

URGENT MOTION TO COUNCIL – 10 September 2020

ITEM16E – URGENT MOTION PUBLIC PARTICIPATION IN REMOTE COUNCIL MEETINGS

In accordance with paragraph 4.9.4 (Urgent Motion) the Chairman has consented, as he believes that it is right and proper that the current arrangements be reviewed, that the motion, submitted to the Service Director: Strategy and Governance, set out below will be considered at this Council meeting as agenda item 16(e). In accordance with Rule 4.16.1 [Six Months Rule] the Motion has been signed by at least one quarter of the Members of Council.) (Councillors: Lynne Doherty, Graham Bridgman, Howard Woollaston, Hilary Cole, Ross Mackinnon, Richard Sumner, Jo Stewart, Steve Ardagh-Walter, Dominic Boeck, Alan Law and James Cole.)

The following Motion has been submitted in the name of Councillor Lynne Doherty.

Background

At its meeting on 29 April 2020, and in the light of the Covid-19 pandemic and the introduction of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020, Council resolved (“the April Resolution”) to introduce new procedures, and amend the Council Constitution (“the Constitution”), to alter the ability of a member of the public to speak at Remote Council Meetings.

The April Resolution, proposed by Cllr Doherty and seconded by Cllr Dillon, read:

“The Council:

- 1 Approves the following changes to the Constitution insofar as they apply to Remote Council Meetings only:
 - (a) Any right given to a member of the public to speak at any Council meeting shall not apply to Remote Council Meetings. This right will be replaced with the ability to make written submissions.
 - (b) Written submissions that replace the right of a member of the public to speak for up to five minutes, shall be limited to a written submission of no more than 500 words. (This limit shall be applied pro rata to any different time limit detailed within the Constitution.) Written submissions must be submitted to the Council no later than midday, two days before the meeting.
 - (c) Where practicable, written submissions made as an alternative to a previous right to address a Committee will be read aloud at the Remote Council Meeting. Where multiple parties make written submissions, these will all be made available to the Members of the Committee, but it will not be appropriate to read all aloud. In such circumstances, an officer will provide a verbal summary for the Remote Council Meeting of the issues raised.
 - (d) Where a member of the public has the right to ask a question at a meeting of the Council, they will continue to have the right to ask the question but that will be done in writing only. Members of the public will have no right to ask a supplementary question during a Remote Council Meeting.
 - (e) The Chairman of any meeting may determine to provide written answers only to questions submitted by members of the public. However,

questions submitted to Remote Council Meetings and the responses provided will be published in full.

- (f) Members of the public will have no right to present a Petition during a Remote Council Meeting.
- 2 Any statutory right for a person other than a Member or Officer of the Council to attend, and/or speak at, and/or raise verbal questions at, a Remote Council Meeting shall not be affected by this Resolution.
 3. The Monitoring Officer is authorised to publish a statement setting out the effect of this Resolution in the Constitution and in any other place considered necessary to bring it to the attention of anyone affected as she deems fit."

An extract from the Monitoring Officer's Report to the April meeting giving the background to, and reasoning for, the proposal (and thus the April Resolution) is at Appendix A to this Motion (re-numbered from the agenda pack but otherwise unchanged).

Developments since April

When the April Resolution was passed the Council's understanding and experience of remote meetings was in its infancy. Much more is now known about how remote meetings can be undertaken, and Members have become experienced and adept at engaging in remote meetings via Zoom. In particular, council officers have become experienced at using the facility of a Zoom Webinar (as opposed to a Zoom Meeting) to ensure that remote meetings are as secure as possible and ensure that decisions made by the Council, the Executive, a committee, etc are as protected from challenge on technical grounds as can be achieved.

With the experience of the past few months it is now considered that a limited re-introduction of public participation in meetings can be achieved, where the public's ability to participate is a product of the Constitution (as distinguished from a statutory right of a member of the public to engage in a meeting which was retained).

The proposal is not without risk of challenge to decisions because a member of the public speaking at a remote meeting might allege that they were unable to hear a Member, or make themselves heard, and as a result the Member(s) would be deemed to be absent, making the meeting inquorate and invalidating any decisions taken (see Appendix A). However, it is submitted that what is now proposed minimises and mitigates that risk as far as possible.

