

# URGENT DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
OFFICE OF THE CHIEF EXECUTIVE	COUNCIL	18 MARCH 2020	
<b>CORONAVIRUS CONTINGENCY – ALTERNATIVE DECISION-MAKING OPTION</b>			

**PUBLIC ITEM**

This item is for consideration in the public part of the meeting

This item is recommended by officers to be considered by the Mayor as an urgent item under Section 100B(4)(b) of the Local Government Act 1972.

**SUMMARY**

The committee system operated at Fylde is predicated on members physically coming together to make decisions in a public forum. Group Leaders in consultation with the Chief Executive have agreed that the present coronavirus pandemic, along with the latest advice from central government, mean that it is not advisable, or the responsible course of action, for the council to continue to meet as normal. That being the case, it is necessary to put in place alternative decision-making processes for the council which must be within the context of the Local Government Act 1972 and other legislation governing local authority decision-making and approved by the Council.

Fylde has a significant number (43%) of elected members in the high-risk age group with several already taking government advice responsibly and self-isolating for an undisclosed period. Government advice published on March 16<sup>th</sup> included:

- Avoid all non-essential social contact (pubs, clubs, cinemas and restaurants)
- Avoid non-essential travel
- All family to self-isolate for 14 days if anyone has the symptoms / virus
- Emergency services will not support mass gatherings
- People need to work from home if possible
- The elderly who are ill and pregnant women need to take extra care
- Over 70s with ill health conditions should be shielded for 12 weeks

The advice is at present voluntary with the intention that everyone will act mature and responsible and pull together for the benefit of the wider community, the government has the powers to make non-compliance a criminal act. Local authorities will be expected to lead by example and act or make decisions appropriate to the national advice. It is with this background that the recommendation is to remove the requirement for personal contact in order to protect elected members, employees and the general public and to operate within the spirit of the current advice. The report outlines the preferred option to approve delegated powers to Chief Officers in accordance with the Local Government Act 1972 for a period to be determined in consultation with Group Leaders based on updated government advice and guidance as the circumstances of the pandemic evolve.

## RECOMMENDATIONS

1. That the Council delegate the following decision-making powers to the Chief Executive, Directors and Heads of Service in consultation with the Leader/Mayor/Chairmen and relevant members of the respective committees, with immediate effect:

*Powers to take any decision on behalf of the council which can lawfully be delegated to officers, subject to the decision-taker, before taking the decision, having taken appropriate steps to consult the chairman and members of the committee which would, save for this delegated power, have taken the decision.*

*Power to cancel council, committee or sub-committee meetings.*

2. That the Chief Executive reviews the alternative decision-making arrangements each week, or more frequently as required, in consultation with Group Leaders, taking into consideration the latest advice from government and appropriate agencies, to determine whether to revert to the normal committee procedures, and that the arrangements be additionally reviewed by members when it is next appropriate, taking into account that advice, for a scheduled meeting of the full council to take place.

## SUMMARY OF PREVIOUS DECISIONS

None relating to this matter.

## CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	√
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	√
Working with all partners ( <b>Vibrant Economy</b> )	√
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	√
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	√

## REPORT

### OPTIONS FOR DECISION-TAKING DURING THE CORONAVIRUS PANDEMIC

1. The coronavirus pandemic, or the response to it, has affected many aspects of normal life with the latest government advice addressing the need for 'social distancing' including:
  - Avoid all non-essential social contact (pubs, clubs, cinemas and restaurants)
  - Avoid non-essential travel
  - All family to self-isolate for 14 days if anyone has the symptoms / virus
  - Emergency services will not support mass gatherings
  - People need to work from home if possible
  - The elderly who are ill and pregnant women need to take extra care
  - Over 70s with ill health conditions should be shielded for 12 weeks

The advice proposes that public gatherings should be avoided, and it is proven that certain groups, such as the elderly or those with underlying medical conditions, are at greater risk from the virus. Group Leaders have agreed that in these circumstances it is not advisable for the council to continue with normal decision-making arrangements which require public gathering in the form of committees, at which elected members, employees and the public are present. The advice is not a requirement at present, it has been issued with the expectation that people will act responsibly and act consistent with the advice however, the government has stated that in the next few days further control measures will be required and there is an expectation that local authorities will lead by example.

2. Under a committee system of governance, no individual member can exercise delegated authority to take a decision on behalf of the council. Nor can any group of members take a decision unless formally constituted as a committee or sub-committee, meeting in person. Full council, a committee or sub-committee must physically meet in order to make a decision, the law does not permit meetings to be held by remote access. Legislation would be required to change that position, whilst several requests have been made for this to be approved in response to the pandemic it is highly unlikely that legislation will be forthcoming in the immediate future. That being the case, it is necessary to put in place alternative decision-making processes for the council which are consistent with the advice provided.
3. A paper published by ADSO (the Association of Democratic Services Officers) and LLG (Lawyers in Local Government) has analysed in depth the alternative approaches councils could take to implement alternative decision-making structures. The paper is attached to this report for reference which advocates that the delegation of powers to chief officers, with the use of technology to engage with the members of the committee, offers the most inclusive option.

