

Committee:	Date:
Policy and Resource Committee Court of Common Council	8 April 2021 15 April 2021
Subject: Audio-visual Participation in Formal Meetings	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	4, 5 and 9
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Town Clerk, Remembrancer and Comptroller and City Solicitor	For Decision
Report author: Angela Roach, Assistant Town Clerk and Director of Committee and Members Services	

Summary

1. The introduction of virtual meetings was first contemplated by the Policy and Resources Committee in November 2018. It was considered a sensible means of facilitating greater participation in meetings and at that time the Committee agreed to pilot virtual meetings with the Board of Governors of the City of London Freeman's School. A number of other Members not associated with that Board were also keen for remote access to meetings to be considered with a degree of permanency to better assist participation in the democratic process and the work commitments of Members and Officers. They have continued to voice this view since that time.
2. Last year's outbreak of COVID-19 together with the restrictions on gatherings and travel which followed, brought the issue of virtual meetings to the forefront for all public bodies. It resulted in a rapid move to virtual meetings in the UK with Government introducing temporary, emergency, measures (the *Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020*) enabling formal decision-making meetings to be undertaken virtually until 7th May 2021.
3. Virtual meetings have introduced more flexibility, helped to facilitate greater public scrutiny, aided Members and officers in conducting business more efficiently and are now operating with a high degree of success nationally. Notwithstanding this, the Ministry of Housing, Communities and Local Government (MHCLG) have confirmed that it will not be extending measures beyond 6th May 2021 to enable local authority meetings to continue virtually or indeed enable us to move towards a hybrid format as we would have liked.

4. Part VA of the Local Government Act 1972 covers public access to meetings, agendas and reports, the inspection of minutes and background papers, etc. and applies to the Common Council in its capacity as a local authority and police authority. Without the modifications introduced by the 2020 Regulations the legislation prohibits formal meetings taking place virtually. This means that in order to participate in discussions and vote on decisions or recommendations, Members must be present physically at the meeting at which the matter is considered. The legislative framework does not apply to informal meetings such as call-overs and working parties.
5. The Court has in the past voluntarily chosen to apply Part VA to all of its formal meetings including those with non-local authority and non-police authority functions. The need for public access to meetings in accordance with Part VA is referred to in Standing Orders No. 4 and 32 but the Standing Orders also give the Court and its Committees scope to disapply those provisions in respect of non-local authority and non-police authority functions. A schedule setting out the status of the committees in terms of the functions they cover is attached as an appendix to this report for your information.
6. Notwithstanding the fact that committees can, if they so choose, change the way the legislation is applied, officers are of the view that rather than leaving this to individual committees and addressing the issue in a piece-meal manner, any disapplication is best dealt with holistically, with a corporate, policy, decision being taken and applied across the board.

Recommendations

7. Members are asked to note the content of this report and:-
 - i. determine whether, subject to the approval of the Court, Members should continue to have the flexibility to participate in Court and committee meetings remotely, when exercising non-local authority and non-police authority functions;
 - ii. subject to the approval of recommendation (i) above, resolve to continue voluntarily applying Part VA of the Local Government Act 1972 to the Common Council's non-local authority and non-police authority functions beyond 6th May 2021 as amended by the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020;
 - iii. authorise a change to the wording on the title page of non-public committee reports which relate to the Common Council's non-local authority and non-police authority functions to make it clear that Part VA of the Local Government Act 1972 is being voluntarily applied;
 - iv. consider not resuming physical meetings until after 17th May as suggested by the MHCLG, by which time the Department envisages a much greater range of indoor activities taking place in line with the Government's Roadmap. Noting that, subject to the approval of recommendation (i) above, all decisions required

between 7th - 14th May would need to be dealt with under the urgency procedures including those destined for the Court on 13th May;

- v. consider whether Members who need to return to Guildhall for face-to-face meetings should be encouraged to undertake regular lateral (rapid) flow tests prior to coming into Guildhall in the same way staff, who have to attend the workplace to perform duties that they cannot do at home, are being encouraged to do; and
- vi. the Town Clerk being authorised to make such amendments to Standing Orders and related corporate governance documentation as is required to give effect to the above decisions.

