

## **Cabinet – 19 May 2020**

### **Governance and Decision Making during Covid 19 emergency**

**Portfolio:** Councillor Mike Bird, Leader of the Council

**Related portfolios:** None

**Service:** Resources and Transformation

**Wards:** None

**Key decision:** No

**Forward plan:** No

#### **1. Aim**

- 1.1 To provide details of the governance that has been put in place in order that the Council can continue to manage its business in accordance with its Constitution and the law during the Covid 19 crisis in the absence of Council meetings.

#### **2. Summary**

- 2.1 The report sets out the decision making procedure the council has adopted as a consequence of the Covid 19 crisis, through the utilisation of officer delegations and the strong leader executive decision making function. The report also sets out how the council is implementing the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 came into force on 4<sup>th</sup> April, 2020 to enable remote council committee meetings to take place.

#### **3. Recommendations**

That Cabinet note the report.

#### **4. Report detail - know**

##### ***Context***

- 4.1 In line with the continually updated Government advice concerning protecting the most vulnerable people in society and limiting gatherings of people, Walsall Council, following discussions with its political group leaders, and liaison with neighbouring authorities, decided that, following the Cabinet meeting on 18 March 2020, unless absolutely necessary, Council committee meetings would be suspended until the Annual Council meeting scheduled for 19 May 2020. All Elected Members were informed of this decision on 18 March 2020. As a consequence, the Council has utilised the emergency provisions in relation to delegated powers in the constitution in relation to Council decisions, in consultation with the relevant elected members, and has utilised the “strong leader” model in relation to executive decisions that have

needed to be taken. Where required the decisions have been published on CMIS and circulated to all elected members. The council is in the process of implementing the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 to enable it to hold virtual meetings.

- 4.2 The constitution already empowers the Chief Executive and the Executive Directors to take all necessary decisions in cases of emergency. The definition of an emergency under the constitution means any situation in which the relevant officer believes that there is a risk of damage to property, a threat to the health or well-being of an individual or that the interests of the Council or the Borough as a whole may be compromised.
- 4.3 On 20<sup>th</sup> March 2020 Democratic Services issued guidance with regard to Executive decision making by the Leader and officers during the Covid-19 outbreak to assist Officers in making lawful decisions under their delegated powers to ensure the Council could continue to function in the absence of committee meetings. This guide to decision making was approved by the Corporate Management Team on 4 April 2020 and circulated to all the top four tiers of Council managers with an explanatory email on 7 April 2020. The document also explained the Leader's role in executive decision making throughout this period. This included a full explanation as to how urgent decisions would be made. The Council still followed its constitutional requirements in relation to the publication and recording of decisions. It was recognised that the Council was operating in a time of emergency and accepted that decisions may have to be made on an urgent basis to deal with the rapidly changing circumstances to prevent serious prejudice to the Council's or public interest. Where urgency existed in relation to executive decisions agreement from the Mayor was sought to deal with the issue as a matter of urgency which removed the requirement for such decisions to be subject to the call in procedure. Even where decisions were taken on this basis the council has tried to ensure that these have been informed decisions with relevant information provided to decision-makers. It has to be accepted due to the circumstances the council are operating in that this information may not have been as complete as it would be under normal circumstances.
- 4.4 In managing the crisis the council also established two senior management officer groups which met on a daily basis. The main strategic meeting was Gold Control which was established to manage the strategic impact of the Covid 19 crisis taking into account national, regional, and local issues that had an impact on the functioning of the Council and the welfare of its residents and employees. Gold Control was part of the decision-making insofar as issues were raised may require decisions and following discussion at Gold Control were referred for decisions to be made where it was felt to be appropriate. The other Silver Control met on a daily basis to discuss and determine operational issues at a local level.
- 4.5 Following the suspension of Council committee meetings Democratic Services and ICT were already in the process of upgrading Elected Members information technology with the rollout of Microsoft Office 365. This software program includes Microsoft Teams which it was recognised would enable Elected Members, Officers, and Members of the Public to participate in virtual team meetings once the

government enacted the necessary legislation to do so. This rollout was done in consultation with the Leader of the Council, opposition group leaders in order to effectively prioritise the decision-making functions that would need to be enabled as a priority. As a consequence the initial rollout included the opposition group leaders and all of the Council's cabinet members. This rollout has continued to all Elected Members. Training has been provided to all elected members, and continues to be provided to ensure that elected members can fully participate in virtual meetings of the council. Elected Members have fully cooperated with this process.

