

| | | | |
|--------------------------|--|--|--------------------------|
| Subject: | Council and Committee meetings post 6th May 2021 | | |
| Date of Meeting: | 13 May 2021 | | |
| Report of: | Executive Lead Officer, Strategy, Governance & Law | | |
| Contact Officer: | Name: | Abraham Ghebre-Ghiorghis | Tel: 01273 291500 |
| | Email: | Abraham.ghebre-ghiorghis@brighton-hove.gov.uk | |
| Ward(s) affected: | All | | |

FOR GENERAL RELEASE.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The purpose of this report is to seek the agreement of council regarding arrangements for meetings of Council, Committees and other bodies after 6th May 2021 when the legislation enabling the current arrangements for virtual meetings comes to an end.

2. RECOMMENDATIONS:

- 2.1 That Members note that the regulations under which we currently hold virtual meetings came to an end on 7th May 2021 and therefore the need to make different arrangements to comply with legal requirements;
- 2.2 That Members note the public health considerations and the measures proposed to minimise risk to health;
- 2.3 That Members agree the proposals set out in the protocol in Appendix 1 together with the supporting documents in Appendices 2 to 6 of this Report as a working arrangement to manage Council and Committee meetings during the time between 13 May and the end of July 2021;
- 2.4 That Members agree the enhanced delegations to Officers as set out in Appendix 1 and the flowchart in Appendix 2;
- 2.5 That Members authorise the Chief Executive and the Executive Officer for Strategy, Governance & Law to take such steps as are necessary to ensure that the arrangements for meetings are safe.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Council runs a committee system where all Member level decisions are taken by full Council, committees or sub-committees in accordance with the framework contained in sections 101 and 102 of the Local Government Act 1972 and schedule 12 to the same Act.

- 3.2 Paragraph 39 (1) of the Schedule 12 to the 1972 Act provides: "...all questions coming or arising before a local authority shall be decided by a majority of the members of the authority *present and voting* thereon at a meeting of the authority." (Emphasis supplied). This has generally been interpreted to mean Members have to attend meetings in person if they are to be able to vote.
- 3.3 Following the outbreak of the Covid-19 pandemic, the Government introduced legislation under the Coronavirus Act 2020 in the form of the **Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) (Amendment) Regulations 2020** ("the Regulations"). The Regulations authorised local authorities to hold "virtual" meetings of the Council and its committees, providing members are able to follow the proceedings and the public are able to hear, and if possible, view the proceedings.
- 3.4 The Regulations expire on 7th May 2021 and, in the absence of a new legislation to extend the Regulations, the Council will have to run its meetings in accordance with the law as it existed before the current enabling provisions were introduced, i.e. by ensuring that members attend meetings in person rather than remotely.
- 3.5 The LGA and many local authorities, including Brighton & Hove City Council, have been lobbying the Government to introduce legislation extending the current arrangements beyond 6th May. This has included a joint letter from leaders of all political groups in the council. However, in the government's view, that will require primary legislation and there was no time available before the 6th May in the parliamentary programme.
- 3.6 On 25 March 2021, Luke Hall, MP, Minister of State for Regional Growth and Local Government wrote to leaders of local authorities confirming that the government will not be introducing legislation extending the current regulations.
- 3.7 In addition, the government has issued updated guidance on use of Council buildings, including guidance on meetings. Some of the key recommendations are:
- For authorities with an executive system, use of Leader or Executive Member individual decision-making as a preference
 - Recommending delegation to Officers
 - For local authorities with no local elections, to bringing forward the date of annual Council to take place before 7th May
 - To provide facilities for the public to follow meetings remotely, to minimise need for in-person attendance
 - To conduct meetings by taking necessary precautions, including wearing of face cover, social distancing, sanitisation facilities.

The guidance was updated to take account of the recent court case and may accessed on the following link: [Guidance on local authority meetings](#)

- 3.8 There was a court case brought by the Local Government Group (representing local authority lawyers) the Association of Democratic Services Officers and one local authority (Hertfordshire CC) applying for a declaration from the High Court to the effect that the Local Government Act 1972 does not require attendance in person and virtual attendance counts as “attendance” for the purposes of the Act. The case was heard on Wednesday 21st April and the High Court ruled that attendance at meetings have to be in person to comply with the 1972 Act. The court also confirmed subsequently in a follow up judgement that the public have to be granted access to local authority meetings in person and virtual attendance by the public does not comply with the 1972 Act.
- 3.9 Given the above, most local authorities are making their plans to introduce revised arrangements. As most authorities have an executive (or ‘cabinet’) system, they are not as affected as those, like Brighton & Hove, who run a committee system. This is because, in an executive system, the Leader and any Executive Member can make decisions on their own - and do not need to convene a meeting. In these cases, executive functions constitute the overwhelming majority of council functions and therefore, the total impact of the changes on council business is significantly less for authorities with an executive system than in authorities with a committee system
- 3.10 We have checked what other local authorities are doing. These differ and include:
- returning back to the pre-Covid arrangements with all meetings held in person (physically;)
 - delegating all non-executive functions to officers after consultation with the Chair;
 - changing executive arrangements so that what was transacted by Cabinet is done by the Leader alone;
 - allowing a hybrid meeting where some members attend a physical meeting and can vote whereas others join virtually with the Chair’s agreement but can’t vote;
 - adopting voluntary “pared down” meetings where members agree voluntarily to reduce the number of members to attending to what is necessary to meet a quorum with the seats allocated proportionately;
 - hiring bigger venues or delegating powers to officers to do so;
 - restricting attendance of the press and the public; and
 - designating absence due to the arrangements as being authorised absence for the purposes of section 85 of the Local Government Act 1972 (member who fails to attend meetings for 6 months ceases to be a Member.)
- 3.11 Given the uncertainties, and to ensure measures are appropriate to Brighton & Hove, Officers obtained advice from Leading Counsel. His advice was that unless there is a change in legislation or the application for a declaration from the High Court is successful, the Council’s options are limited to:
- a. Introducing a pared down meeting arrangement, where Members agree a reduced number of members to attend meetings;

