is important to note that the working groups would not be making decisions on behalf of the council; decisions would only be taken by the Town Clerk in consideration of the advice given by the members of the working group. The Town Clerk shall firstly confirm the decision he is to make to the appropriate chairman. All decisions taken under this authority would also be formally reported to the first Full Council or committee meeting when meetings resume and be ratified by the meeting.

To enable members to provide effective counsel, the Town Clerk would provide members with such advance information as is considered necessary, for example an options report.

The rights of members to convene council meetings will not be affected; the Town Mayor may, at any time, convene a meeting of the council and a committee chairman may do so for their committee. Members also have the ability to convene meetings when the relevant chairman refuses to do so.

¹ For example, more microphones would be required for streaming a meeting if members are seated at greater distances from one another.

3.0 SUGGESTED RESOLUTION

It is RESOLVED that:

- a) The Town Clerk (or his designated deputy) shall have delegated authority to exercise any function that would normally be exercised by Full Council or a committee, excepting any function which statute prescribes may only be exercised by Full Council.
- b) The authority under (a) may only be exercised having received counsel from the appropriate working group as set out at (c). The Town Clerk (or his designated deputy) shall confirm any decision to be taken to the Town Mayor or appropriate committee chairman.
- c) The following working groups are established:
 - i. All Member Working Group – comprising all members with a remit to advise on issues which are ordinarily reserved for the Full Council
 - ii. Assets Working Group – comprising the members appointed to the Assets and Operations Committee with a remit to advise on issues usually delegated to that committee under its terms of reference
 - iii. Environment Working Group – comprising the members appointed to the Environment and General Purposes Committee with a remit to advise on issues usually delegated to that committee under its terms of reference
 - iv. Personnel Working Group – comprising the members appointed to the Personnel Committee with a remit to advise on issues usually delegated to that committee under its terms of reference
 - v. Events Working Group – comprising the members appointed to the Events and Town Centre Management Committee with a remit to advise on issues usually delegated to that committee under its terms of reference
 - vi. Planning Working Group – comprising the members appointed to the Planning and Licensing Committee with a remit to advise on issues usually delegated to that committee under its terms of reference
 - vii. Finance Working Group – comprising the members appointed to the Finance Committee with a remit to advise on issues usually delegated to that committee under its terms of reference
- d) The council's published schedule of meetings shall be suspended until:
 - i. the majority of members indicate in writing to the Town Clerk their desire for in person meetings to resume, OR
 - ii. social distancing requirements for meetings are removed, OR
 - iii. legislation allows for Full Council and committee meetings to be held virtuallywhichever is the sooner.
- e) The working groups should, as a minimum, meet on the dates and times currently scheduled for formal meetings and the Town Clerk should provide members with sufficient information to provide effective counsel. Records of the counsel provided by working groups shall be retained.

Except when discussing matters where publicity would be prejudicial to the public interest (as defined in the Public Bodies (Admission to Meetings) Act 1960) working group meetings

shall be open to the public to view and, at an appropriate time, participate.

- f) The authority granted under (a) shall only have effect until meetings resume under (d).
- g) All decisions taken under (a) shall be submitted to and ratified by Full Council or the appropriate committee at the first meeting following the resumption of meetings.
- h) The authority under (a) shall not affect any authority which is already delegated through Standing Orders, Financial Regulations, existing policy or previous resolution and any conditions attached thereto shall continue to have effect.