- 4.6 The Government introduced the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 came into force on 4<sup>th</sup> April, 2020 which will remain in force until 7<sup>th</sup> May, 2021. The regulations make provision to enable local authorities to hold meetings remotely including by (but not limited to) telephone conferencing, video conferencing, live webcast, and live interactive streaming. In addition, existing legislative provisions have been modified to remove the requirement for local authorities to hold annual meetings, and to enable requirements for the public and press access to local authority meetings and associated documents through remote means and website access.
- 4.7 Following extensive consultation with the Leader of the Council, Opposition Group Leaders, the Mayor, and Deputy Mayor it was agreed that:
- a) to allow for remote meetings to be introduced the Council begins to pilot virtual Committee meetings immediately with a co-ordinated roll out initially focusing on essential decision making bodies and the Scrutiny Overview Committee from April – September 2020 this initial pilot period will ensure that systems are tried and tested before a proposed wider roll out begins in September 2020;
  - b) the Annual Council Meeting scheduled for 19 and 21 May be postponed until such time agreed by Group Leaders and that all appointments, as agreed by Annual Council in 2019, continue until such time that it convenes with Group Leaders to review this position in September 2020;
  - c) a draft calendar of meetings from April, 2020 to September, 2020 be agreed, this will be put on the Council's Website under Decision making in Walsall;
  - d) Personnel Committee, scheduled to be held on 15 and 16 April, 2020 be the first decision making meeting to be held electronically;
  - e) That Council delegations continue to be used where appropriate due to the continuation of the emergency situation;
  - f) That admission appeal hearings do not convene until such time that the DfE release further guidance;
  - g) That communications are developed on the rollout of virtual meetings to raise awareness.
  - h) That a guide to virtual meetings be developed by Democratic Services and regular feedback taken from officers and elected members on the running of virtual meetings;
  - i) That training on O365 for Elected Members continues to be developed and delivered by ICT to enable them to participate in virtual meetings.
  - j) That a further report be submitted at the end of July 2020 with the view to proposing a wider roll out of remote meetings from 1 September 2020 if the Council is unable to commence actual meetings.
  - k) Changes to attendance requirements for Committee meetings

- 4.8 The council has piloted three virtual committee meetings to date. They were an Overview and Scrutiny Committee working group and two Personnel Committees as set out above. It was decided to start with these meetings as they did not include members of the public which meant that testing could start on a risk assessed basis to see how the technology could be best used to support the democratic process. These trials have progressed well and the next virtual meetings will be the Cabinet Meeting on 19 May 2020, and then Licensing and Planning Committees. It has been decided to re-introduce an Overview and Scrutiny Committee meeting to ensure that there is the capacity for decisions of the Executive to be scrutinised. This also reflected concerns expressed by opposition group leaders that there should still be transparency and scrutiny of decisions. The Leader of the council was in full support of this proposal.
- 4.9 The Council's Chief Legal Officer has been meeting on a weekly basis with other Chief Legal Officer's across the Black Country to share learning in relation to the virtual meeting process and other governance issues. This has allowed for a level of uniformity across the region and reduced costs in relation to certain aspects of governance.