Main Report

Background

8. Part VA of the Local Government Act 1972 was inserted by the Local Government (Access to Information) Act 1985. It covers public access to meetings, agendas and reports, the inspection of minutes and background papers, etc. and applies to the Common Council in its capacity as a local authority and police authority. As drafted, the legislation prohibits formal virtual meetings. In order to participate in discussions and vote on decisions or recommendations, a Member must physically be present at the meeting at which the matter is considered. In 1986 the Court of Common Council voluntarily agreed to apply Part VA to all of its formal meetings regardless of whether the relevant functions were financed via City Fund (ratepayers' money), City's Cash or Bridge House Estates. It should be noted that this would not prohibit Members participating in informal meetings such as call-overs and working parties remotely.
9. The introduction of virtual meetings in relation to the Common Council's non-local authority and non-police authority functions was first contemplated by the Policy and Resources Committee in November 2018. It was considered a sensible means of facilitating greater participation in meetings and at that time the Committee agreed to pilot virtual meetings with the Board of Governors of the City of London Freeman's School. The School Board was attracting limited interest from Members wishing to serve on it and the feeling was that this was largely due to the difficulties associated with Members needing to juggle work commitments with travel to and from Ashted in Surrey to attend meetings. Other Members not associated with the Board were also calling for remote access to meetings to be considered with a degree of permanency to better assist participation and the work commitments of Members and Officers and allow for some modernisation of the Corporation's practices. They have continued to voice this view since that time.
10. Last year's outbreak of COVID-19 together with the restrictions on gatherings and travel which followed, brought the issue to the forefront for all public bodies. It resulted in a rapid move to virtual meetings in the UK with Government introducing temporary, emergency, measures (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 of Meetings Regulations*")

enabling formal decision-making meetings to be undertaken virtually until 7th May 2021.

11. With the advent of improved technology and new ways of working, virtual meetings have been operating well since that time. They have introduced more flexibility, helped to facilitate greater public scrutiny, aided Members and officers in conducting business more efficiently and are now operating with a high degree of success nationally. The City Corporation's committee rooms have been upgraded and can now support this new way of working. A project is also underway to upgrade the AV system and equipment used in Guildhall's event spaces in order to better support the delivery of both the City Corporation's and commercial events in future.
12. Notwithstanding this, the Ministry of Housing, Communities and Local Government (MHCLG) have confirmed that it will not be extending measures to enable local authority meetings to continue virtually or indeed enable us to move towards a hybrid format as had been hoped. MHCLG had previously advised that extending the facility for councils to continue to meet remotely, or in hybrid form, would require primary legislation. In confirming its view more recently, the Department have also commented that with the successful rollout of the vaccine and the reduction in cases of Covid-19, risks to Members meeting in person will reduce significantly. It cited the ability of public bodies to utilise existing powers to delegate decision-making to key individuals as another reason and whilst the Flexibility of Meetings Regulations end on 6th May, the MHCLG have suggested that local authorities could also consider not resuming physical meetings until after 17th May by which time it is envisaged that a much greater range of indoor activity will be taking place in line with the Government's Roadmap. A copy of the Minister for Regional Growth and Local Government's letter is attached as an appendix.
13. Nevertheless, the Minister is encouraging Councils to share their experiences, via a call for evidence, about how remote meetings have taken place during the pandemic. Its purpose is to inform any potential legislation regarding their use beyond the coronavirus outbreak and will close on 17th June 2021. It is important that the City Corporation responds to this accordingly.
14. The Local Government Association as well as a number of pan-London agencies all made representations to MHCLG prior to its decision and will continue do so in light of the most recent outcome. The Association of Democratic Services Officers (ADSO) with the help of Lawyers in Local Government (LLG) is seeking a declaratory judgment in the High Court that the Act does in fact allow remote cabinet and committee meetings to take place (contrary to the generally accepted position).
15. In the meantime, like us, local authorities are now considering their options for enabling safe, physical, attendance at meetings including looking at the use of larger premises and any associated cost.
16. The requirement for people to socially distance is still in place and is likely to remain so for some time, making it difficult to accommodate some of the City Corporation's larger committees without the use of larger event space and incurring significant cost. For example, there are 32 Members on this Committee and its usual meeting place,

Committee Rooms 3 and 4, can only accommodate a maximum of 18 people in a safe, socially distanced, manner. This excludes access to a public gallery. Moving the meeting to alternative event space such as Great Hall will come with a cost (approximately £6,848.50 ex. VAT for the first meeting and £5,400 for subsequent meetings), should we wish to continue with livestreaming and/or record meetings (which in our view is desirable to assist managing physical attendance and to maintain greater transparency). If physical meetings are to resume before 17th May, a total of 6 meetings would potentially have to be held in Great Hall due to the size of membership and limited capacity in the committee rooms. They would need to be supported by an external contractor at a cost of approximately £33, 848.50. That said, streaming is not legally required if provision is made for the public to attend physically. However, doing so would require space, further limit the number of Members who can attend meetings in a committee and could be challenging logistically.

