

# Cheshire East Council

## Constitution Committee

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**Date of Meeting:** 24<sup>th</sup> November 2016

**Report of:** Director of Legal Services

**Title:** The Openness of Local Government Bodies Regulations 2014

**Portfolio Holder:** Councillor Paul Findlow, Corporate Policy and Legal Services

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### 1. Report Summary

1.1. This report:

- a) outlines the Openness of Local Government Bodies Regulations 2014 (“the Regulations”) and related legislation in the context of contemporaneously recording, webcasting and offering social media commentary on the council’s decision making meetings (“DMMs”).
- b) highlights the best practice that has developed around councils contemporaneously recording, webcasting and offering social media commentary in respect of their own DMMs.
- c) seeks the Committee’s views as to whether further work should be done to explore the implications and logistics of the Council contemporaneously recording, webcasting and offering social media commentary in respect of its own DMMs.

### 2. Recommendations

- 2.1. That the content and effect of the Openness of Local Government Bodies Regulations 2014, including the implications for councils contemporaneously recording, webcasting and delivering social media commentary in respect of their own decision making meetings be noted.
- 2.2. That the Committee indicate whether it wishes further work to be undertaken to identify and evaluate the financial and other logistical implications of recording, webcasting and providing social media commentary in respect of the Council’s decision making meetings with a view to generating an options appraisal report and a draft policy (to address the potential pitfalls that may arise from the audio recording/webcasting of and providing social media commentary on Council meetings) for the Committee to consider.

### **3. Reason for Recommendations**

- 3.1. This report identifies a number of benefits and potential disbenefits associated with webcasting of and providing social media commentary on Council meetings.

### **4. Other Options Considered**

- 4.1. None: at its meeting on 20 October 2016, Council resolved that a report be presented to this Committee to explore the implications of the Regulations.

### **5. Background**

- 5.1. At its meeting on 20 October 2016, Council considered a report on the audio recording of meetings and resolved that:

1. Subject to the following principles, the audio recording of meetings shall take place:
  - (a) All decision-making meetings of the Council be subject to audio-recording, including overview and scrutiny committees (but not informal non-decision-making bodies such as working groups) unless the press and public have, by resolution, been excluded from the meeting;
  - (b) Any member who was a member of a decision-making body at a meeting of that body, including anyone attending as a substitute, may request that the audio recording of that meeting be reviewed in order to clarify the wording of a draft minute;
  - (c) Such a request for review of the audio recording must be made on a working day before the day of the meeting at which the draft minutes are to be submitted for approval; and
  - (d) The audio recordings be retained for a period of 6 months from the date of the meeting in question, unless a Freedom of Information request is made in respect of the recording, in which case the recording will be retained for such longer period as is required by law.
2. the Director of Legal Services be given authority, in consultation with the Chairman and Vice-Chairman of the Constitution Committee, to make such changes to the Constitution as he considers necessary to give effect to the wishes of Council;
3. the audio recordings of meetings should be published on the Council's website and, if it is minded to agree, request and authorise the Constitution Committee to approve the detailed arrangements and the necessary changes to the Constitution; and

4. a report be presented to the Constitution Committee which will explore the implications of the Openness and Local Government Bodies Regulations 2014.

This report addresses the last of Council's decisions in relation to the report on the audio recording of meetings.

### Legislative Context

- 5.2. The Regulations were made under section 40 of the Local Audit and Accountability Act 2014 and came into force on 6 August 2014. They were introduced to supplement existing legislation governing the reporting of public body meetings. An overview of the relevant legislation is as follows.
  - a) The Local Government Act 1972 ("LGA 1972") and, in respect of meetings of an authority's executive, the Local Government Act 2000 ("LGA 2000") allow members of the public and press to report on local authority meetings.
  - b) By virtue of those acts (and subordinate regulations) a local authority must provide any person (whether a member of the press or general public) attending a meeting for the purpose of reporting on the proceedings with reasonable facilities for reporting on those proceedings.
  - c) Where a local authority meeting is open to the public, any person attending is permitted to report on the proceedings. Any communicative method can be used to report on the proceedings, including the internet, to publish, post or share the results of the meeting. "Reporting" includes filming, photographing, making an audio recording and providing commentary on proceedings. There is no obligation to permit contemporaneous oral reporting or commentary from a meeting.
  - d) The Regulations introduced additional rights to permit those attending meetings to report on proceedings using social media applications. This was commonly referred to at the time as enabling "citizen journalism".
- 5.3. The purpose of the Regulations was to bring clarity, by answering in the affirmative, the question of whether the public, press and councillors could or should use social media to report on the proceedings of local authority meetings.
- 5.4. Through guidance (*Open and Accountable Local Government – a guide for the press and public on attending and reporting meetings of local government*) published by the Department for Communities and Local Government ("DCLG") on the day that the Regulations came in to force, the DCLG expressed the view that these additional rights would make councils

more transparent and accountable and enable members of the public to know how decisions are made.