Proposal - Overview

A fundamental element of the proposal is to distinguish between Zoom Webinar **Panellists** and Zoom Webinar **Attendees**.

In essence, there are three ways of engaging in/viewing a remote meeting that is being live streamed via YouTube (as all Council remote meetings are, and will continue to be):

- Zoom Webinar Panellists are "in the meeting room" and seen on screen – they can (subject to their video feed being switched on) see other Panellists and be seen by them, and (subject to being unmuted) be heard by Panellists and Attendees.
- Zoom Webinar Attendees are "in the meeting ante-room" and not seen on screen - they can see other Panellists but not be seen or heard.
- Viewers are not in the meeting in any sense but can view the proceedings via YouTube.

The proposal is that members of the public who wish to ask a question at or address a meeting will be invited to the meeting as an Attendee and, when their time comes to speak, will be moved from Attendee to Panellist status. They will only be treated as being “in the meeting” for so long as they are asking their question or addressing the meeting (eg answering questions on a submission) and will be moved back to Attendee status once that involvement is concluded.

This should limit the risk of any individual alleging that they could not hear (eg) a Member and challenging a decision, since they will only be “in” the remote meeting for a limited period, and it should be obvious if they can hear (since they will be engaging in dialogue with the Member(s) concerned). However, if it is alleged that such a member of the public cannot hear what is being said, it will always be open to the chairman of the meeting (“Chairman”) to (a) require that a question be answered in writing, or (b) adjourn that element of the meeting to seek to resolve any technical issues (eg by the member of the public telephoning into the meeting).

Proposal – Specific Issues

It is proposed to make changes to the April Resolution with effect from 1 October 2020 (to allow for training [Officers and Chairmen, etc], republishing guidance, etc).

Any meeting where public questions submitted in advance are permitted (principally Council and Executive)

Each questioner shall be invited to the remote meeting as an Attendee.

At the point of the remote meeting that the Chairman calls on them they will be changed to being a Panellist (the Host might do this in anticipation to reduce delay, but they will not be treated as being “in the meeting” until they are called on to speak). The Chairman shall refer to their question (generally this will be displayed on screen as is currently the practice) and invite the Member responding to give an oral answer. The Chairman or the Member responding will then ask the questioner if they have a supplementary question and to ask it if they do. The Member in question will then respond as necessary and once concluded the individual will cease to be “in the room” and be made an Attendee again.

As with any meeting in the chamber or a committee room, the Chairman may curtail a question or require the individual to stop speaking if they consider it necessary for the orderly running of the meeting. If this happens the Chairman will instruct the Host to mute and/or make the individual an Attendee again.

Since all members of the public will have effectively left the meeting after the public questions stage, only Members and Officers will be Panellists when the meeting moves to the consideration of items for debate/vote.

Any meeting, other than planning, where a member of the public might be permitted to speak

Where it has previously been custom and practice for a Committee to suspend standing orders to allow members of the public attending a meeting to speak, eg members of the taxi trade in relation to a Licensing Committee meeting considering a report relevant to that trade, it is proposed that such members of the trade will be invited to submit a written submission on relevant reports at least two clear working days before the meeting, and they will then be invited to join as Attendees – to be changed to Panellists at the relevant juncture to answer questions on their submission

(if the committee agrees to suspend standing orders to permit such). Once they have responded to any questions, they will be changed back to Attendees and the meeting will resume standing orders.

Similarly to a Licensing sub-committee meeting, the Chairman will regularly check that everyone has heard everything (see below).

Licensing sub-committee meetings

Public participation rights at these meetings were explicitly excluded from the April Resolution and will continue to be - as at present, since interested parties have a statutory right to attend, all such interested parties will be invited to be Panellists at all stages, with the Chairman regularly checking that everyone has heard everything.

