

Committee	Date
Policy and Resources Committee	15 September 2022
Subject: Virtual Participation in Committee Meetings: non-Local Authority Business	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1 - 12
Does this proposal require extra revenue and/or capital spending?	No
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, Comptroller & City Solicitor	For Decision
Report authors: Greg Moore, Michael Cogher	

Summary

During the Covid-19 pandemic, the Government temporarily lifted restrictions on the ability of councillors to participate in formal local (or police) authority committee meetings. Prior to that point, the law did not allow for Members attending such meetings via video link to count towards the quorum, participate in discussion, or take part in voting on the business at a meeting and this was the generally accepted position.

Since the expiry of these temporary measures, despite lobbying from the local government sector generally to allow for them to be reinstated on a permanent basis, the legal position has not changed and it remains the case that virtual participation in local or police authority business is restricted.

Given that such legal restrictions do not apply to the Corporation's many non-local or police authority functions, the Corporation has taken the policy decision to permit virtual participation in respect of those functions. Nevertheless, there remain many committees where business is "blended", that is to say, the committee considers items which straddle both its public and private functions; in such cases, it is the current policy that remote participation remains prohibited.

There is the option, however, to disaggregate agendas such that virtual participation is facilitated for those items on the agenda of such committees where the business relates solely to non-City Fund activity. Recent challenges around Covid-19 spikes, travel difficulties caused by rail strikes, and so on, have brought the need to give consideration to this option into greater relief.

This report restates the legal position in respect of virtual participation and outlines options and risks for consideration in respect of a change to the current policy.

Recommendation

The Policy & Resources Committee is invited to consider the current policy on virtual participation at meetings and to agree the preferred options of approach across the

City's Local / Police Authority Business and Private Funds (City's Cash, charitable funds etc.)

Main Report

Background

1. It is an established requirement of formal local authority meetings that they be held physically, with public right of access. These requirements are specified within Part 5A of the Local Government Act 1972.
2. Until relatively recently, this position had not been the subject of any robust or concerted challenge, and the legislation was clearly drafted without the benefit of prescience in respect of future advances in technology.
3. However, the outbreak of the Covid-19 pandemic and associated travel restrictions led to the Government's introduction of 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) which enabled formal decision-making meetings to be undertaken virtually until 6th May 2021.
4. Virtual meetings during that period allowed for flexibility, helped to facilitate greater public scrutiny and aided Members and officers in conducting business more efficiently and operated with a degree of success nationally while measures were in place. Notwithstanding this, the Ministry of Housing, Communities and Local Government (MHCLG) decided not to extend measures beyond 6th May 2021 to enable local authority meetings to continue virtually or indeed enable the City Corporation to move towards a hybrid format as had been envisaged.
5. Due to a number of subsequent Covid outbreaks and associated travel restrictions or concerns, the City Corporation also introduced a Covid-19 approvals process, to allow for additional virtual participation in exigent circumstances associated therewith. The effect of this process was that informal hybrid meetings were held, with decisions then ratified formally under the approvals process afterwards. However, this is not a position which it would be desirable to replicate on an ongoing basis, for the obvious reasons of ensuring the control of decision-making remains in Members' hands in formal setting and in accordance with the spirit of relevant legislation.
6. The aforementioned Part 5A 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, nor to those non-local or police authority functions to which the City Corporation does not wish to apply them voluntarily.

Current Position

7. Following the successful utilisation of hybrid and virtual meetings, the Court subsequently determined to allow for their continued use for meetings of its committees which dealt exclusively with non-local (or police) authority business.
8. However, the legal position in respect of virtual participation for local / police authority business remains as per Part 5A of the Local Government Act 1972 and so, for those committees which deal with some local / police authority business, virtual participation has continued to be prohibited.
9. Having procured advice from leading Counsel on the matter (some time prior to the Covid pandemic), the advice had 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 was taking place in one physical location, it was clear this would be limited to, for example, assisting with a factual matter, or dealing with a point of information. Any participation beyond this would potentially present a risk of potentially challengeable public law decisions being taken, which would be unacceptably high-risk particularly in areas such as planning or licensing. The generally accepted position was confirmed by the Administrative Court in April 2021 in *Hertfordshire CC and Others v. Secretary of State for Housing, Communities and Local Government* [2021] EWHC 1093.
10. Whilst it would be reasonable to say that there are some local / police authority reports or issues which would be extremely low risk, were Members to be allowed to participate remotely (for instance, because they don't actually involve potentially challengeable public law decisions or because they are presented solely for information), they are by and large those items which the Court has resolved should not be the subject of significant debate (given their presentation for information purposes) and are likely to be those items where Members have less of an interest in debate, in any case, given their (by definition) relatively non-controversial status.
11. The position is, though, somewhat complicated by the existence of committees which oversee a blend of both local authority and private functions. Whilst some committees (such as Planning & Transportation) look after solely local authority functions, others (such as Policy & Resources) look after blended items. That is to say, reports are often presented which relate solely to private funds such as City's Cash, or where funding is blended from City Cash and City Fund both.
12. In the interests of testing the most efficient and effective ways to conduct its business, Members have requested that further consideration be given to ways in which the facilitation of virtual participation might be considered in those circumstances, where legal.

