

Full Council

4 May 2021

Democratic Decision Making

Portfolio Holder: Cllr S Flower, Leader of the Council

Local Councillor(s): All

Executive Director: J Mair, Corporate Director, Legal & Democratic

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Report Status: Public

Recommendation:

- (i) That subject to the exceptions described in paragraph 2.9 of this report all council meetings that are not executive in nature should continue to be held virtually from 7 May until such time as social distancing requirements are removed (currently scheduled to be lifted on 21 June 2021), with committee members expressing a 'minded to' decision in respect of recommendations set out in officer reports.
- (ii) That as a temporary change to the scheme of delegation the Chief Executive, appropriate Executive Director, Corporate Director, Head of Service or Service Manager be authorised to exercise delegated powers to make non-executive decisions in the light of 'minded to' decisions expressed by members in the virtual meetings.
- (iii) That the Leader should be asked to agree that the Cabinet continue to meet virtually (until such time as social distancing requirements are removed) with decisions to be made by the relevant portfolio holder in the light of views expressed by the wider Cabinet.
- (iv) That all members should be given a dispensation under section 85 of the Local Government Act 1972 until such time as social distancing requirements are removed.

- (v) That in the event that the court case referred to in paragraph 1.7 of this report results in virtual meetings being found lawful (without the need for additional regulations) then the Council's current arrangements for virtual meetings should continue until such time as social distancing requirements are removed

Reason for Recommendation:

To ensure that democratic decision making is able to continue effectively and safely whilst social distancing requirements are still in place post 7 May 2021, and ensuring that decision making is transparent, that local residents are appropriately represented, and that all local authority decisions have appropriate scrutiny.

1. Executive Summary

- 1.1 The legislation governing council decision making dates from 1972, a time before the technology to enable online remote meetings existed.
- 1.2 Before changes introduced by the Local Government Act 2000 council decisions could be made only by councillors attending at a meeting of the Full Council, a committee or a sub-committee or by an individual officer with delegated powers. An individual councillor acting alone could not make a decision.
- 1.3 The 2000 Act introduced a distinction between executive and non-executive decision making. It enabled the Leader and other executive councillors to make individual executive decisions. Non-executive decisions such as planning decisions must still be made either by a committee of councillors or by an individual officer with delegated powers.
- 1.4 As part of the national response to the Covid-19 Pandemic Parliament gave the Secretary of State the ability to make regulations to enable councils to hold remote meetings. Those regulations (The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings ((England and Wales) Regulations 2020) will cease to have effect after 6 May 2021.
- 1.5 The Government has set out a four step "Roadmap out of lockdown". Step 4 (which will take place no earlier than 21 June 2021) is the removal of all legal limits on social contact.
- 1.6 After 6 May 2021 the Council can no longer rely upon the remote meeting regulations but with legal limits on social contact (until at least 21 June

2021) the Council cannot legally and safely hold council and committee meetings that are attended in person.

1.7 Hertfordshire County Council and others have brought a court case seeking to establish that remote meetings can take place within the general law, without the need for the remote meetings regulations. At the time of publishing this report the case was undecided and so this report recommends how best to ensure that decisions can still be made and in ways that are democratic and transparent.

1.8 In the event that the court case does result in our being able to continue with formal virtual meetings then the current arrangements would be reviewed and any changes necessary to comply with the court's decision would be made after consulting group leaders and the Chairman of the Audit and Governance Committee.

2. Delivering democratic decision making in a COVID secure way

2.1 Government guidance confirms that where local authority meetings take place in person, the principles set out in the government's working safely guidance (<http://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/offices-and-contact-centres>) should be followed.

2.2 This creates a challenging situation as legal restrictions on social distancing are not anticipated to be lifted fully until 21 June 2021 at the earliest. In the meantime, the Council does not have any meeting spaces big enough to accommodate either the Full Council or the majority of the Council's committees with press and public attendance in person in a COVID secure way.

2.3 To give an indication of the current restrictions, within the whole of the South Walks House committee suite space, there is only sufficient room for a maximum of 15 people to meet in a COVID secure way, and in the largest meeting space at County Hall, the council chamber, it would only be possible for a maximum of 18 people to meet in a COVID secure way.