- b. Delegating powers to Officers to make decisions after consulting the Chair or Group spokespersons; but the delegation has to be unfettered - and not be required to be exercised in accordance with the wishes of the groups.
- 3.12 In Counsel's view, Hybrid meetings where some members attend remotely, even if they are not voting, is unlawful. Counsel also advised that a virtual advisory committee or panel whereby members meet virtually but, instead of making decisions, make recommendations to an officer who holds the legal decision-making power is not lawful. We are not clear what external advice, if any, other authorities have received.
- 3.13 Given the need to return to some form of physical meeting, a group of Officers from IT&D, Legal Services, Democratic Service, Premises, Health & Safety and Public Health have been working to find arrangements that would enable the Council decision-making process to continue to operate in a Covid-safe way. These took into account the legal position, advice from Health & Safety and Public Health as well as comments from Members. Although, on current projections, the situation with the pandemic is expected to improve with vaccination, it is not clear whether there will have been sufficient improvement before May and there may, of course, be a possible deterioration as the easing of the lockdown starts to take effect.
- 3.14 The proposals from the working groups are set out in the draft protocol in Appendix 1 to this report and the supporting appendices that follow. The arrangements are intended to cover only the period between 13 May (when we have the first P&R meeting after 7 May) and 15 July when we have full Council meeting.) This is a total of 15 meetings over a period of 9 weeks. A list of the meetings scheduled for that period is set out in Appendix 5. There is a meeting of the Health & Wellbeing Board scheduled for 27th July, but we have not decided the arrangements for this as it requires consultation with the CCG and other member organisations. There are no regular meetings planned during the summer recess with the next meeting being on 7th September. We will have a clearer picture in July as to what measures, if any, we will need to put in place for meetings from September onwards. These measures are only designed as an interim facility. Any subsequent changes would be subject to a further consideration by members before the end of the period covered by these proposals.
- 3.15 Government guidance recommends greater use of officer delegated powers in order to minimise the need for in-person meetings. The proposals in the appendices have been drawn up to reflect the continued desire for member oversight and scrutiny, and to reflect the preferred committee decision-making system in Brighton & Hove. The proposals are designed to facilitate a version of in-person decision making to ensure member oversight, while minimising risk in accordance with public health advice and ensuring officer delegated powers are still used proportionately.
- 3.16 The proposals reflect advice from Public Health and Corporate Health and Safety as well as corporate guidance on ways of working. These are set out below under Public Health Implications. In summary the response of Public Health is that the risk of Covid-19 infection will be reduced if options are sought that

reduce the number of people present, and minimise the duration of time people are spending in a larger group indoors, maximising physical distancing, wearing masks, enhanced cleaning regimes and requiring LFD testing. Both the public health of members, officers and members of the press/public is taken into consideration as part of the proposals in Appendix 1.

- 3.17 A full risk assessment and equalities impact assessment of changes in the draft protocol has been undertaken and a summary of the assessment is attached as Appendix 7 together with the Equalities Impact Assessment, which is attached as Appendix 8. The risk assessment is even more relevant now given the result of a survey of Health & Safety reps published by the TUC.

<https://www.tuc.org.uk/news/workplace-safety-representatives-sound-alarm-survey-reveals-widespread-covid-secure-failures-0>

According to the report, almost one in ten (9 per cent) said their employer had not carried out a risk assessment, while 17 per cent said they did not know whether a risk assessment had taken place. Of those who said their employers had carried out a risk assessment, more than a fifth (23 per cent) said they felt the risk assessments were inadequate.

3.17. Arrangements for Licensing Panels

Where Licensing Panels are held in accordance with the Licensing Act 2003, they are not subject to the requirement in the Local Government Act 1972 to hold meetings in person. It is therefore proposed that, until otherwise decided, these panels will continue to meet in person where that is allowed.