Planning committee meetings

As at present, interested parties (applicant/supporter/objector/parish or town council) wishing to 'speak' at a planning committee meeting will be required to instead submit a 500 word (maximum) submission by 12:00, two working days before. This is retained from the April Resolution because otherwise there might be different individuals seeking to share the limited speaking time at a remote meeting with the technical issues that would ensue. It also means that (a) all those who wish to do so are able to furnish a submission (instead of having to share a limited oral presentation), and (b) that Members on the committee will have the opportunity of reading the submissions in advance.

Individuals who submit a written submission as above will be invited to the meeting as Attendees in much the same fashion as for a public questioner (see above). Where more than one person from the same group has sent in a submission, each will be invited.

At the appropriate stage of the meeting, as at present, the Clerk will read out each submission or summary (as the case may be) in turn. During each reading the relevant interested party or parties will be moved from Attendee to Panellist status and, after the submission has been read, will be invited to answer Members' questions upon it. Once the questions are concluded they will revert to being an Attendee again, eg:

- applicant, supporter, etc, present as Attendees;
- applicant's submission read out;
- applicant converted from Attendee to Panellist;
- applicant asked and answers questions;
- applicant reverts to Attendee;
- supporter's submission read out;
- supporter converted from Attendee to Panellist; and so on...

Thus, any debate and vote will not occur until after all members of the public have effectively left the meeting.

Resolution

This Council **RESOLVES** that, with effect from 1 October 2020:

- 1 Its Resolution of 29 April 2020 in relation to Remote Council Meetings is rescinded.
- 2 The following changes to the Constitution are approved insofar as they apply to Remote Council Meetings ("Remote Meetings") only:
 - a) Any right given to a member of the public by the Constitution to make a

submission to any Council meeting shall not apply to Remote Meetings. This right will be replaced with the ability to make written submissions.

- b) Written submissions that replace the right of a member of the public to speak for up to five minutes shall be limited to a written submission of no more than 500 words. (This limit shall be applied pro rata to any different time limit detailed within the Constitution.) Written submissions must be submitted to the Council by no later than midday, two working days before the meeting.
 - c) Where practicable, written submissions made as an alternative to a previous right to address a Committee will be read aloud at the Remote Meeting. Where multiple parties make written submissions, these will all be made available to the Members of the Committee, but it will not be appropriate to read all aloud. In such circumstances, an officer will provide a verbal summary for the Remote Meeting of the issues raised.
 - d) Where a member of the public has made a written submission they will be invited to attend the Remote Meeting to answer any questions that Members of the Committee might wish to ask in relation to their submission (but questions may only be asked to clarify a statement made and not to introduce new business). If members of the public attend as invited they will be in the Remote Meeting with a right to speak for only so long as they are receiving and answering such a question or questions.
 - e) Where a member of the public has submitted a written question to a Council meeting they will be invited to attend the Remote Meeting to hear the answer to their question and to ask any supplementary question they might wish (in accordance with the Constitution). If they attend as invited they will be treated as being in the Remote Meeting with a right to speak for only so long as they are asking and receiving the answer to such a question or questions.
 - f) The requirement for any questioner to say (eg) "I ask my question as set out in the Summons" is replaced by a requirement for the Chairman of the meeting to refer to the question and invite the Member responding to answer.
 - g) Nothing in this Resolution affects the ability of the Chairman of the meeting to determine how a question shall be answered as set out in the Constitution (eg at 4.12.5).
 - h) Members of the public will have no right to present a Petition in person during a Remote Meeting.
- 3 Any statutory right for a person other than a Member or Officer of the Council to attend, and/or speak at, and/or raise verbal questions at, a Remote Meeting shall not be affected by this Resolution.
- 4 The Monitoring Officer is authorised to publish a statement setting out the effect of this Resolution in the Constitution and in any other place considered necessary to bring it to the attention of anyone affected as she deems fit, and to publish any Protocol or Guidance to assist Members and others in the way in which the Council conducts Remote Meetings.

Appendix A

Extract from the Monitoring Officer's Report to the meeting of Council on 29 April 2020 (re-numbered from the agenda pack but otherwise unchanged)

Introduction

- 1 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 came into force on the 4th April 2020.
- 2 These regulations removed the legal obligation to hold local authority meetings at a specified physical location, by permitting Members and others attending the meeting to do so by way of 'remote attendance'.