## THE DELEGATION OF POWERS

4. Fylde has a higher than average proportion of the population, approximately 26%, that belong to the high-risk groups most impacted by the Coronavirus, this is even more so amongst elected members with 43% in the high-risk age group. At the time of publishing this urgent report four members had chosen to self-isolate for an undetermined period after carefully considering their circumstances and the welfare of the wider community. There is the real possibility that there could be insufficient elected members able or willing to attend in person based on the current advice and the possible additional social distancing and shielding measures that are likely to be implemented as the pandemic evolves.
5. The council is required to have arrangements in place to continue to make necessary decisions, the most appropriate mechanism based on the latest advice to avoid social contact and public gatherings, and ADSO guidance for councils that operate a committee system of governance, is the delegation of decisions to officers. The delegation would be to the Chief Executive, Directors and Heads of Service in order to cover the lead officer for each committee i.e. the Head of Planning & Housing will make planning decisions on behalf of the planning committee, and the Chief Executive responsible for any decisions made by Full Council. It would also be enough to ensure that there is appropriate cover if officers are absent as a result of the pandemic. There would be the requirement that the members of each committee are engaged (using technology for remote group access) to discuss and informally vote on any decision. The officer cannot in law fetter (constrain) their discretion entirely, but that does not mean that they cannot give almost overwhelming weight to a vote of committee members responding remotely to a report and officers' advice. The officer decision would be closely informed by the virtual discussion and vote of the members. The delegation would be made tonight and come into effect on the conclusion of this meeting.
6. Under the delegation, all power to take decisions on behalf of the council, would be delegated to the Chief Executive, Directors and Head of Service the inclusion of additional senior officers allows for the delegated powers to be transferable if the Chief Executive or senior officer for the committee is absent or unavailable as a result of the pandemic. The Chief Executive, Director or Head of Service would be required to engage those members who comprise the committee which would normally have taken the decision, before exercising the power.

### Proposed Delegated Roles

Committee	Delegated Lead Officer
Full Council	Chief Executive
Finance & Democracy	Chief Executive
Tourism & Leisure	Director of Development Services
Environment, Health & Housing	Director of Resources
Operational Management	Chief Executive
Audit & Standards	Head of Finance
Planning	Head of Planning & Housing
Licensing & Public Protection	Head of Environment & Waste

7. This approach removes the requirement for non-essential social interaction and gatherings between members, employees and the public as well as removing the need for non-essential travel. It also enables the ability to make decisions if the Town Hall is required to close, and officers are working from home or remote locations, consistent with the current national advice. The committee workplan will be reviewed with only essential items determined using the powers delegated to officers under alternative arrangements, reducing the volume of work required and allowing capacity to be dedicated to essential services.
8. Certain decisions cannot be delegated to officers including the Annual General Meeting of the Council which will be arranged in consultation with Group Leaders. The wording of the delegated power takes account of the decisions that cannot be delegated to officers.
9. All decisions taken by officers which would otherwise have been taken by committee would be published through the committee pages on the council's website.
10. It is also suggested that, for the avoidance of doubt, the Chief Executive is given express power, within that period to cancel meetings of the council and of committees, except for the annual meeting of the council

#### **CONSTITUTIONAL AND LEGAL CONSIDERATIONS FOR THE LONGSTOP DELEGATION**

11. Article 13.05 of the council's constitution requires that *"changes to the constitution will only be approved by the full Council after consideration of a recommendation from the Audit and Standards Committee or a proposal from the Chief Executive or the Monitoring Officer, or by way of members proposing a notice of motion in accordance with the Council's Procedure Rules subject to Section 101(2) of the Local Government Act 1972 applying which allows any committee of the council to arrange for any of its functions to be discharged by an officer of the authority"*. The changes under consideration are proposed by the chief executive and the monitoring officer, so the requirement under article 13.05 is met.

<b>IMPLICATIONS</b>	
Finance	None
Legal	The alternative arrangements do not override the requirement for decisions to be made within the legal framework of the Local Government Act 1972 and other legislation. The proposed arrangements are intended to allow decisions to continue to be made within that framework.
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	None
Health & Safety and Risk Management	The inability to have arrangements in place to make necessary decisions could place the council at significant risk.

