

Report of the Monitoring Officer – Proposed temporary democratic and decision making arrangements

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1. Summary of proposals

- 1.1** This report from the Monitoring Officer sets out proposals for the Council to consider revising the democratic and decision making arrangements. The proposals recommend a temporary change by converting all current non-executive committee meetings to advisory boards which would be held virtually and enable members and other stakeholders to participate and give a steer to officers to consider when taking formal decisions using delegated powers.
- 1.2** 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 where all participants could participate remotely and elected members could also vote on decisions remotely. 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) were used by the County Council throughout the rest of 2020 and into 2021 to hold virtual committee meetings but they ceased to have effect after 6 May 2021.
- 1.3** Generally both member and public involvement was higher through virtual meetings than through traditional face to face meetings (where no live broadcast and participation facility was provided).
- 1.4** Since May 2021, the County Council has returned to face to face committee meetings with covid 19 safety arrangements in place, which has included live broadcasts of the proceedings to enable the public, partners and non-committee members to participate remotely.
- 1.5** In parallel, the Council along with other councils and through the Local Government Association has been lobbying for the Government to bring forward primary legislation to enable virtual / hybrid meetings to take place again so that remote voting can be permitted. Despite many councils responding to Government consultation on this matter in June 2021 the Government is yet to announce its proposals for bringing forward legislation regarding virtual/hybrid meetings.

- 1.6** Council will be aware of the growing public health issues and increased Covid 19 infection rates that are being experienced nationally and within Somerset. National guidance suggests that sickness absences could be as high as 25% and high absences are already being experienced in the NHS.
- 1.7** There are currently a range of options available to how the Council could proceed ahead of the next Annual General Meeting in May 2022:
- 1) Continue to hold face to face meetings, managed to reduce Covid 19 risks as best as possible for all involved
 - 2) Continue to hold Full Council meetings face to face and all other meetings to be held remotely with officers using delegated powers to take any decisions following members giving a steer on proposed decisions *
 - 3) Continue to hold Full Council meetings face to face and all other meetings to be held on a hybrid basis with managed attendance to limit numbers present to a minimum and for all other participants to join remotely *

*- in relation to the Cabinet it is for the Leader of the Council to determine what arrangements he wishes to put in place

- 1.8** After evaluation of the options and following consultation with the Cabinet and SLT, the Monitoring Officer is recommending option 2 above to the Council.

2. Recommendations

2.1 Democratic and decision making arrangements

That the Council:

- 1) Agrees that all council meetings that are not executive in nature should be held virtually as 'advisory boards' until the Annual General Meeting in May 2022, with committee members expressing a 'minded to' steer in respect of recommendations set out in officer reports.
- 2) That as a temporary change to the Scheme of Delegation the Chief Executive, relevant Director, Head of Service or Strategic Manager be authorised to exercise delegated powers to make non-executive decisions in the light of 'minded to' steers expressed by members in the virtual 'advisory boards'.
- 3) Agrees that all non-executive meetings where it is an Administering Authority meet virtually on the same basis as those meetings set out in recommendations 1 and 2, subject to partner authorities agreeing to that approach and delegations to officers being in place.
- 4) Asks the Leader to confirm his proposed meeting arrangements for the Cabinet.

- 5) Agrees that all members should be given a dispensation under section 85 of the Local Government Act 1972
- 6) Authorises the Monitoring Officer to take forward the implementation of the recommendations above and make appropriate temporary changes to the Council's Constitution and Scheme of Delegation to allow those remote meetings (advisory boards) to function as consultative bodies and delegate decisions that would otherwise been taken by those meetings to relevant officers until the Annual General Meeting in May 2022 where the Council will then review the arrangements.

Reason for Recommendations: To ensure that democratic decision making is able to continue effectively and safely, and ensuring that decision making is transparent and that local residents and other stakeholders are appropriately represented and able to participate safely.

3. Background

3.1. Covid - 19 and democratic arrangements put in place to date

3.1.1 The Covid-19 (coronavirus) outbreak has been designated a global pandemic by the World Health Organisation. Globally, countries continue to deploy a range of measures to contain the spread of the virus and its impacts on public health and safety.

The Covid-19 pandemic brings challenges due to its global extent and likely long duration. The council, and the whole of the UK, has been involved in the pandemic response for over 21 months already. The UK's emergency response and incident management processes have been operating in a situation that will be unprecedented in the lifetime of most people.

3.1.2 As a Local Authority Somerset County Council has a duty under the Civil Contingencies Act 2004 to plan and prepare for emergencies alongside other agencies. Whilst Covid-19 is a health led incident, local authorities have a planning, response and recovery role working alongside other organisations to deliver and coordinate a system wide response. The Authority has a duty under the Act to plan for and maintain the business continuity of its critical services.

3.1.3 The Council began to stand up its response to Covid-19 in February 2020, initially mobilising the Public Health Incident Room following the first confirmed case of coronavirus in the UK on 29th January 2020. This was closely followed by the SCC incident room in early March 2020. The Avon and Somerset Local Resilience Forum (ASLRF) declared a Major Incident on 19th March, triggering the local responding organisations to design and mobilise multi-agency workstreams and groups fit for managing the response.

3.1.4 The Government put in place emergency legislation including the Coronavirus Act during March 2020 and urged councils to continue delivering essential services

including supporting vulnerable people and ensuring that important functions that have an economic impact such as planning and highways, continue to be delivered as close to normal as possible.

