

## Report of City Solicitor

### Report to General Purposes Committee

**Date: 4<sup>th</sup> March 2014**

### **Subject: Protocol for Third Party Recording of Committee, Board and Panel Meetings**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

In October 2013 General Purposes Committee considered issues arising from a DCLG publication 'Your council's cabinet – going to its meetings, seeing how it works – A guide for local people'.

At that meeting Members were informed that the Secretary of State had recently announced his intention to legislate to give the press and the public new rights to film and report council meetings and that it might be advisable to wait and see how this develops before adopting a protocol. Since October amendments have been agreed to the Local Public Audit and Accountability Bill and the Bill has received Royal Assent. The likelihood is that the Secretary of State will publish Regulations that will allow third party recording of committee, board and panel meetings in the very near future – it is therefore timely for the Council to consider again a protocol for third party recording.

### Recommendations

General Purposes Committee is asked to consider and agree;

- a) The content of a protocol relating to the third party recording of council committee, board and panel meetings attached at Appendix 1;
- b) That the protocol be further reviewed by the City Solicitor (in consultation with group leaders) in light of the content of Regulations and guidance issued by the Secretary of State; and
- c) Note the ancillary matters set out in this report relating to the adopting of the protocol, including Member and Officer briefings, Member immunities, Civic Hall facilities and consequential amendments that may be necessary to the constitution.

## **1 Purpose of this report**

1.1 The purpose of this report is to consider;

- a) And agree the content of a protocol relating to the third party recording of council committee, board and panel meetings, attached at Appendix 1;
- b) Ancillary matters relating to the adopting of the protocol, including member training, member immunities, civic hall facilities and consequential amendments that may be necessary to the constitution.

## **2 Background information**

2.2 In October 2013 General Purposes Committee considered issues arising from a DCLG publication 'Your council's cabinet – going to its meetings, seeing how it works – A guide for local people'.

2.3 Members highlighted their concerns over the recording of licensing and planning meetings and commented that councillors were not afforded the same indemnities as were enjoyed by MPs by Parliamentary Privilege. It was suggested that representations be made to the Secretary of State raise this as an issue that might be further considered by Government, particularly where Members are considering planning and licensing matters.

2.4 Members also highlighted the problems of selectively recording meetings and considered that ideally committee meetings be audio recorded by the Council and made available to the public. Members were also informed that the Secretary of State had recently announced his intention to legislate to give the press and the public new rights to film and report council meetings and that it might be advisable to wait and see how this develops before adopting a protocol.

2.5 General Purposes Committee resolved to

- a) reaffirm support for the webcasting of full council, and introduce mechanisms whereby, subject to the availability of equipment, meetings of Executive Board and scrutiny boards can be routinely audio recorded by the Council, with these recordings being made available to third parties on request;
- b) not grant permission to third parties to audio record meetings of planning and licensing committees, nor permit video recording on any committee, board or panel meeting, until clarity is received from DCLG on the issues raised;
- c) request a further report, once clarity is received from DCLG, and once the parliamentary process have been concluded for the Local Audit and Accountability Bill, setting out a protocol in respect of the recording of committee meetings; and
- d) That facilities management staff be consulted about the options of providing improved committee room facilities that would enable the Council to record all committee meetings.

- 2.6 The Leader of Council and the Leader of the Opposition sent a joint letter to the secretary of state setting out concerns that the arrangements anticipated by government provide little assurance that recordings made by third parties would not be used out of context or might be edited in such a way as to not represent an accurate record of proceedings, and which might be of particular concern in circumstances where decisions might be prone to appeal, judicial review or public inquiry.
- 2.7 Both Leaders also asked the secretary of state to consider whether the immunities enjoyed by-way of Parliamentary Privilege could be extended to councillors, particularly when sitting on quasi-judicial panels.

### **3 Main issues**

#### Recording Protocol

- 3.1 In November the Public Bill Committee of the House of Commons considered amendments to the Local Audit and Accountability Bill (which had cross party support). These were approved by Parliament on the 21<sup>st</sup> January 2014 and received Royal Assent shortly after on the 30<sup>th</sup> January 2014. The Act empowers the Secretary of State to make Regulations to allow people to film, photograph, or make sound recordings of proceedings of the committees, boards and panels.
- 3.2 At the time of writing this report, those Regulations, even in draft form, have not yet been issued but these are expected in the very near future with consultation promised (by Baroness Steele of Beeston) via Local Government Association and the National Association of Local. Baroness Steele of Beeston commented that:
- “Noble Lords raised important points about risks, and the measures necessary to mitigate those risks, to ensure that proper conduct [of meetings] is able to continue. I re-emphasise that we will carry out a process of consultation on these regulations and ensure that we take account of the points that have been made. We will not lay the regulations until we have completed that consultation. However, we are talking about a matter of months in terms of bringing those regulations forward. We do not want delay on this.” (Hansard 21<sup>st</sup> January 2014)
- 3.3 It is therefore timely for the Council to consider again a protocol for third party recording.
- 3.4 Attached at Appendix 1 is a draft protocol for Members’ consideration – the draft protocol makes clear that third party recording of committees, boards and panels is permitted but that recording must be done overtly from the area designated for the public.
- 3.5 The draft protocol also considers the circumstances where a chair might instruct that recordings might be stopped. These circumstances are, in part (4a&b), linked to existing legislative provisions relating to the conduct of local authority meetings, specifically provisions to exclude the press and public where exempt or confidential business is being discussed and where there is public disturbance. Other circumstances (4c&d) are specifically linked to the new recording rights.

