



## Local Democracy Working Group

### Update On Hybrid (Public) Committee Meetings

**Date:** 10 February 2021

**Key decision:** No

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Director of Law, Governance & HR

### Outline and recommendations

In response to the COVID-19 pandemic, the government temporarily removed the legal requirement for physical attendance at (public) Council committee meetings. This means that local authorities are able (until 7<sup>th</sup> May 2021) to hold public meetings remotely by using video or telephone conferencing technology and these Council meetings can be held in virtual locations as opposed to a physical place (i.e. a Council building).

An initial report on proposals to introduce hybrid (public) committee meetings (where some people are in physical attendance and others are participating virtually) was presented to the Local Democracy Working Group (LDWG) in September 2020. LDWG members agreed that, as part of their continued work programme, they would oversee the development of these proposals. The purpose of this report is therefore to provide the LDWG with a further update on work to date and next steps, in the context of the current deadline of 7<sup>th</sup> May 2021.

## Timeline of engagement and decision-making

**May 2018** – Mayor Damien Egan promises to launch a review that will make the Council *‘even more democratic, open and transparent’*

**July 2018** – Full Council agrees to establish a Local Democracy Review Working Group consisting of eight councillors. They are tasked with making recommendations about how the Mayor and Council could enhance their openness and transparency, increase public involvement in Council decisions and promote effective decision-making

**September 2018 to January 2019** – the Local Democracy Review Working Group gathers evidence from a wide range of residents, community groups and local councillors (including an online questionnaire completed by over 700 respondents, workshops at four secondary schools and attendance at over 40 events)

**January to March 2019** – the Local Democracy Review Working Group collects their evidence into a final report, which identifies 57 recommendations for change

**March to April 2019** – Mayor & Cabinet and Full Council agree the report and recommendations of the Local Democracy Review Working Group

**May 2019 to March 2020** – the retained Local Democracy Working Group oversees delivery of the recommendations

**December 2019** – the Local Democracy Working Group receives an update report on the delivery of recommendation #45

**September 2020** – the Local Democracy Working Group is extended so that it can complete its outstanding work and also consider the impact of COVID-19 on the three key themes of the review

**23 September 2020** – the Local Democracy Working Group receives an initial report on proposals to introduce hybrid (public) committee meetings

## Reason for lateness and urgency

The report has not been available for five clear working days before the meeting and the Chair is asked to accept it as an urgent item. The report was not available for dispatch on 2<sup>nd</sup> February 2021 due to officer capacity and the wider pressures of the Council's ongoing response to the COVID-19 pandemic. The report cannot wait until the next meeting (to be scheduled for March 2021) because this will be the final meeting of the Local Democracy Working Group and decisions are required to enable work to be concluded in advance (so that a final report can be presented to members).

## 1. Summary

- 1.1. The purpose of this report is to provide the Local Democracy Working Group (LDWG) with a further update on proposals to introduce hybrid committee meetings, following the initial report presented on 23<sup>rd</sup> September 2020.

## 2. Recommendations

- 2.1. The Local Democracy Working Group (LDWG) is recommended to:
  - Note the content of the report (specifically the work to date and next steps outlined in section 6)

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### 3. Policy context

- 3.1. The recommendations of the Local Democracy Review are consistent with all the Council's corporate priorities (outlined in the Corporate Strategy 2018-22) as effective decision-making underpins the delivery of every commitment within the strategy. However, the recommendations are particularly relevant under the priority of:

- *Open Lewisham* – Lewisham is a welcoming place of safety for all where we celebrate the diversity that strengthens us

### 4. Background

- 4.1. An initial report on proposals to introduce hybrid (public) committee meetings was presented to the LDWG in September 2020. LDWG members agreed that, as part of their continued work programme, they would oversee the development of these proposals and requested that a further update (outlining the timetable and resource implications) be presented at the next formal meeting.