### Best Practice

- 5.5. Given advances in technology and the increasing ease and speed with which audio and visual “feeds” of local authority meetings can be captured and webcast by citizen and professional journalists, thereby generating instantaneous on-line debate through social media, many local authorities have decided to contemporaneously record, webcast and deliver social media commentary on their own DMMs. There are a number of reasons for this.
- 5.6. Firstly, it enables councils to exploit all available channels to raise public awareness of its work and to significantly maximise transparency, accountability and public engagement in the democratic process. There are, in particular, significant inclusion benefits for those otherwise unable to attend council meetings in person. The facility to observe or engage in the democratic process so readily has far reaching benefits in raising awareness of how and why decisions are taken, dispelling misconceptions around the democratic process.
- 5.7. For example, there are authorities who have a significant number of regular subscribers to meeting webcasts. Subscribers who might not otherwise be engaged in the democratic process are able to follow more closely the work of a committee at large, or the progress of a certain matter through the various stages of the democratic process.
- 5.8. There are also authorities who utilise the technology to take and respond to subscribers’ questions in real-time, further enhancing inclusion, understanding and engagement with the democratic process. Linking webcasts to digitally published agendas enables subscribers to engage with those materials as a debate progresses, and gives them the opportunity to become aware of and so engage in other matters arising from those materials that may not otherwise have had.
- 5.9. Contemporaneous webcasting and social media commentary also allows the council and its partners to adopt holistic and more effective marketing and communications enabling, for instance, subscribers to be made aware of and directed to debates or complimentary resources through web links and partner organisation “re-tweets”.
- 5.10. Secondly, there is the issue of offering choice to the significant and increasing number of people who want to engage with the democratic process and consume the information that it generates in contemporaneous and digital form.

- 5.11. The council does not currently offer a platform through which to deliver contemporaneous feeds and commentary to those who would prefer to receive that information in that format directly from the Council. A further consideration in that regard is that without such a platform, the council has no presence in contemporaneous digital debates surrounding its work. It is only able to engage in such debates some time after the fact, by which time the opportunity to have done so with any meaningful impact may well have passed.
- 5.12. Thirdly, contemporaneous webcasts and social media commentary further the national and local digital agenda not only to be more inclusive, but also to improve efficiency by delivering services digitally.
- 5.13. An example where significant efficiency improvements can be realised is in the processes that sit behind providing responses to queries or requests for clarification of matters arising from the proceedings of meetings. Such requests can generate a significant volume of work with, in respect of each such request, the content of responses having to be compiled from the notes or recollections of different officers or members, each of which will vary in quality and detail. The process of collating and interpreting that material can take a significant amount of time. There being a readily accessible contemporaneous recording of the meeting in question will in very many cases obviate the need for a query to be raised with the council at all (particularly if there is facility to ask and answer such questions digitally as the meeting is in progress). Where queries are raised, a readily accessible contemporaneous recording will significantly improve the ability to respond accurately and rapidly.
- 5.14. A further example where significant efficiency improvements can be realised is in the implementation of decisions made. Having easy access to a contemporaneous recording of a meeting can assist in making early progress to implementing a decision without the delays associated with time it can take to ratify minutes or seek out clarification from the notes of those present at the meeting in question.
- 5.15. For many authorities (for example, Chester and Cheshire West Council ('CWaC')) contemporaneously recording sight and sound and webcasting their DMMs is neither difficult nor excessively costly. However, CWaC have permanently installed webcasting equipment in their main meeting rooms and this can be activated easily and at modest cost to enable each meeting to be recorded. Cheshire East do not have this facility and there would be likely to be significant costs associated with webcasting every DMM. The current Webcasting of Cabinet meetings costs something in the region of £30,000 every year, or £3,000 per meeting. This is because an external company has to provide the equipment, together with a trained technician to operate the system. In contrast, webcasting meetings of the Police and

Crime Panel at CWaC premises costs under £250 per meeting. The Council has over 200 DMMs each year, and the costs of the various options for webcasting additional meetings will need to be established before a decision is taken to adopt such an approach.

