

By: Ben Watts, General Counsel (Monitoring Officer)

To: Selection and Member Services Committee – 29 July 2020

Subject: Update on Council Meetings

Classification: Unrestricted

Summary: This paper is presented to provide Members with background information and advice to inform a discussion around future planning for meetings during and beyond the restrictions put in place for the Coronavirus pandemic.

Introduction

1. On Tuesday 17th March 2020, in line with Government guidance, we took the decision to reluctantly cancel County Council and Cabinet which had already been published. On that date, I wrote to all Members and advised that we would be suspending all Committee meetings until further notice and instructed Democratic Services to cancel all diarised Committee meetings between 20th March and 20th May 2020. The final formal meeting to take place was Personnel Committee on 19th March 2020.
2. In my role as Monitoring Officer, I have a number of statutory and constitutional obligations to ensure good governance, lawful decision-making and probity which persist in the current emergency. Accordingly, I have kept all Members updated regularly in relation to Council meetings and have specifically briefed Cabinet and the Opposition Leaders in framing my thoughts that are reflected in this paper.
3. The Government passed emergency regulations which allowed local authorities to conduct virtual meetings from April 4th 2020. In just over a fortnight, Kent County Council established and trialled a virtual Cabinet meeting. Formal meetings resumed on 27 April with Cabinet followed by HOSC, Scrutiny and a range of other Committees held in briefing format in the lead up to a full County Council meeting in mid-June. All meetings are currently listed to be held virtually until 30 September 2020 at the earliest.
4. At the briefing meeting for Selection and Member Services in June 2020, I committed to bring forward a paper to support a discussion between Members about the conduct of meetings. I am aware that many Members have strong and contrary views as they have been expressed to me over the past few months. In facilitating such a discussion, I have set out in the proceeding pages some of the issues that I would ask Members to bear in mind when expressing a view as part of any debate.

5. To inform the discussion at Selection and Member Services further and to assist me in my statutory duty to determine the appropriate lawful governance for the Council, a survey will be circulated to all Members and key staff who clerk, attend and present at meetings to seek their views as we look at meeting arrangements in the coming months.
6. I will provide a short presentation at the start of this item at the meeting on 29th July 2020, to capture the outcomes from the survey and discussions with other Monitoring Officers.

Virtual Meetings – Legal Position

7. The Government introduced provisions for virtual meetings so that local authorities could continue to transact democratic business. Kent County Council quickly adapted and utilised the Microsoft Teams platform to conduct meetings followed by Microsoft Teams Live Events for formal meetings. This ensures that meetings are available to view by members of the public in real time.
8. Our current arrangements are compliant with the legislation around meetings and in my professional view represent the safest way to transact democratic activity from a governance, legislative and Health & Safety perspective.

Returning to Physical Meetings – Legal Position

9. Notwithstanding the relative success of our virtual meetings, it is important to continually review the role of physical meetings not least because the virtual meeting regulations are currently only in place until May 2021.
10. Despite the comments from the Prime Minister on 17 July 2020 and the publication of new regulations (The Health Protection (Coronavirus, Restrictions) (No. 3) (England) Regulations 2020) on the same day, the position in statutory terms remains unchanged from the earlier legislation published on 4 July 2020.
11. From Saturday 1 August 2020, the Government is updating their advice on going to work. Instead of advising people to work from home as a default, the message has changed. Government “are going to give employers more discretion, and ask them to make decisions about how their staff can work safely”. The Prime Minister has said that this could mean “continuing to work from home”, “or it could mean making workplaces safe by following Covid Secure guidelines”. Employers are asked to “consult closely with their employees, and only ask people to return to their place of work if it is safe”. The Prime Minister clarified that it is “up to employers” what decisions they take, and that “it is not for Government to make that decision”.
12. The earlier Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 set out some of the new rules around gatherings and are relevant to the issue of meetings. It is important to understand that these rules

need to be read in conjunction with other statutory and regulatory duties on the Council which include the key health and safety legislation.