### 5. Current legal position

#### Definition of 'hybrid meeting'

- 5.1. As outlined in the previous report, a hybrid meeting is any meeting (whether councillors only or councillors and public) which has some people in physical attendance and others participating virtually. It is sometimes referred to as a blended or integrated meeting. Technically, two or more people will need to be physically present for it to be considered a hybrid meeting.
- 5.2. The key question that needs to be asked for a meeting to be deemed as a hybrid meeting is – do the public, councillors and the press all have the choice of being able to attend in person to view and/or participate in a meeting that is being held in a Council building? If not, then there is no difference to holding the meeting remotely in a virtual location.

#### Context

- 5.3. In response to the COVID-19 pandemic, the government temporarily removed the legal requirement for physical attendance at (public) Council committee meetings. This means that local authorities are able (until 7th May 2021) to hold public meetings remotely by using video or telephone conferencing technology. Council meetings until 7th May are able to be held lawfully in virtual locations as opposed to a physical place (i.e. a Council building).
- 5.4. If there's no change in the legal position, then as from 7th May 2021, Council meetings will have to revert back to physical meetings only.
- 5.5. On 12th October 2020, the Local Government Association (LGA) wrote an open letter to the Secretary of State seeking an extension to the current May 2021 deadline (see Appendix A). To date, there has been no published response from the Secretary of State. The latest position (as at 5th February 2021) is that, if the government is not minded to amend the regulations<sup>1</sup> so as to extend the deadline then two professional bodies – Lawyers in Local Government (LLG) and the Association of Democratic Services Officers (ADSO) – having sought an Advice from a leading barrister will be taking steps to obtain a legal Declaration from the High Court. The hoped for legal

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<sup>1</sup> This refers to s.78 of the Coronavirus Act 2020 and specifically the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020.

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declaration that is being sought will confirm that the Local Government Act 1972 allows meetings to be held remotely or in hybrid form when the current provisions under the Coronavirus Act and Regulations expire on 6th May 2021. Basically, they will be arguing to the Court that remote attendance could satisfy the 1972 Act's requirements for somebody to be present at a meeting while the actual place of a meeting could be a digital place.

- 5.6. This situation is not certain by any means, the optimal position would be for primary legislation to allow remote meetings, but a declaration from the Court will certainly clarify the legal position under the 1972 Act and enable the lawful continuation of virtual and hybrid meetings from 7th May 2021 onwards.

## 6. Work to date and next steps

### Work to date

- 6.1. Since the last meeting with Members, Officers from IT, Governance and Policy have been meeting to plan logistically how to give effect to holding hybrid meetings.
- 6.2. Officers from the Council's IT and Governance teams have together attended a virtual demonstration by Auditel of their proprietary system which could be considered as a replacement for Microsoft Teams. Auditel's system is still in development but is aimed specifically for use by Local Councils. It promises to include voting software and promises to be more aligned to local government requirements than Microsoft Teams.
- 6.3. The Auditel system could readily be delivered via existing equipment in the Civic Suite or be deployable in community venues at additional cost. At present that cost is still unknown however. Officers who attended the demonstration noted the software company has not yet had any local authority take up its system and it is still in its development stage – so any authority that chooses to use the Auditel system will be for now, the very first and it will be very much in a trial status.
- 6.4. Civica (Modern.Gov), who provide the Council's Committee Management system are also close to trialing a workable system and officers expect to see this within the next fortnight; namely, by the end of February 2021.
- 6.5. The Governance team have been in contact with other councils and no local authorities are currently holding hybrid meetings.