Areas to be Mindful of – Freedom of Information Act 2000

- 5.16. Recordings of meetings become information held by the authority for the purpose of the act, and are therefore within the class of information that would need to be made available in the event of a request for the same. Where such recordings are of the public proceedings of a meeting there will be no exemption available to decline to provide either a copy of the recording or a transcript.
- 5.17. The issue to consider here is the resource implications of dealing with such requests which will inevitably be made, particularly where an interested party is of the view that a transcript of the meeting, for instance, may assist them in seeking out a basis to challenge or appeal a decision made. Equally, transcripts may provide the council with valuable evidence in seeking to rebut such claims.
- 5.18. If meetings are contemporaneously webcast and thereafter remain viewable on the council's website, there will be no resource implications associated with information requests as the information will be readily available as part of the council's publication scheme without the need to make a formal request. Those who do make requests can simply be directed to the relevant page of the Council's website.
- 5.19. Council policy should set out the period of time recordings will be kept.

Areas to be Mindful of – Data Protection Act 1998 and the Human Rights Act 1998

- 5.20. Sound and/or images captured at meetings will potentially rank as "personal information" and so be subject to the requirements of the Data Protection Act 1998. Similar considerations will apply in respect of the right to respect for private and family life protected by the European Convention on Human Rights (article 8) and the Human Rights Act 1998.
- 5.21. If sound and/or images are to be recorded at meetings, practical steps must be taken to make sure those present are aware that the meeting is being recorded and how the recordings are likely to be used so that they can, by remaining present at and/or contributing to the meeting, be considered to have consented to the capture and use of their personal information. Such practical steps include:
  - a) Putting notices on the order of business to make members of the public aware the meeting is to be recorded.

- b) Displaying signs inside and outside the meeting room stating that the proceedings are to be recorded.
  - c) The chair of the meeting making a formal announcement at the start of the meeting.
- 5.22. Council policy should set out requirements and expectations in this regard, and standard template documents should be amended accordingly.

#### Areas to be Mindful of - Defamation

- 5.23. Statements made by members at a local authority meeting are subject to the law of defamation. If a meeting is reported or recorded, any defamatory statement will be brought into the public domain more quickly and has the potential of being published to a much wider audience. For this reason members may need to be more mindful of the manner in which they contribute to a debate.
- 5.24. However, qualified privilege will attach to statements made by local authority members in meetings, provided that the person making the statement believed in the truth of what was said and was not motivated by malice. Other defences to an action for defamation include justification (that is, the defamatory statement is true), or the defamatory statement was made unintentionally. In the latter case public apologies to “correct the record” are routinely sought as an alternative to defamation proceedings seeking damages.
- 5.25. If a defamatory statement is made during a webcast it is often appropriate to immediately suspend the webcast. It may also be appropriate to do so in the event of disruptive or unruly behaviour at a meeting, for example if the meeting is used as a forum for public protest. Consideration should be given to authorising a specified officer to suspend webcasts. Similarly, if webcasts are to be automatically available to be replayed from the website, the same officer should be authorised to remove any offending webcast (or sections of it) from the website. In either case actions taken should be explained. It is also sensible to apply a 15 or 20 second delay to webcast transmission for these purposes.
- 5.26. Advice and procedures covering these matters should be set out in council policy.

#### Areas to be Mindful of – Copyright

- 5.27. A local authority wishing to assert copyright in any webcast or recording will need to publish terms and conditions for the use of any footage. This should include a statement that the webcast is the copyright of the local authority and should not be downloaded or reproduced without the local

authority's written permission. This too is a matter to be considered and addressed in council policy.