17. The decision to apply Part VA of the Local Government Act 1972 to all the Common Council's functions was well-meaning and was based on the Court's desire to increase transparency and consistency across all of its activities. However, given the success of virtual meetings and the fact that the expiry of the 2020 Regulations will again require Members to be physically present in order to make decisions on local authority and police authority matters, the time is now right for the City Corporation to consider whether it ought to move away from a "one size fits all" approach.
18. Consideration should therefore be given to whether Members should continue to have the flexibility to participate in committee meetings remotely when exercising non-local authority and non-police authority functions. To assist with this decision a schedule of the status of the Common Council's committees in terms of the functions they cover, is attached as an appendix to this report for your information.
19. The need for public access to meetings in accordance with Part VA is referred to in Standing Orders No. 4 and 32 but the Standing Orders also give the Court and its Committees scope to disapply those provisions in respect of non-local authority and non-police authority functions. However, officers are of the view that rather than leaving this to individual committees and addressing the issue in a piecemeal manner any disapplication is best dealt with holistically with a corporate, policy, decision being taken and applied across the board.
20. When considering local and police authority matters, the Comptroller and City Solicitor has advised that the statutory framework surrounding local authority meetings (in the absence of the 2020 Regulations) require the public to have physical access to the public part of the meeting. Authorities would however be able to make reasonable provision in the current circumstances by, for example, continuing to offer a live streaming service to those members of the public who could not be accommodated physically. It has always been the case that public access can be limited by the facilities reasonably available as long as the authority acts in good faith (it is likely to be bad faith to deliberately organise a meeting in a small room to limit public access). Reasonable available capacity having regard to health and safety requirements is therefore a legitimate limiting factor.

Options for Holding Physical Meetings Safely

21. The City Corporation has a duty of care with regard to the use of its premises. It is required to conduct appropriate risk assessments and to follow Public Health England, Health and Safety Executive and Government guidance to ensure that business is conducted safely. As mentioned, the requirement for social distancing (two metres, or one metre with risk mitigation (where two metres is not viable) will still be in place and for the time being capacity in the committee rooms has been reduced to adhere to this. For example, in Committee Room 1 it is now no more than 8 people, Committee Room 2 no more than 10 and Committee Rooms 3 and 4 combined, now has a maximum of 18 people with two metre distancing. In addition, safe movement around the building will also need to be factored in.
22. Accommodating some of the City Corporation's larger committees without the use of larger event space will be challenging and carries a significant cost. The reduced capacity in committee rooms is also likely to have an impact on the management of the current calendar of meetings. For example, on 26th May, there are 4 meetings scheduled to take place – Property Investment Board (8.30am start), Social investment Board (9am start), Resource Allocation Sub-Committee (10am start) and Markets Committee (11.30am start). Due to the size of the membership of the Markets Committee (33), this meeting could not be accommodated in the committee rooms unless 16 members were excluded from attending in person. The other committees could be accommodated in the committee rooms - and all members able to attend physically - but there is uncertainty regarding the amount of time required between meetings to allow for rooms to be appropriately cleaned before re-use. Overall footfall through the 2nd and 3rd floors of West Wing are also a consideration when and where meetings can be held, noting the guiding principle that the meeting area must be Covid-safe.
23. Accommodating a full Court of Common Council meeting will also be challenging. Committee and Members Services have been advised that Great Hall can accommodate approximately 63 Members only with the 2m social distancing safety measure in place. This increases to approximately 106 Members if 1m distancing is deployed with further risk mitigation measures, i.e. those present in the room being required to wear a mask.
24. Officers are in the process of working through the impact and the complex logistics of holding committee meetings as well as the limitations associated with Court meetings. For example, consideration is being given to the use of alternative, City Corporation, venues which might be able to accommodate a full Court, cleaning the committee rooms in between meetings and, in the case of the Court, cleaning microphones after use and managing a division should one be required if Great Hall is used. In the meantime, it is proposed that, apart from the Clerk, all officers should continue to attend meetings remotely. This will assist with management of physical numbers within a confined space. It also represents a more efficient use of officer time.
25. Members views are nevertheless sought on what further measures could be introduced to managing meetings within these constraints. For example, consideration could be given to:-