### Next steps

- 6.6. Officers will be meeting fortnightly to keep this a) under review and b) to ensure logistics are in place so as to facilitate the successful holding of hybrid meetings. To that end, it may obviously mean opening the doors again of the Council Chamber of the Civic Suite in a safe and carefully managed manner. The health and safety of all persons physically attending a hybrid meeting is paramount and managing that effectively is part of our logistics planning.
- 6.7. The next steps for hybrid committee meetings are very much dependent on whether the 7<sup>th</sup> May deadline is extended:
- **Outcome 1: The regulations are extended beyond 7<sup>th</sup> May 2021.** In this scenario, the Council would continue to hold virtual meetings using existing software (Microsoft Teams) alongside planning for the introduction of hybrid meetings. It is likely that a phased approach would be taken, potentially involving pilot hybrid meetings for specific committees.
  - **Outcome 2: The regulations are not extended beyond 7<sup>th</sup> May 2021.** In this scenario, the Council will be required to revert back to holding all physical meetings. Again, using the Civic Suite as previously (or even perhaps

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necessary alternative locations).

- 6.8. For both outcomes, there are a number of issues to consider. This will include the implications of any future plans for the Civic Suite. Priority for us is ensuring the premises identified being suitable and safe (in terms of accommodating numbers of Members, officers and public and movability of IT resources). Given the volume of Council committee meetings held each year which could require a physical or hybrid attendance, logistical planning is being developed.
- 6.9. Given the issues that have been identified from our regular officer meetings, moving forward after this meeting, as part of our logistics planning, it is intended to hold a number of test / trial hybrid meetings, initially using officers only.
- 6.10. Practically, given the health and safety issues involved, we will not know until nearer May 2021 the guidance regarding social distancing requirements. If the situation remains as at present, then we know that less than 30 people only may safely attend at any one time in the Council Chamber.
- 6.11. Our planning for actually trialling hybrid meetings at present is obviously being hampered by the national lockdown. The Government has stated they will provide more information regarding this on February 22<sup>nd</sup> 2021.
- 6.12. Officers understand there is a keen interest from Members to hold hybrid meetings and officers will continue to meet fortnightly to plan for that to safely happen, but given the current national pandemic implications, this is clearly not a process that is likely to be given effect to over the following couple of months. Realistically, as the Coronavirus national situation becomes less severe moving towards May we will be moving into the pre-election period and attention will be focussed on that.
- 6.13. Officers will continue to work on this and will update Members regarding this matter.

## **7. Financial implications**

- 7.1. At present these remain unknown

## **8. Legal implications**

- 8.1. Further to the information set out within paragraph 5 above, here is the full statutory position. In response to the COVID-19 pandemic, the government has temporarily removed the legal requirement (provided under the Local Government Act 1972) for physical attendance at (public) Council committee meetings.
- 8.2. This means that local authorities have a temporary power (before 7<sup>th</sup> May 2021) to hold public meetings remotely by using video or telephone conferencing technology and these Council meetings can be held in virtual locations as opposed to a physical place (i.e. a Council building). Importantly, this means that all voting by Members that happens at virtual “places” is lawful and may be recorded as such.
- 8.3. Section 78 of the Coronavirus Act 2020 and specifically the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (the “flexibility regulations”) enable all local authority meetings to be held remotely and do not preclude physical meetings or a hybrid form of meeting where these can be held in accordance with public health regulations and guidance. It is for each local authority to determine what is appropriate in their specific circumstances.
- 8.4. The interim virtual procedure is able lawfully to continue up to 7<sup>th</sup> May 2021. On 12<sup>th</sup> October 2020, the Local Government Association (LGA) wrote an open letter to the Secretary of State seeking an extension to the current May 2021 deadline (see Appendix A). To date, there has been no published response from the Secretary of State.

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- 8.5. The very latest position is set out within paragraph 5 above.
- 8.6. The position now, from reading the Advice, is outlined below (see Appendix B for the full note):

“ ...