#### Areas to be Mindful of – The Primacy of Minutes

- 5.28. For very many decades, prior to the advent of recording technology, local authority meetings have relied upon the notes taken by committee clerks to generate the minutes of the meeting. Minutes are only intended to capture key areas of a discussion and the outcome of any decision made.
- 5.29. Whilst draft minutes are being prepared, or when offered up to the next meeting for ratification, they are often amended in the light of the recollection of those who were present at the meeting in question as to what the intention of the committee was. There are occasions when minutes are amended and ratified to align more closely with agreed intention of those present at the last meeting, as opposed to them being configured as a verbatim record of what was said.
- 5.30. In addition, ratified minutes are, from time to time, amended to correct omissions or errors. These two necessary operational expedients are commonly accepted practice known colloquially as the "slip rule".
- 5.31. Whilst not a basis upon which to make fundamental changes to a decision that has been taken, the preservation of the operation of the "slip rule" is an expedient crucial to ensuring the proper and efficient conduct of business. The ratified minutes of a meeting, having been approved as correct by a majority vote of those councillors present, constitute the legal record of the meeting and take primacy over any recording or transcript of the meeting itself.
- 5.32. It is essential when moving to a practice of recording meetings that this is commonly understood, accepted and dealt with in council policy lest resource be consumed and business efficacy be needlessly impacted through attempts to challenge the primacy of ratified minutes on the basis of recordings or transcripts of the meeting in question.
- 5.33. The process envisaged in terms of using recordings as a tool to improve the accuracy of draft minutes could still be used in a scenario where the Council has moved to webcasting instead.

#### Areas to be Mindful of – Reputation Generally

- 5.34. By their very nature, recordings can be watched repeatedly and so lend themselves more readily to an analysis of the minutia. Whilst there are a significant number of benefits to contemporaneous webcasting, experience provides examples of where such analysis highlighted behaviours that have given rise to unfortunate or embarrassing perceptions, particularly in scenarios where it was thought that behaviours in question were out of range of the recording devices.

5.35. Councillors or officers talking amongst themselves, passing notes, eating or passing around sweets, using mobile devices (including to tweet about matters subject to the meeting as it happens), leaving the room, injecting humorous observations or remarks, or displaying certain types of body language or gestures (for instance) are all ordinarily innocuous or benign human behaviours displayed throughout the course of long committee meetings. Councillors and officers need to remain mindful that when subject to analysis through a recording, and perhaps out of context, such behaviours can and have given rise to complaints or challenges to decision making in the basis of inattention.

## **6. Wards Affected and Local Ward Members**

6.1. There are no direct implications for individual wards or local ward members.

## **7. Policy Implications**

7.1. Areas where policy implications arise and where new or amended policies and practices would be required are highlighted above. The recommendation includes producing a draft policy for consideration to address these issues. Ultimately, changes to the constitution would be required to reflect and enable new operating practices.

## **8. Legal Implications**

8.1. The key legal implications are set out in the body of this report. Further consideration can be given to discrete matters arising in the event that a proposal to move to contemporaneous webcasting and social media commentary proceeds.

## **9. Financial Implications**

9.1. The recommendation recognises the need to identify and understand the financial implications associated with contemporaneous webcasting, etc.. It should, however, be noted that a number of other local authorities already adopt this practice.

9.2. The current Webcasting of Cabinet meetings costs something in the region of £30,000 every year. This is because an external company has to provide the equipment, together with a trained technician to operate the system. The Council has over 200 DMMs each year, and the cost of webcasting additional meetings will need to be established before a decision is taken to adopt such an approach.

9.3. In addition, whilst the initial outlay of a more holistic webcast/ web based approach would most likely be more expensive than the originally proposed audio only recording approach, there are likely to be significant additional costs with the audio only recording approach beyond initial set up costs

that must be properly factored into any decision if it is to be properly made. These include the ongoing costs of operating an audio only recording approach which are likely to be more resource intensive in the medium to longer term as the retention, storage, copying, transcribing, distribution and eventual destruction of recordings will be factors that will attract costs beyond those associated with a webcast/web based publishing approach.

## **10. Human Resources Implications**

10.1. There are no direct human resource implications beyond the potential to save time dealing with queries arising from the proceedings at meetings which should not be overlooked.

## **11. Equality Implications**

11.1 By improving accessibility and inclusion in the democratic process, there are direct advantages to the proposal for those with protected characteristics.

## **12. Rural Community Implications**

12.1. By improving accessibility and inclusion in the democratic process, there are direct advantages to those people living and working in rural communities.

## **13. Public Health Implications**

13.1. There are no direct public health implications

## **14. Risk Management**

14.1. Identified risks have been set out in the body of the report. The recommendations include steps to be taken to identify and mitigate any further risk.

## **15. Background Papers**

15.1. No background papers have been referred-to in the preparation of this report.

## **16. Contact Information**

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