<b>LEAD AUTHOR</b>	<b>CONTACT DETAILS</b>	<b>DATE</b>
Ian Curtis	ian.curtis@fylde.gov.uk & Tel 01253 658506	16 March 2020

<b>BACKGROUND PAPERS</b>		
<b>Name of document</b>	<b>Date</b>	<b>Where available for inspection</b>
ADSO/LLG briefing	15 March 2020	Town Hall, Lytham St Annes

#### **Attached Documents**

Appendix 1: ADSO/LLG briefing <https://www.adso.co.uk/joint-statement-from-adso-and-llg-la-decision-making-and-democracy-in-light-of-coronavirus/>

# Joint Statement from ADSO and LLG – LA decision making and democracy in light of coronavirus

15th March 2020

By [Wayne Chandai](#)

LLG and ADSO have received several enquires as to the position with local authority decision making and the democratic process in light of the Coronavirus. This has included the suggestion that both associations should lobby for a change of legislation to allow remote meetings if the situation deteriorates to the point that all meetings must be cancelled. Questions have been asked as to how local government should react to a requirement for curtailment of public gatherings, including meetings of councils. This may be the case in response to a Government direction or the decision of local authorities (or their members) based on local circumstance.

Local authorities are required to hold meetings to make decisions. The Local Government Act 1972 requires members to be physically present in order for a meeting to take place. The exception to that rule is in Wales, where remote attendance is allowed under the circumstances provided by section 4 of the Local Government (Wales) Measure 2011 provided there is a quorum of 30% physically present. In terms of day to day executive authority, those with executive leaders or elected mayors can rely on single member decision making without the need for Cabinet meetings if their Constitutions allow.

Even where those decisions must be made in the presence of an officer, (which is a sensible approach taken by many), this can be arranged in a different way or authorities can change their schemes of delegation now to alter those rules to accommodate remote presence in exceptional circumstances. For other decisions or those with a committee system, almost all delegation schemes include a reserve power to their Head of Paid Services to undertake responsibility for delegated functions of the authority in exceptional circumstances, albeit that differing authorities can sometimes insert various additional conditions. Given that these times are indeed exceptional (and a declared pandemic should meet the test for this), meetings might be cancelled and replaced with the alternatives this provides. The decision making might take a number of forms; the most inclusive is that a decision, that would otherwise have been on the agenda for a committee, is now made by an officer, but that the officer is advised in their decision-making by the views of members of the committee, which are then accessed remotely at an agreed time by way of Microsoft Teams, Skype, etc.

The officer cannot in law fetter (constrain) their discretion entirely, but that does not mean that they cannot give almost overwhelming weight to a vote of committee members responding remotely to a report and officers' advice, or even after seeing videoed submissions in lieu of public access. Local authorities are advised to review their schemes of delegation to ensure that provision is made for other officers to take urgent decisions in the event of the Chief Executive/Senior Management Team being indisposed due to the virus. This then leaves those meetings which must be held. Here authorities can only rely on the quorum and discussion with the political groups. If they agree, then the meeting could go ahead on a quorum basis, made up proportionately from each political group.

This would allow, for example, a full council meeting to quickly agree core business only and be made up of a quarter of their number, each sitting as spaced apart as the chamber allows. LLG and ADSO have written to the Ministry to echo the LGA's recent request that the government looks again at the accessibility of council meetings by use of remote means. It is likely however that that any change which might be made will take too long to implement for use in the current climate and is likely to be bottom of the list of the government's priorities in terms of the emergency legislation it wants to put through. Nevertheless, LLG and ADSO will continue to keep you updated on any developments.

Regards Phillip Horsfield, LLG President and John Austin, ADSO Chair

For further information on local government legal and democratic impacts from Coronavirus please visit

<https://www.lawyersinlocalgovernment.org.uk/saas/coronavirus-legal-issues-and-responses> and/or <https://www.adso.co.uk/members-forum/>

See below for Relevant Legislation

With thanks to Philip McCourt, Wirral Council and Alison McKane, LB Lambeth

## Relevant Legislation

The relevant legislation regarding access to local government body meetings and information is contained within Section 40 of the Local Audit and Accountability Act 2014. The relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2014/2/section/40>

The detailed provisions on how any person can report on the meetings of a local government body are in The Openness of Local Government Bodies Regulations 2014 which can be found at:

<http://www.legislation.gov.uk/uksi/2014/2095/contents/made>

The legislation relating to access to information regarding decisions made by council executives, and their committees/sub-committees and joint committees is Part 1A of the Local Government Act 2000 – see sections 9G and 9GA. It was inserted as a result of amendments made by the Localism Act 2011 and the relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2011/20/schedule/2/part/1>

The detailed provisions on the rights to meeting and information of an executive are in the secondary legislation made under the 2000 Act, that is the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which can be found at:

<http://www.legislation.gov.uk/uksi/2012/2089/contents/made>

The legislation relating to access to meetings and documents of a council and other local government bodies can be found in Part VA of the Local Government Act 1972, available at the following link: <http://www.legislation.gov.uk/ukpga/1972/70/part/VA>

The legislation relating to access to meetings of a parish or town council can be found at section 1 the Public Bodies (Admission to Meetings) Act 1960, available at the following link: <http://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/section/3> The legislation relation to remote attendance of meetings in Wales can be found at the following link: <http://www.legislation.gov.uk/mwa/2011/4/contents>