- committees taking place on an informal basis prior to convening a formal session for decision-making. The Policy and Resources Committee adopted a similar process, albeit briefly, at the beginning of the pandemic. The process enabled those attending remotely to share their thoughts or ask questions on agenda items and for the general view of the Committee to be known before a formal decision is taken. Such an approach is unlikely to be appropriate for Planning and Licensing.
 - reverting to the use of the urgency process for the time being but widening the scope of the process by convening an informal meeting of a committee to, once again, share thoughts/ask questions prior to a formal decision being taken.
 - Convening an informal, virtual, meeting of the Court with the public being given access to the informal meeting and formal decisions subsequently being ratified under the urgency procedures.
 - Where there are no decisions to take, Sub-Committees and indeed Consultatively Committees being held informally and taking place as a virtual meeting.
 - Subject to the Committee's views on the disapplication of certain aspects of local authority legislation across the board, all non-local authority committees and Boards continuing to take place virtually for the time being (and not hybrid). This would create more room in the committee calendar for those meetings which have to take place physically.
 - Reduce social distancing to one metre to allow more Members to attend physically. However, this will require further risk mitigation with those present in the meeting room having to wear a mask.
26. It is important to note that some of these suggestions will reduce the level of public transparency as to how decisions were reached. It is also important to note that to minimise the risk of asymptomatic people transmitting the COVID virus, staff who have to attend the workplace to perform duties they cannot do at home are being encouraged to undertake a lateral (rapid) flow test prior to attending the workplace. The Committee might want to encourage Members who need to return to Guildhall for face-to-face meetings to do the same.

Legal and Constitutional Implications

27. For local authorities, the conduct of meetings is governed primarily by the Local Government Act 1972. Not all these provisions apply to the City Corporation in its capacity as a local authority or police authority. However, those provisions that do apply, inserted by legislation passed in 1985, do not as drafted allow Members attending via video link to count towards the quorum, participate in discussion, or take part in voting on the business at a meeting. The advice from leading counsel in the past has been that it would probably be permissible for Members and officers to make some contribution to local authority or police authority meetings via video link where a quorate meeting is taking place in one physical location, but this would be limited to, for example, assisting with a factual matter, or dealing with a point of information. This has always been the generally accepted position, within Government and Local

Government, hence the need for the Flexibility of Meetings Regulations in the first place. However, as noted in paragraph 14 this position is now being challenged and officers will monitor the position.

28. Subject to this, any change to this position after the expiry of the Flexibility of Meetings Regulations therefore requires an amendment to legislation. The view of Government, pre-pandemic, was that only joint committees, combined authorities meetings and some rural authority meetings were suitable to be held via video conferencing for transparency purposes reasons and the potential distances people might need to travel to adhere to some of those arrangements. As will be seen above the Government has indicated that they do not intend to extend the Flexibility of Meetings Regulations and the position will therefore revert to the traditional position.
29. In terms of the City Corporation's educational activities, schools in the public sector are able to hold virtual meetings under legislation specifically directed at them, and independent schools may also do so depending on the terms of their individual governing instruments.
30. With regard to some of our other activities, such as Bridge House Estates, and other charities for which the City Corporation is trustee acting by the Court of Common Council, guidance from the Charity Commission states that charity trustees may choose to conduct some trustee meetings by electronic means, unless the governing document specifically prohibits it, and provided that the means used allows them to both see and hear each other. The guidance states that such meetings can be useful if an emergency decision needs to be made, if trustees live a long way from any central point or if electronic communication makes it easier for charity trustees with disabilities to participate.
31. The City of London is a common law corporation and the conduct of its non-local authority and non-police authority business is a matter for its own internal management. This includes the conduct of Court of Common Council and its committees. In the same way that the Court can voluntarily choose to adopt the framework under Part VA of the Local Government Act 1972 for its non-local authority and non-police authority functions, it can continue to treat the currently amended provisions as though they apply. It could also choose to depart from this framework completely and develop some alternative arrangements. This has been confused by the existing Corporation practice of referring to the Local Government Act 1972 on the title page of all non-public committee reports when dealing with access to information rules, a practice traceable to a decision of the Common Council when the 1985 legislation was passed to record the access rules applicable to local authorities to all Common Council functions whether local authority or non-local authority in nature. This was a decision which the Court was entirely entitled to make, but the prompt for doing so was the Common Council's and not as a result of a statutory imposition.
32. This history is not apparent from the way committee papers are currently annotated. The existing practice infers that all Common Council functions are governed by the 1972 Act. The issue raised by virtual meetings points to the need to address the current practice to make clear that in relation to non-local authority functions, the rules on access are governed by the Corporation's policy decision and not imposed by the legislation applicable to local authorities.

33. Members are therefore asked to consider authorising a change to the wording on the title page of all non-public committee reports which relate to the Common Council's non-local authority and non-police authority functions to make it clear that Part VA of the Local Government Act 1972 is being voluntarily applied.