2.4 In light of this situation, officers have been exploring the options for how we hold council meetings in the interim period between 7 May and when social distancing requirements are no longer in place (currently set as 21 June at the earliest), in a way that is legal, COVID secure, and enables a transparent democratic process to continue. All councillors were recently surveyed for their preference on a number of options. A summary of the survey responses is set out in Appendix 1.

2.5 The preferred option was for council meetings to continue to be held remotely during this period, with committee members giving a 'minded to'

- decision on recommendations set out in officer reports. It is proposed that temporary delegated powers are given to council officers who can then make the formal decisions after hearing debate and the ‘minded to’ decisions expressed by members in virtual meetings.
- 2.6 Careful consideration has been given to the legal status of a “minded to decision” and how delegated officer decisions would be made. To ensure that the Council does not unlawfully restrict any delegated authority there can be no requirement that the officer making the decision must always comply with the “minded to” view of councillors. Nevertheless it is reasonable to stipulate that an officer should only make a decision contrary to the “minded to” view of members for clear and compelling reasons and if the decision cannot reasonably be deferred until a time when it can be made by councillors.
- 2.7 It is suggested that an officer decision under the proposed delegation must be made transparently and only during the virtual meeting when members express their own “minded to” view. It would not be a valid exercise of the proposed delegated authority for an officer to make a decision after a virtual meeting, without the opportunity for councillors and the press and public to attend.
- 2.8 The position described in paragraph 2.5 applies to non-executive decisions. For executive decisions the Leader has delegated decisions that are key decisions to the Cabinet and non-key decisions to the relevant portfolio holder. It is recommended that until the lifting of social distancing requirements the leader should be asked to agree that the Cabinet will continue to meet virtually and that following debate the decision should in each case be made by the relevant portfolio holder (including key decisions).
- 2.9 There are a small number of meetings where decisions cannot or should not be made by officers under delegated authority e.g. certain Licensing Act decisions and Localism Act decisions on allegations concerning the conduct of councillors. As these meetings involve small panels of members and few other attendees it is considered appropriate and possible that these be held as ‘in person’ meetings.
- 3. Dispensation under Section 85 Local Government Act 1972**
- 3.1 Councillors have maintained high levels of attendance at virtual meetings through the pandemic. The Council did though grant a dispensation so that councillors did not lose office on a technicality (as a result of virtual attendance during the pandemic not counting as “attendance” under section 85 of the 1972 Act).

3.2 The current dispensation comes to an end after 6 May 2021. We do not know how long the arrangements now proposed in this report will prove necessary, only that social distancing requirements will not be lifted before 21 June 2021.

3.3 As “attendance” at the virtual meetings proposed in this report will not count as attendance for the purposes of section 85 of the 1972 Act it is recommended that the current dispensation should be extended until social distancing restrictions are lifted at stage 4 of the Roadmap out of lockdown.

4. Future of democratic decision making

4.1 The Government has issued a “Call for Evidence” seeking local authorities’ views on the possibility of future flexibility to hold meetings virtually where this is considered appropriate, potentially enabling local authorities to make their own decision on when this would be appropriate. Members’ responses provided as part of the survey attached at Appendix 1 will form the basis of Dorset Council’s response in consultation with the Group Leaders and the Chairman of the Audit and Governance Committee.

5. Financial Implications

5.1 There will be no financial implications in respect of this proposal although savings will continue to accrue through councillors not claiming travel costs for attendance at ‘in person’ meetings.

6. Well-being and Health Implications

6.1 The proposal will ensure that those required to participate in or view a council meeting will be able to do so in a way that does not breach our obligations to provide to COVID secure environment.

7. Climate implications

7.1 There will continue to be a reduction in carbon dioxide emissions from councillors not driving to attend committee meetings in person.

8. Other Implications

8.1 None.

9. Risk Assessment

- 9.1 Having considered the risks associated with this decision, the level of risk has been identified as:
Current Risk: Medium
Residual Risk: Medium

10. Equalities Impact Assessment

- 10.1 An impact assessment had been undertaken in respect of holding virtual committee meetings.

11. Appendices

Appendix 1 – survey of members.

12. Background Papers

Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No. 392

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.