There are six Licensing Panels scheduled for May 2021 and therefore, in order to align with the Council's aim of minimising the number of in person meetings to those that are required by law, it is proposed that the Panels continue to take place virtually for this period. Arrangements are in place to ensure the live webcasting of the proceedings as well as specific invites for the press and parties to the Hearing and the ability to enable computer access to those making representation at HTH if they do not have internet access.

Licensing Panels dealing with licensing matters under other legislation will be subject to the same rules as other committees and sub-committees.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Officers considered the option of hybrid meetings or returning to normal physical meetings in full for all meetings. However, these were either unlawful or pose significant health and safety concerns. We will however monitor the situation and if there is change in the law or better practice from elsewhere, we will effect modifications to the proposed arrangement, seeking member agreement as necessary.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1. Given the short timescales, it has not been possible to consult with the local community.

6. CONCLUSION

- 6.1 The proposals summarised in Appendix 1 to the report provide a safe and proportionate way to proceed and are in line with external legal advice.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 Some of the measures such as hand sanitation, supply of masks and security will involve additional costs, but this is not quantified at this stage. It is expected that these costs will be covered by the ways of working budget which covers Covid-19 related arrangements for Council Offices

Legal Implications:

- 7.2 The legal implications are set out in the body of the report. As and when there are developments at national level either in term of legislation or caselaw, we will review them and take any steps necessary to make our arrangements compliant with legal requirements.

Lawyer Consulted: Abraham Ghebre-Ghiorghis Date: 23/03.2021.

Equalities Implications:

- 7.3 A high-level assessment of equalities implication has been undertaken. Some members of the community with mobility or other special needs may prefer to be able to access the meeting remotely. The subtitle system in Teams has enabled those who are hard of hearing and deaf to participate. Virtual meetings have also enabled greater participation in some meetings. A combination of webcasting and access to Teams for those presenting questions, petitions and deputations as well as some access to the meeting venue in special cases is included in the planning. The situation will be monitored on an ongoing basis and reasonable adjustments made.

Sustainability Implications:

- 7.4 The return to physical meeting will involve more travelling and therefore increased emissions. The full impact is difficult to gauge and will be part of the assessment for the longer-term arrangements.

Brexit Implications:

- 7.5 None

Public Health Implications:

- 7.6 **Advice on minimising risk of Covid with face to face council meetings:**

The risk of Covid 19 infection will be reduced for all those attending council committee meetings by

- Reducing the total number of people present
- Requiring LFD testing

- Reducing the duration of contact with others (i.e. length of meeting)
- Maximising the physical distance between all those attending the meeting (at least 2m and implement one way systems)
- Maximising fresh air ventilation by a combination of opening the doors and putting the ventilation system at a sufficiently high level to ensure effective ventilation.
- Safe positioning of seating (side by side rather than face to face reduces risk of infection spread)
- Wearing a face mask to an approved standard (all those present who are able to wear Type iiR Surgical Face Mask)
- Ensuring enhanced cleaning regimes in the Council Committee rooms

7.7 **current situation in the city – case rates and vaccination (if useful)**

In mid-March infection rates in the city reduced to a low of 25 /100,000 population. Schools have now re-opened, and more mixing is occurring as the city starts to open up. Last week we saw cases increase again by a third in the city. We are starting to see the benefits of vaccination for those over 60 in terms of less infection and hospital admissions, but it will be some months before all those over 50 and in our national priority groups have been vaccinated twice. Until that time and when local infection rates are low for all age groups minimising risks of infection in the workplace and public spaces through the city should be a priority to reduce the risk of serious illness and death. The risk from the more infectious new variants in circulation should not be underestimated.

7.8 **corporate guidance on ways of working and working from home**

In line with the Government's Covid roadmap, senior council officers will review the policy that staff work from home wherever possible no earlier than 21st June 2021. Any changes to the capacity of our offices will not take place until September at the earliest. This provides officers with the time needed to assess any new government advice before planning and implementing changes to the workplace. Existing restrictions include physical distancing, enhanced cleaning regimes, and a risk assessed approach for determining who can safely work from our office. Staff should only be working from our offices if they:

- Deliver a service that cannot be provided from home
- Need to use specialist equipment or software that can't be provided at home

There are also cases where staff may need to work from a council building for one of the following reasons:

- Working from home adversely affects their mental or physical health
- There is no adequate space available to work from home
- Working from home causes financial difficulties.

In these cases, a risk assessment must be completed by the staff member's line manager to protect the health and wellbeing of the staff member and their colleagues. The risk assessment will help staff balance the risk of staying at home with the risk of coming into the office, where they may be in the same space as people from outside of their household.

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1: Protocol for meetings after 6th May 2021 with plans

Appendix 2: Flowchart for decision-making

Appendix 3. Criteria for selecting items for inclusion on committee agenda

Appendix 4. proposed allocation of seats in Committees

Appendix 5: List of meetings

Appendix 6: Floor Plan for full Council

Appendix 7: Risk Assessment

Appendix 8 Equalities Impact Assessment

Background Documents

None