Corporate and Strategic Implications

34. The ability to virtually attend meetings or hold meetings in hybrid format supports outcomes 4, 5 and 9 of the Corporate Plan i.e. it will ensure that City Corporation remains digitally well-connected and responsive, it will also assist in ensuring that its communities being more tenacious and cohesive and that as a business we are trusted and socially and environmentally responsible. As an organisation with private, public and charitable and community sector responsibilities, and significant capabilities and commitments, it is important that we demonstrate this across all our activities. Disentangling the organisations non-local authority and non-policy authority also supports the ethos of the City Corporation's responsible business strategy by creating positive impact on decision-makings. The change will enhance transparency and accountability and enable the City Corporation to support its communities becoming better connected.

Equality Impact Assessment

35. Under the Equality Act 2010, all public bodies have a duty to ensure that when exercising their functions due regard is given to the need to:-

- *eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act;*
- *advance equality of opportunity between people who share a protected characteristic and those who do not; and*
- *foster good relations between people who share a protected characteristic and those who do not;*

In advancing equality of opportunity public bodies also need to have due regard to the need:-

- *remove or minimise disadvantages suffered by people due to their protected characteristics;*
- *take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and*
- *encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.*

36. An Equality Assessment has been undertaken to ensure that this will not adversely affect any particular group of people (i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sex orientation). Disapplying legislation which requires Members to be physically present in order to participate in the decision-making process will have a positive impact by widening transparency and the scope for elected Members and members of the public to participate in the democratic process remotely, particularly those with

disabilities or health conditions which would potentially make coming into Guildhall difficult.

Conclusion

37. With the advent of improved technology and new ways of working, virtual meetings are operating well. They have introduced more flexibility, helped to facilitate greater public scrutiny, aided Members and officers in conducting business more efficiently and are now operating with a high degree of success nationally. The City Corporation's committee rooms have been upgraded and can now support this new way of working. A project is also underway to upgrade the AV system and equipment used in Guildhall's event spaces in order to better support the delivery of both the City Corporation's and commercial events in future. A resolution to continue voluntarily applying Part VA of the Local Government Act 1972 to the Common Council's non-local authority and non-police authority functions beyond 6th May 2021, as amended by the 2020 Regulations, will enable certain committees to continue with virtual/hybrid meetings on a permanent basis.
38. Whilst the Court, its Committees and Sub-Committees have the ability to do disapply the legislation, officers are of the view that rather than leaving this to individual committees and addressing the issue in a piece meal manner any disapplication is best dealt with holistically with a corporate, policy, decision being taken and applied across the board. Officers are also of the view that consideration should be given to changing the wording on all non-public reports with reference to the Local Government Act 1972, where it does not formally apply, as this can cause confusion.

Appendices: Schedule of the Status of Committees and Letter from the Minister for Regional Growth and Local Government, Luke Hall MP

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Appendix 1

Local Authority Status of Committees/Boards

	Body	Local Authority (Yes/No/Part)
1	Audit and Risk Management Committee	Part
2	Barbican Centre Board	Yes
3	Barbican Residential Committee	No
4	Board of Governors of the City of London Freemen's School	No
5	Board of Governors of the City of London School	No
6	Board of Governors of the City of London School for Girls	No
7	Board of Governors of Guildhall School of Music and Drama	No
8	Capital Buildings Committee	Part
9	Community and Children's Services Committee	Yes
10	Culture, Heritage and Libraries Committee	Part
11	Education Board	Part
12	Epping Forest and Commons Committee	No
13	Establishment Committee	Part
14	Finance Committee	Part
15	Freedom Applications Committee	No
16	Gresham (City Side) Committee	No
17	Hampstead Heath, Highgate Wood and Queen's Park Committee	No
18	Health and Wellbeing Board	Yes
19	Investment Committee	Part
20	Licensing Committee	Yes

21	Livery Committee	No
22	Local Government Pensions Board	Yes
23	Markets Committee	Part
24	Open Spaces and City Gardens Committee	Part
25	Planning and Transportation Committee	Yes
26	Police Authority Board	Yes
27	Policy and Resources Committee	Part
28	Port Health and Environmental Services Committee	Part
29	Standards Appeals Committee	Part
30	West Ham Park Committee	No
31	Bridge House Estates Committee (NEW)	No
32	Innovation & Growth Advisory Board (NEW)	No
33	Health and Social Scrutiny Care	Yes
34	Fraud and Cyber Crime Reporting and Analysis Service Procurement Committee (NEW – time limited)	No

Local Authority Committees	8
Non-Local Authority Committees	14
Hybrid Committees	12