Consideration and Options

13. **Local / Police Authority Business** – Given the legal position stated earlier in this report, it must be cautioned that, for the majority of decision-making items in

this area, the City Corporation would need to be very careful in considering any amendment. The key question is at what point does participation tip the balance so as to put the decision at risk – and in most instances, officers will not know what Members are necessarily going to say until they’ve said it (or which way subsequent debate will turn), which would be too late and practical advice cannot therefore be avoided. Therefore, there would need to be absolute clarity in advance which items virtual Members could safely speak on, to avoid that risk – and Members may find that the number is disappointingly few (being limited to information items, in practice).

14. This approach may have the disadvantage of potentially causing Members to feel that they can only participate in non-important decisions and are excluded from important ones; there is also a risk of “creep”, as a case-by-case relaxation by in low-risk scenarios could lead to more problematic or erroneous decisions.
15. Finally, it is worth noting that, as far as local authority functions are concerned, both Parliament and the Courts have decided that committees should meet in public – so any flexibility sought in this respect carries the risk of potentially being seen to be seeking to skirt the law, which is undesirable.
16. It is, therefore, recommended that the current treatment of local and police authority business be retained, i.e., with no virtual participation allowed, given the very marginal benefits of change and in order to mitigate against the risks set out above.
17. This must logically extend to those items where funding is blended (i.e., part City Fund and part City Cash) as it is not possible to disaggregate the two. An example would be the Markets Co-location Programme, which is primarily City’s Cash (through Smithfield and Billingsgate) but partially City Fund (New Spitalfields).
18. ***Private Funds (City’s Cash, Charitable Funds, etc.)*** – A greater variety of options present themselves in respect of private funds.
19. In principle, moving City’s Cash (or other private fund) matters to facilitate virtual contribution is a policy decision and one which has already been applied to those Committees dealing with solely private functions. There is, therefore, no legal reason why the same treatment could not be applied to items relating purely to private funds which are under consideration by committees with blended responsibilities.
20. Should Members wish to pursue this, there are three broad options to facilitate the approach:
 - ***Disaggregate Committees such that none have blended functions:*** Whilst this option would make it abundantly clear how reports / participation should be treated, as well as providing absolute clarity in terms of questions of quoracy, it is somewhat nuclear in that it requires the dismantling of the existing governance framework. This would be neither practical nor desirable, and is not recommended, but is listed here for completeness.

- ***Disaggregate agendas into City Fund / Private Fund sections and allow participation on the latter:*** Agendas could be separated out so that they were divided into City Fund, blended, and City Cash / other private fund parts, with participation permitted for the latter. However, given the likely need to retain both public and non-public sections for each, this might not necessarily prove as efficacious in managing business as one might hope, as Members would still need to “drop in and out” of discussion for parts of the meeting; such a disaggregation would also lead invariably to more critical or strategic items being moved lower down the agenda, or break natural linkages between items of similar substance or being presented by the same author(s).
 - ***Clearly mark papers, with participation permitted on those marked as Private Funds:*** This would seem to be the most straightforward approach, as reports should already be marked clearly with a funding source and so could easily be altered to indicate for additional clarity that the item is open to virtual participation. As with the preceding option, Members joining virtually would still need to “drop in and out” of discussion for the relevant items, but the flow of agendas would be more easily preserved.
21. The primary risk (with any of the above options) would rest with report authors and their responsible Chief Officers needing to be absolutely clear on their funding sources: any error, no matter whether made in good faith or on the basis of incorrect information, has the risk of leading to decisions being taken illegally and becoming challengeable.
 22. A material risk also arises in relation to quoracy. For instance, if an agenda had primarily City Cash items, Members may be less minded to attend in-person in challenging circumstances (for instance, during rail strikes). This would then affect the ability of the committee to achieve a quorum for local authority items which, in turn, would risk the meeting having to revert to taking place informally with those decisions ratified thereafter via urgency procedures (or otherwise deferred until the next meeting). Such a practice has previously been the subject of much disquiet amongst Members where required due to pandemic-related restrictions, due to the obvious implications in respect of a lack of transparency around formal public decision-making and the risks associated with such decisions being taken out of Members’ hands. Practical issues would also need to be navigated, including material resource implications in processing requisite paperwork to effect legal decisions after informal meetings.
 23. Notwithstanding the above options and considerations, the option also remains to retain the status quo.

Corporate and Strategic Implications

24. ***Financial and Resource implications*** – There would be no direct financial or resource implications associated with a change to the marking or management of agendas, although clearly there would be implications should a decision be taken to pursue restructuring committees more generally.

Climate Implications – The proposals included in this paper do not carry any significant implications for the Climate Action programme.

Equalities implications – Under the Equality Act 2010, all public bodies have a duty to ensure that when exercising their functions they have due regard to the need to advance equality of opportunity between people who share a protected characteristic and to 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. The proposals contained in this report do not have any potential negative impact on a particular group of people based on their protected characteristics; indeed, the opening up of virtual participation to a wider array of business would arguably advance the opportunity for participation.

Risk implications – As set out in the preceding report, there are risks inherent in any change in approach associated with quoracy, demarcation of items, application,

Security implications – none.

Conclusion

25. The ability to participate virtually at committee meetings in discussion of items relating to matters within the purview of City Cash (or other private funds) is a policy decision for the City Corporation. Members are invited to consider whether, and to what extent, they would wish to open this up to City's Cash items in all committee meetings. Given the legal restrictions around local (or police) authority items, it is recommended that no change be sought in respect of committees which deal solely with those functions.