Background

- 3 The regulations specify a number of requirements that must be met when a meeting is proceeding in this way, including:
That in order for a member to qualify as being in 'remote attendance', they must be able:
 - a) to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other members in attendance,
 - b) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting, and
 - c) to be so heard and, where practicable, be seen by any other members of the public attending the meeting.
- 4 In summary, this means that a Member who is in remote attendance must be able to hear and be heard by other Members in attendance, by members of the public who are entitled to speak at the meeting, and that Members can be heard by other members of the public.
- 5 Being able to see or be seen by other parties is not a necessity under the Regulations. Whilst the Council has a good degree of control over a) and c) above, there are risks with the requirement that a Member be able to hear and be heard by any party who is entitled to speak at a meeting. This means that if the technology of an individual in this category fails, and they are unable to hear the Members or to make themselves heard, the Members would be deemed to be absent. This would make the meeting inquorate and invalidate any decisions taken.
- 6 The Regulations do not override existing Constitutional provisions about how meetings are to be held. Therefore, when holding a virtual meeting, the Council will need to ensure that it complies with both the technical requirements of the Regulations and the relevant Constitutional rules.
- 7 There are a number of instances where the Council's Constitution permits public participation in meetings where this is not required by law, for example, public questions and the ability for parties to address Planning Committees. This report therefore proposes amendments to the manner of public participation in Remote Council Meetings, where this is currently permitted under the Constitution. Specifically, where the public have a right to speak at any meeting, it is proposed to amend that so that the public will have the right to make a written submission only.

- 8 This will mean that despite the existence of social distancing measures in place at this time, Members will be able to continue to take the decisions that are currently reserved to Members under the Constitution. It will also ensure that the public continue to have the ability to participate and engage in the decision making process, albeit by way of written rather than verbal representations.

Proposals

- 9 It is proposed that any non-statutory right granted by the Council's Constitution ("the Constitution") for a person other than a Member or Officer of the Council to attend, and/or speak at, and/or raise verbal questions at, a Meeting shall be replaced at Remote Council Meetings by:
- (a) a facility to permit members of the public to view or listen to the proceedings of the Meeting remotely;
 - (b) a facility to make a written submission to a Meeting where the Constitution gives a right to make an oral submission;
 - (c) a facility to submit a written question to a Meeting where the Constitution gives a right to ask a question at a Meeting.
- 10 Written submissions that replace the right to speak for up to five minutes at a Meeting, shall be limited to a written submission of no more than 500 words. (This limit shall be applied pro rata to any different time limit detailed within the Constitution.) Written submissions must be submitted to the Council no later than midday, two days before the meeting.
- 11 Where practicable, written submissions made as an alternative to a previous right to address a Committee will be read aloud at the Remote Council Meeting. Where multiple parties make written submissions, these will be made available to the Members of the Committee, but it will not be appropriate to read all of them in full during the Remote Council Meeting. In such circumstances, an officer will summarise for the Remote Council Meeting the issues raised.
- 12 Where a member of the public has the right under the Constitution to ask a question at a meeting of the Council, they will continue to have the right to ask the question at a Remote Council Meeting, but that will be done in writing only. Members of the public will have no right to ask a supplementary question during a Remote Council Meeting.
- 13 The Chairman of a Remote Council Meeting may determine to provide written answers only to questions submitted by members of the public. However, questions submitted to Remote Council Meetings and the responses provided will be published in full. Questions and answers will be published on the Council's website within five clear working days of the meeting taking place.
- 14 Members of the public will have no right to present a Petition during a Remote Council Meeting. However, Petitions may be submitted on line, providing that they meet the relevant criteria detailed in Appendix C to Part 13 of the Constitution.
- 15 It is considered that the above proposals ensure that the Council will continue to comply with all relevant statutory obligations, and will reduce the risk of decisions being challenged for reasons that are beyond the control of the Council. A Protocol for Remote Council Meetings has been developed, as has a Guidance note for Remote Council Meetings. A copy of the Protocol is attached to this report as Appendix A. The Protocol will be kept under review to ensure that the Council is operating appropriately and effectively.