- 3.1.5 The legislation governing council decision making dates from 1972, a time before the technology to enable online remote meetings existed. 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.
- 3.1.6 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.
- 3.1.7 In April 2020, the Secretary of State for MHCLG agreed the Local Authorities and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020. These regulations gave local authorities new powers to hold public meetings virtually by using video or telephone conferencing technology.
- 3.1.8 The Council embraced the new regulations and moved rapidly to implement virtual committee meetings from early May using Microsoft Teams technology.
- 3.1.9 The Council's Constitution and Scheme of Delegation already provided delegated powers to the Chief Executive (and any officer authorised by the Chief Executive) to take any and all actions necessary to protect and / or further the best interests of the Council, the County of Somerset and the public.
- 3.1.10 The Constitution also empowers Senior Leadership Team officers to manage the services for which they are responsible for commissioning and delivering and to act to safeguard, protect and promote the interests of the Council.
- 3.1.11 Both of these provisions have existed for many years and mirror arrangements in many other councils in England. These arrangements are critical to enable service delivery during an emergency and have been used when emergency events have previously arisen such as the Somerset floods in 2014.
- 3.1.12 Extensive corporate work by Democratic Services and Corporate ICT enabled the Council to put in place new ways of working within a very rapid time for members, public, partners, press and staff to participate in virtual committee meetings and virtual school appeals hearings from early May 2020 until May 2021. These arrangements were supplemented by members' briefing meetings convened by the Chief Executive and supported by the Senior Leadership Team.
- 3.1.13 The Council also provided virtual meeting arrangements to a number of

partnership meetings that it administers such as the Heart of the South West Joint Committee, Avon & Somerset Police and Crime Panel and Somerset Waste Board.

- 3.1.14 Following the expiry of the virtual meeting regulations in May 2021, the Council put in place face to face and 'hybrid' meeting arrangements with a range of Covid 19 safety measures for all participants. 'Hybrid' meetings are meetings where members and other participants can attend a venue as well as other members and the public participating in the meeting by virtual means.
- 3.1.16 Many other councils have followed the same approach as the County Council but some councils have continued with quasi virtual meeting arrangements since May 2021.

3.2.1 **Democratic meeting arrangements since May 2021**

Covid 19 safety measures for face to face and 'hybrid' meetings have seen an increased level of meeting support and resources to deliver them compared to the pre-pandemic position. There have also been growing challenges with achieving the level of member attendance required for a meeting to take place, principally due to concerns about personal safety and the safety of family members. Similar concerns are expressed by staff supporting those meetings.

- 3.2.2 In addition to this, since December there are growing safety and resilience concerns for delivering the face to face and 'hybrid' meetings at the same time as the council is managing essential service delivery, supporting the pandemic response and the Local Government Reorganisation in Somerset in the midst of the latest significant national and local increases in Covid 19 infection rates.

- 3.2.3 There are currently a range of options available to how the Council could proceed ahead of the next Annual General Meeting in May 2022:

- 1) Continue to hold face to face meetings, managed to reduce Covid 19 risks as best as possible for all involved
- 2) Continue to hold Full Council meetings face to face and all other meetings to be held remotely with officers using delegated powers to take any decisions following members giving a steer on proposed decisions *
- 3) Continue to hold Full Council meetings face to face and all other meetings to be held on a hybrid basis with managed attendance to limit numbers present to a minimum and for all other participants to join remotely *

*- in relation to the Cabinet it is for the Leader of the Council to determine what arrangements he wishes to put in place

After evaluation of the options and following consultation with the Cabinet and SLT, the Monitoring Officer is recommending option 2 above to the Council.

- 3.2.4 Option 2 would involve all non-executive committee meetings (except Full Council) being temporarily converted into 'advisory boards' that meet remotely and with the members of the advisory boards (the current committee members)

giving a 'minded to' steer on recommendations set out in officer reports. Other members, the public and other stakeholders would still be able to observe and participate in the advisory boards. After the advisory boards, officers with delegated powers would make the formal decisions after considering the debate at the advisory boards and the 'minded to' steers expressed by members at the virtual meetings of the advisory boards.

3.2.5 Careful consideration has been given to the legal status of a "minded to" steer 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.

3.2.6 It should be highlighted that Full Council will still be required to meet on a face to face meeting basis. However, it is scheduled to only meet in late February and arrangements have been made to hire a large meeting room in an external venue where social distancing and other public safety measures will be used.

3.3.1 **Dispensation under Section 85 of the Local Government Act 1972**

Councillors 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).

As "attendance" at the proposed 'advisory boards' set out in this report will not count as attendance for the purposes of section 85 of the 1972 Act it is recommended that the Council grants a dispensation for all councillors.

4. Implications

4.1 Legal & Risk: This report complies with all current legal requirements and the proposals can be further developed in the light of any changes made by central government. The main risk to the Council is in the instance that Full Council does not support the proposals set out in this report which could hamper its democratic arrangements over a critical period in the pandemic response and LGR work.

4.2 Financial, equalities, sustainability and community safety implications: There are no specific equalities implications arising from any of the proposals in this report. The proposals recommended in this report will reduce carbon dioxide emissions from councillors, the public and other stakeholders not having to drive to venues to attend committee meetings in person. There are no specific sustainability or community safety implications as a result of these proposals.

The recommended option 2 will improve the Council's current safety measures for members, the public and other stakeholders.

The main financial implications will be reduced meeting costs, travel costs and the reallocation of travel time and meeting set-up resources to support delivery of council priorities in this critical period.

5. Background papers

- 5.1** Council's Constitution
- Civil Contingency Act 2004
- Emergency democratic and decision making arrangements – 28 March 2020
- Coronavirus Act 2020
- Review of emergency democratic and decision making arrangements – Full Council meetings in July and November 2020
- Report of the Monitoring Officer – Full Council meeting May 2021