13. The Regulations do not prevent local authorities such as Kent from holding physical meetings but this does not mean that we should hold such meetings. The Council's Health and Safety and other legal obligations (which are significant) persist and are specifically mentioned in the regulations.
14. The legal advice is therefore:
 - a. it would remain unwise to hold a physical meeting, whether hybrid or not, unless there was a real need to do so which could not be met by remote meeting, and
 - b. even if there was a real need of this nature, the numbers of people meeting physically should be kept as low as possible and any meeting would need to be carefully risk assessed
 - c. the equalities implications of any such meeting would need to be considered including the equalities impact on those attending the meeting as Members/Presenters, those supporting the meeting as well as the public.
15. In circumstances where a meeting was held physically, whether hybrid or not, the Regulations and the other legislation and guidance require us to set out clearly why such a meeting needs to take place and why.
16. The Regulations are cleverly drafted and transfer liability and responsibility to building owner/operators such as KCC to ensure that legal obligations are met. The comments of the Prime Minister are also clear as to where the liability for this judgement rests. If an individual or their estate is able to demonstrate that KCC did not discharge those legal obligations or that there was not a "real need" for the meeting then the Council and decision-making Members and Officers may face legal proceedings.
17. The above notwithstanding, part of the purpose of the survey and the discussion at Selection and Member Services is to carefully take the views of Members and to understand whether there are circumstances that might fit the legal test.

Returning to Physical Meetings

18. Given the guidance and legislative position, there are a number of assessments that need to be undertaken before buildings are opened and before they are authorised for certain uses. Members have been advised already of some of the work that is ongoing in this regard. Building and Health & Safety assessments are ongoing across the estate and would form part of any return to physical meetings. Members will also be aware that work is underway to explore the technology possibilities around hybrid meetings – which would also require the same assessment process.

19. At the moment, the Council continues to deal with an operational emergency and is structured accordingly, with resources and priority redirected to those in greatest need supporting our vulnerable communities.
20. It is also vital as part of my statutory and constitutional duties, that I am able to make arrangements for all Members to attend meetings.
21. Governance, Law and Democracy staff are currently deployed virtually and our governance is modelled accordingly to ensure that we are able to continue to conduct meetings and make decisions lawfully. The Council as an employer has duties under the Work and Families Act, Employment Rights Act and Equality Act amongst others. These are unusual times and it is not about the motivation of the staff who in many cases have worked considerable additional hours during the lockdown period to help us respond to needs.
22. Staff are currently continuing to act as carers for children and elderly family members. Schools and summer childcare settings are not available in the usual way which impacts on staff availability for physical meetings. We also have staff (and their families) who have disabilities or medical conditions for whom the risk of contracting COVID is particularly severe.
23. Ordinarily, many of our staff attend County Hall via public transport and are concerned about the additional risks attendance via public transport places on their health and wellbeing. Those same staff have been resourced to work from home and have been doing so successfully which is why the “real need” question is so important.
24. In terms of any physical meetings, these would have to take place in the Council Chamber and assessments will need to be conducted over the coming weeks as to how we can make any meeting compliant with the Government’s guidance, the regulations or existing legislation.
25. We will need to rearrange the webcasting, timing and technology facilities which require two operators and are currently housed in a room that is not big enough to socially distance. Similarly, we will need to find solutions for sterilising microphones (which given the risks around COVID present a particular challenge) and for entry and exit from the Chamber for multiple attendees. It will not be possible for multiple users to use the same microphone in a single session so that will require thought.
26. Whilst it is accepted that a number of shops and pubs have reopened, their operating model is considerably different to that at County Hall and whilst not insurmountable it requires thought, time and resources to be committed at a time when lawful virtual meetings are in place.

27. Ultimately, it will not be possible to eradicate risk entirely and accordingly it is vital that we are able to clearly and calmly explain the “real need” for meetings to take place physically. It is also important to note the successes brought by virtual meetings as we move forward and for the continued and increased opportunities of webcasting through our new virtual platforms.

Next Steps

28. After the discussion at Selection and Member Services, I will then speak with the Leader of the Council and the Opposition Leaders about arrangements for the period from September 30th onwards. This will include updates regarding the potential for hybrid meetings. This is a situation that is constantly moving and further updates will be provided to each meeting of Selection and Member Services.

Recommendation:

The Committee is requested to:

- a) NOTE the Report
- b) AGREE for a full risk assessment to be carried out and circulated to all Members of the Council on the potential for formal meetings in the Council Chamber by 31 August 2020
- c) AGREE that the arrangements for meetings for the period from 30 September 2020 – 31st December 2020 be further discussed between the General Counsel, Opposition Leaders and a further paper brought back to this Committee in September 2020.

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Background Information: none