- 3.6 Members may recall that Trade Union colleagues expressed some concerns relating to circumstances where officers might be recorded when presenting to committees.
- 3.7 DCLG guidance on this point is that;
- “Council officers acting in the public sphere should expect to be held to account for their comments ...in such meetings”
- 3.8 It is considered that, although only relevant in exceptional circumstances, the existing exemption provisions in Access to Information Procedure Rules could be relied upon and could provide some comfort to officers.

Access to Information Procedure Rules (Extract)

Category	Condition
1. Information relating to any individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
2. Information which is likely to reveal the identity of an individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

- 3.9 It is considered that where, for example, for personal or work related reasons (such as where officers perform enforcement based activities), an individual officer's anonymity needs to be preserved these categories of exemption could be applied.
- 3.10 In these circumstances the committee would consider the representations made by the officer and then, in all likelihood, resolve to exclude the press and public from the meeting (thereby resulting in recording not being permitted).
- 3.11 More widely it is incumbent upon Chief Officers to ensure that those officers who are presenting to committees feel comfortable with the new requirements and that where necessary further briefings/training is provided or alternative arrangements made.
- 3.12 DCLG guidance also suggests that;
- “The council should consider adopting a policy on the filming of members of the public speaking at a meeting, such as allowing those who actively object to being filmed not to be filmed without undermining the broader transparency of the meeting”

- 3.13 It is important that the council is seen as being consistent in how it treats representations from the public not to be filmed. In order to achieve this the protocol makes clear that if a member of the public raises an objection to being filmed then the filming will be curtailed.
- 3.14 That said, it is important that the complete context of decision-making is preserved. Where proceedings of committees (and full Council) provide rights to the public to speak (e.g. where objection or support is given to planning and licensing application, where depositions are received, or where open forum discussion takes place) it is arguable that those contributions, and the context that they provide to the resolutions of committees, should be retained. This view has also been expressed by accredited journalists who have been consulted on the draft protocol.
- 3.15 It is suggested that, in these circumstances, whilst requests to not film individuals may be granted, continued audio recording of the contribution of the individual should be permitted to continue – thereby maintaining the overall balance of contributions made and subsequent decisions that are taken.

#### Use of recordings by third parties

- 3.16 In addition to the consideration of arrangements for recording, the draft protocol also sets out a code of practice for the use of recordings – this has been drafted in consultation with those who submitted representations to this committee when the arrangements for recording were last considered.
- 3.17 Whilst the code of practice is not legally enforceable, it does provide a framework of reasonable use that has been developed by likely practitioners by way of self-regulation and is supported by those stakeholders that have been consulted.

#### Members Immunities

- 3.18 At the request of General Purposes Committee the City Solicitor has explored further the existing protections provided to Members by way of qualified privilege. By way of further explanation - qualified privilege is to be distinguished from absolute privilege – absolute privilege provides a complete defence to any accusation of defamation and covers situations including trials and Parliamentary debates. Whereas qualified privilege is weaker and only applies to statements made in situations laid out in statute. Councillors as a group are not automatically protected by qualified privilege – a defence must be established at common law for qualified privilege – i.e. that a Member has a legal, social or moral duty to provide the information and the recipient e.g. fellow councillors in a committee setting, has an interest or a duty to receive the information given.

- 3.19 An often referenced case *Horrocks v Lowe* [1975] covered qualified privilege and Lord Denning found that:

“It is of the first importance that the members of a local authority should be able to speak their minds freely on a matter of interest in the locality. So long as they honestly believe that they say to be true, they are not to be made liable for defamation. They may be prejudiced and unreasonable. They may not get their facts right. They may give much offence to others. But so long as they are honest, they go clear. No councillor should be hampered in his criticisms by fear of an action for slander. He is not to be forever looking over his shoulder to see if what he says is defamatory. He must be allowed to give his point of view, even if it is hotly disputed by others. This is essential to free discussion”

- 3.20 It is therefore very likely (although, as subject to the courts, not wholly certain) that qualified privilege will apply to statements made in full council, committees, board or panel meetings. The Standards and Conduct Committee will be further considering this matter at their meeting on the 7<sup>th</sup> March 2014.

- 3.21 As outlined early in this report, both the Leader and the Leader of the Opposition made representations to the Secretary of State concerning members limited immunities (when compared to parliamentary colleagues) particularly to those local councillors serving on quasi-judicial panels.