*(2) For the present situation to continue after 7 May 2021 with the use of remote meetings, the optimum position would be for further legislation to be passed to make the position clear.*

*(3) In the absence of such legislation, one resolution would be to obtain a declaration from the courts to obtain clarity as to the legal position under the pre-existing legislation.*

*(4) The Secretary of State does have (a) power under section 16 of the 1999 Act to make an Order to modify or disapply those restrictions for best value authorities and (b) power under the 2000 Act to make regulations governing executive decision-making bodies to hold remote meetings...”*

- 8.7. Subject to seeing the outcome of any related Court application for the proposed Declaration, the situation is that if the current flexibility regulations are not amended to extend the 7<sup>th</sup> May 2021 deadline, then from 8<sup>th</sup> May 2021, all Council meetings must revert to only being held in accordance with the provisions of the Local Government Act 1972 – and therefore physically, as occurred pre-COVID. That is crucial, because unless the flexibility regulations are amended to extend the date for holding virtual/hybrid meetings, councillors will have to be physically present for each meeting together to form a quorum for the purposes of ensuring necessary voting procedures are undertaken so that lawful decisions are made.
- 8.8. All Council meetings, whether held virtually, in hybrid form or physically in a premises, must be held safely. Holding such meetings lawfully during the COVID-19 pandemic means that each local authority will need to address the public health concerns and, in particular, their health and safety legal obligations. These relevant statutory obligations are pursuant to the Health and Safety at Work etc Act 1974, Ss. 2, 3 and 4, which provide statutory obligations owed by the local authority to its staff, contractors, and any other persons coming onto its property/buildings for the purposes of any such meeting.
- 8.9. This is an ongoing statutory duty of care placed upon local authorities. Given the COVID-19 situation, the need for risk assessments will be crucial, as will the method used by the Council on an ‘as and when basis’ to address the potential risk of serious harm to persons coming onto Council property/buildings to attend and/or to be involved with facilitating such hybrid meetings.
- 8.10. Further, given that holding hybrid meetings will mean that some persons will be physically attending Council premises for the meeting, the implications of the Equality Act 2010 will also need to be addressed. The s.149 duty (‘having due regard’) within the context of COVID-19 particularly needs consideration. Whilst COVID-19 is still present, the implications of an increased risk of COVID (in particular for our BAME communities and for others with recognised characteristics that are particularly vulnerable and so at heightened risk) should be noted for the purposes of holding hybrid meetings.

## 9. Equalities implications

- 9.1. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.2. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

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- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
  - Advance equality of opportunity between people who share a protected characteristic and those who do not
  - Foster good relations between people who share a protected characteristic and those who do not
- 9.3. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation, or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.
- 9.4. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made, bearing in mind the issues of relevance and proportionality. The Mayor and Council must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 9.5. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled 'Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice'. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11, which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

- 9.6. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- The essential guide to the public sector equality duty
  - Meeting the equality duty in policy and decision-making
  - Engagement and the equality duty: A guide for public authorities
  - Objectives and the equality duty. A guide for public authorities
  - Equality Information and the Equality Duty: A Guide for Public Authorities
- 9.7. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties, and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

## **10. Climate change and environmental implications**

- 10.1. There are no specific climate change and environmental implications arising from this

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report.

## 11. Crime and disorder implications

11.1. There are no specific crime and disorder implications arising from this report.

## 12. Health and wellbeing implications

12.1. There are no specific health and wellbeing implications arising from this report.

## 13. Background papers

- [Update On Proposals To Introduce Hybrid \(Public\) Committee Meetings](#)

## 14. Glossary

Term	Definition
Hybrid or Blended Meetings	A hybrid meeting is any meeting (whether it's just councillors or councillors and public) which has some people in physical attendance and others participating virtually at the same time.
Local Democracy Review	The Local Democracy Review was a councillor-led review of local democracy in Lewisham, which made recommendations about how the Mayor and Council could enhance their openness and transparency, increase public involvement in Council decisions and promote effective decision-making.
Local Democracy Working Group	The Local Democracy Working Group is a group of eight councillors who are responsible for implementing the recommendations of the Local Democracy Review during 2019/20. It has now been extended until January 2021.

## 15. Report author and contact

15.1. If there are any queries about this report, please contact Petra Der Man (Principal Lawyer) by email ([Petra.DerMan@lewisham.gov.uk](mailto:Petra.DerMan@lewisham.gov.uk)).

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