

Decision making during the Covid-19 Pandemic

Purpose

- 1.1 This report sets out arrangements for continuity of democratic decision making in the event of rates of transmission of Covid-19 continuing to increase and further restrictions being placed on the ability of councillors to meet in person.
- 1.2 Several options are detailed for the continuation of decision-making dependent on the severity of the situation, ranging from practical measures to reduce the risk of transmission at public meetings to the increased use of existing powers to delegate decisions to individual councillors and officers.
- 1.3 Two High Court rulings in April and May 2021 found that it would be unlawful for a local authority meeting held under the provisions of the Local Government Act 1972 to take place remotely, as councillors must be present at a single location to form part of the quorum of a meeting and that members of the public must have physical access to those meetings. The emergency regulations that permitted remote meetings during the early stages of the pandemic expired in May 2021 and have not been renewed.
- 1.4 The Government issued a call for evidence in Autumn 2021 on the permanent adoption of regulations permitting remote or hybrid meetings, the outcome of which has not been published at the time of writing.

Recommendation

- 2.1 To note the arrangements in place to ensure continuity of decision-making.

Reasons

- 3.1 To ensure compliance with the Council's statutory duties in relation to access to public meetings and relevant information.
- 3.2 To ensure the continuation of open, transparent, and democratic decision making during the Covid-19 pandemic.
- 3.3 To adopt measures that are proportionate to the level of risk, that protect the health and wellbeing of councillors, officers and members of the public attending meetings, as well as safeguarding the democratic decision-making capacity of the Council.

Supporting information

- 4.1 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 ('the Flexibility Regulations') came into force on 4 April 2020 and permitted remote meetings to take place.
- 4.2 The Flexibility Regulations expired on 6 May 2021 and were not able to be extended due to a sunset clause in section 78(3) of the Coronavirus Act 2020. Primary legislation is required to continue the express provision for remote meetings in England.
- 4.3 High Court rulings in April and May 2021 found that under the provisions of the Local Government Act 1972 meetings must take place at a single, specified location and that being present at such a meeting involved physical presence at that location. Moreover, the Local Government Act 2000 and the accompanying Executive Regulations require notice to be given of the time and place of a public meeting.

The rulings also clarified that such meetings should be open to the public and that online access did not in itself meet the statutory criteria.

- 4.4 The Council is therefore obliged to continue holding its meetings in public until the legislative position changes. Given the increased rates of transmission of Covid-19 and evidence suggesting the heightened transmissibility of the Omicron variant, the Council will encourage a series of practical measures to ensure constituted meetings can take place safely.
- 4.5 Meetings will continue to be held in accordance with the risk assessment and guidance produced by Democratic Services and used since May 2021, and the general risk assessments in place for the use of Council buildings. These measures include social distancing, use of face coverings and good hand hygiene. Members of the public will be encouraged to watch proceedings online, via the Council's YouTube channel.
- 4.6 By political agreement, councillors may voluntarily reduce the numbers in attendance at public meetings, provided that the quorum for a meeting is still met. The quorum for most the Council's constituted meetings is 25 per cent of the membership.

Democratic Services will facilitate this arrangement by issuing a revised allocation of seats that is proportionate to each political group's representation on the committee. Officer attendance at committees will also be minimised, with councillors encouraged to seek advice on reports following their publication and prior to the meeting taking place.

- 4.7 In consultation with the Chairs of Committees and Boards, meetings will be assessed on a case-by-case basis and may be postponed if there is no time sensitive business to be considered.

4.8 If on the advice of the Director of Public Health public meetings can no longer be safely convened, the Leader of the Council may take decisions on any executive matter in cases of urgency. Similarly, the Chief Executive holds a similar standing delegation in respect of urgent non-executive matters, in consultation with Group Leaders.

4.9 The Council's Constitution also includes a standing delegation to the Strategic Director of Communities and Place to act as follows:

Coordinating and managing emergency planning powers, mobilising the council's resources in the event of a major incident and liaising with the emergency services during the conduct of a major incident and subsequent recovery from an incident.

4.10 The standing delegation was utilised in the early stages of the Covid-19 pandemic during the first lockdown, when it was not possible to safely convene meetings and prior to the Flexibility Regulations coming into effect.

It is not considered proportionate to revert to this position under the present circumstances. However, should it be necessary to do so again, all decisions will be taken in consultation with the Leader of the Council and relevant Cabinet Member in respect of executive business and with political Group Leaders in the case of non-executive business.

Any decisions made under the delegation will be documented, reported and subject to full scrutiny, when it is appropriate for constituted meetings to be reconvened.

Public/stakeholder engagement

5.1 The Council's Senior Leadership Team met with Group Leaders at a briefing held on 15 December 2021, where it was agreed by those in attendance that practical measures would be implemented before any consideration is given to increased levels of delegation to either individual councillors or officers.

5.2 All parties present agreed to review arrangements in January 2022 and to consider further advice provided by the Director of Public Health depending on the circumstances at the time.

Other options

6.1 To convene meetings remotely in contravention of the High Court rulings of April and May 2021. This option is not advised on the basis that it would render decisions made under these arrangements liable to subsequent legal challenge and would set a damaging precedent in respect of the Council's regard for the rule of law.

6.2 To convene remote meetings of councillors held informally, that are subsequently ratified by decisions made under delegated powers to officers or individual councillors. Whilst this may offer a practical alternative, the decision maker must exercise discretion in their decision making regardless of the views of those consulted. To simply 'rubber-stamp' a decision would risk legal challenge on the grounds of pre-determination.

Financial and value for money issues

- 7.1 None directly arising.

Legal implications

- 8.1 The measures outlined in this report are a proportionate response to the current public health situation and seek to maintain the Council's statutory obligations under relevant legislation relating to the transparency and accessibility of public meetings (namely the Local Government Act 1972).
- 8.2 In respect of executive decisions, the Local Government and Public Involvement in Health Act 2007 provides for the Leader of the Council to appoint the executive and determine the executive scheme of delegation. Provided that decisions are consistent with the Budget and Policy Framework set by the Council, the Leader may determine that decisions are delegated to individual members of the Council Cabinet without the requirement to hold a meeting.
- 8.3 Licensing hearings are conducted under the Licensing Act 2003 and some experts have argued that the requirements of the Local Government Act 1972 therefore do not apply; if this were the case, hearings of the General and Taxi Licensing Sub Committees could be held remotely. This matter remains untested and should be considered carefully before any decision is made to convene remote hearings.

Climate implications

- 9.1 None directly arising.

Other significant implications

- 10.1 In response to the increased rate of Covid-19 transmission due to the Omicron variant, Councils have adopted a wide range of measures to ensure the continuity of decision-making. Local measures will reflect the risk appetite of each Council and the particular political circumstances of that authority.
- 10.2 The measures detailed in this report seek to strike the appropriate balance between democratic and accountable decision-making, whilst also protecting the capacity of the Council to make decisions whilst ensuring the safety of those in attendance at meetings.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu, Head of Legal Services	20 December 2021
Finance		
Service Director(s)	Emily Feenan, Director of Legal, Procurement and Democratic Services & Monitoring Officer	17 December 2021
Report sponsor	Simon Riley, Strategic Director of Corporate Resources	17 December 2021
Other(s)	Robyn Dewis, Director of Public Health	17 December 2021
Background papers:	None.	
List of appendices:	None.	