- 3.22 It is interesting to note that the concerns raised by Members of this authority have also been raised during the discussion and final approval of the bill in the House of Lords. Lord Beecham having commented that:

“It would also be helpful if, alongside any regulations, the Government gave some information, in guidelines or otherwise, about the risks that may be attendant on people filming, tweeting or otherwise relaying actual events. Although one hopes it would not happen, what is said in council may sometimes stray into the area of defamation and those relaying matters of that sort could find themselves in a difficult situation.

Some guidance about the need to be careful would help those who might otherwise run into difficulties. It is not likely to arise in a large number of cases but it is conceivable it might happen. Broadcasting authorities and so on are very alert to that danger. In Parliament it is privilege but that does not apply to local authorities.” (Hansard 21<sup>st</sup> January 2014)

#### Member and Officer Briefings

- 3.23 During consultation Members and Officers have rightly highlighted the need for further briefings to be made available to further explore issues relating to recording and immunities and better equip those likely to be recorded. Joint Member and Officer briefings are to be organised by the Head of Scrutiny and Member Development with sessions to be available from mid February 2014 – these will be initially tailored for those attending Planning and Licensing Committees; these sessions will be facilitated by senior councillors, and planning, licensing, legal and communications colleagues.

## Civic Hall Committee Room Facilities

- 3.24 Since the resolution of General Purposes Committee in October 2013, (subject to the availability of equipment) all meetings of Executive Board and Scrutiny Boards have been audio recorded.
- 3.25 With the increasing scale of meetings now open to third party recording, General Purposes Committee is asked to agree that meetings of Plans Panels and Licensing Committee now also be routinely audio recorded (where the necessary facilities exist).
- 3.26 This proposal though is currently limited by the availability and reliability of audio recording facilities within the Civic Hall. Currently only the Council Chamber and Committee Room 6/7 have audio recording facilities; with those in room 6/7 often subject to intermittent fault.
- 3.27 Further work is being undertaken to examine the scope for enhancing Committee Room facilities within the Civic Hall to enable better engagement of the public in committee based decision making of the Council.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- a) Consultation on the draft protocol has taken place with the Leader of Council, the Executive Member with responsibility for Democratic Services, Leaders and whips of political groups and the chairs of committees.
- The Leader of Council, and the Executive Member with responsibility for Democratic Services support the content of the protocol;
  - The Liberal Democrat and Morley Borough Independent Groups support the content of the protocol;
  - No representations against the introduction of the protocol have been received from committee chairs with the overwhelming majority being in favour;
  - Partners from the Health and Wellbeing Board have expressed support for the protocol;
- b) As officers are affected, particularly those who present or advise committees, the Trade Unions have also been consulted on the proposals. Whilst recognising the new legal requirements that will be placed on the authority, Trade Union colleagues have commented that they do not support the approach being taken by the Secretary of State to this matter and would have preferred the local authority to have greater flexibility/discretion over how the authorities meetings are reported.
- c) The Chief Executive, City Solicitor and Chief HR Officer have been consulted and are content with the proposals set out.

- d) Members will recall that interest was generated when a report on recording was considered last year. Communications colleagues have contacted those who made representations at that time (and other media based organisations) and have asked for views on the protocol; all are supportive of it and welcome the steps taken by council to introduce the revised arrangements in advance the Regulatory requirement to do so.
- e) At the time of writing this report the views were still being collated; where further comments are received these will be presented verbally at General Purposes Committee.

#### **4.2 Equality and Diversity / Cohesion and Integration**

- a) There are no specific equality and diversity or cohesion and integration issues arising from this report.

#### **4.3 Council policies and City Priorities**

- a) There are no specific implications for council policies or city priorities.

#### **4.4 Resources and value for money**

- a) There are no implications for resources or value for money arising from this report.

#### **4.5 Legal Implications, Access to Information and Call In**

- a) The Local Audit and Accountability Act 2014 provides the Secretary of State with authority, by Regulations, to make provisions for allowing persons;
  - To film, photograph or make sound recordings of proceedings at a meeting;
  - To use other means for enabling persons not present at such a meeting to see or hear proceedings at the meeting, as it takes place or later;
  - To report or provide commentary on the proceedings orally or in writing, so that the report or commentary is available, as the meeting takes place or later to persons not present at the meeting.

#### **4.6 Risk Management**

- a) General Purposes Committee is asked to delegate to the City Solicitor (in consultation with the Leader of Council), authority to review and agree any consequential amendments to rules of procedure contained within the Constitution that might arise from the approval of the protocol at Appendix 1.



## **5 Recommendations**

5.1 General Purposes Committee is asked to consider and agree;

- a) The content of a protocol relating to the third party recording of council committee, board and panel meetings attached at Appendix 1;
- b) That the protocol be further reviewed by the City Solicitor (in consultation with group leaders) in light of the content of Regulations and guidance issued by the Secretary of State; and
- c) Note the ancillary matters set out in this report relating to the adopting of the protocol, including Member and Officer briefings, Member immunities, Civic Hall facilities and consequential amendments that may be necessary to the constitution.

## **6.0 Background documents<sup>1</sup>**

6.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.