### ***Council Corporate Plan priorities***

- 4.10 Inequalities are reduced and all potential is maximised. In ensuring that the Council's decision-making processes have continued to function throughout this crisis period the Council has been able to take decisions to ensure that the most vulnerable residents in the borough have been supported as well as possible throughout this difficult time. It has also allowed a level of scrutiny of the decisions that have been made which assists the council ensuring that public resources have been targeted to where they are most needed and used in the most efficient way possible.
- 4.11 In establishing virtual meetings which will be available for the public to attend we will continue to engage our communities who help shape the services we provide. This ensures greater transparency and scrutiny of the decision-making and democratic process.
- 4.12 This is part of our internal focus to provide high quality support services that enable Council business. In embracing the digital technology to hold virtual committee meetings the council is managing to maintain the democratic process in this time of emergency. It is important the Council builds on the learning that has been developed over this period of time and enhances its digital capability in supporting the democratic process. The Council had already recognised this in investing in technology to upgrade the facilities in the Council Chamber and Committee Rooms, and rolling out the necessary hardware such as the investment in laptops to permit remote working.

### ***Risk management***

- 4.13 It is recognised that decision-making during the Covid 19 crisis increases the risk of legal challenge in relation to the determinations that the Council has made throughout this period. It is also recognised that decisions have needed to be taken at pace to avoid the risk of damage to property, a threat to the health or well-being

of an individual or compromise of the interests of the council or borough as a whole. Such decisions will out of necessity be based on less information than is usually considered and that pace gives less time for the normal reflection and assessment of risk. The Council sought to minimise the risk to the council in decision-making by introducing the governance set out in this report, and has attempted at all times to follow the law and its constitution.

### ***Financial implications***

4.14 There are no direct financial implications arising from this report.

### ***Legal implications***

4.15 The Council will exercise all of its powers and duties in accordance with the law and its constitution. The purpose of the constitution is to enable decisions to be taken efficiently and effectively ensuring that those responsible for decision making are clearly identifiable to local people and are required to explain the reasons for their decisions. (Article 1) New Standing Orders in relation to virtual meetings have been drafted to append to the normal rules set out in the Constitution and provide clarity of certain procedures that will inevitably have to be different for virtual meetings, such as a voting, these can be found on Council's Website under Decision making in Walsall. Only the Council can change the Constitution and approve the rules of procedure set out in Part 4 of the Constitution. Although under the emergency powers that would allow the Chief Executive to make alterations to the Council's Constitution. This should only happen however in consultation with the Leader of the Council, the other political Group Leaders and the Monitoring Officer.

4.16 Councils have an obligation to make informed decisions in relation to the items of business they consider. The principles of good decision-making are set out in the case of R (Sky Blue Sports & Leisure Ltd) v Coventry City Council [2014] EWHC 2089 (Admin). The Council is doing all that it can in the current circumstances to provide sufficient information for informed decisions to be made even where decisions are having to be taken on an urgent basis.

### ***Procurement Implications/Social Value***

4.17 There are no procurement implications arising from this report.

### ***Property implications***

4.18 There are no property implications arising from this report.

### ***Health and wellbeing implications***

4.19 There are no health or wellbeing implications arising from this report.

### ***Staffing implications***

4.20 There are no staffing implications arising from this report.

## ***Reducing Inequalities***

- 4.21 In ensuring that a decision-making process has been maintained throughout the Covid-19 emergency the Council has ensured that equality issues have been considered as part of this decision-making process. It is also allowed the Council to ensure that resources have been directed support the most vulnerable members of our communities.

## ***Consultation***

- 4.22 Where changes have been made to support governance the Democratic services team have at all times consulted with Elected Members and Officers.

## **5. Decide**

- 5.1 The Council will continue to review its governance arrangements as it has done throughout the Covid 19 crisis and will make changes after reviewing all the circumstances at this time of uncertainty to ensure lawfulness, openness, and transparency. A major review of the current arrangements are already scheduled to take place in July 2020. This review will take into account the views of all relevant stakeholders, including the Mayor and Deputy Mayor.

## **6. Respond**

- 6.1 The Council has already put in place a programme to hold virtual meetings.

## **7. Review**

- 7.1 A review of the programme of virtual meetings has been scheduled.

## **Background papers**

Guide to Executive Decision-making by the Leader and Officers up to 19 May 2020 during the Covid-19 outbreak

New Standing Orders for implementing virtual committee meetings

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