

Ward: All

Use of Electronic Devices in Meetings of the Council and its Committees

Report by the Solicitor to the Councils

1.0 Summary

- 1.1 This report asks Members to consider the use of electronic handheld devices by Elected Members, when partaking in both Council and Committee meetings of Adur District Council and Worthing Borough Council.
- 1.2 Members are asked to consider the existing provisions relating to the use of electronic handheld devices for communication, recording or publishing information, by way of social media or otherwise, by Members, in the current Constitution, including Council Procedure Rules and Protocols.

2.0 Background

- 2.1 Council Procedure Rule 32.6 in Part 4 of both Councils' Constitutions, deals with the use of electronic devices. It provides that Elected Members may at any meeting, use any device for the recording of the meeting, the sending or receiving of communications in relation to the meeting and the publication of the contents of the meeting. This is on the provision that such devices do not emit audible signals, there is no recording or communication of any matter relating to confidential or exempt parts of a meeting, the use of the device does not disrupt the meeting or distract members of the public or other Members, and it is not permissible to record an oral commentary during such a meeting. Council Procedure Rules therefore permit Elected Members use of electronic devices during Council and Committee meetings, provided such use does not cause disruption, it is not used in respect of confidential or exempt information and an oral commentary is not recorded.
- 2.2 Each Council's Constitution also contains a 'Protocol for the Public/Press Recording of Public Council Meetings' in Part 5. This Protocol is primarily aimed at providing guidance for the press and public on the use of recording and social media in meetings of the Council and its Committees. However, paragraph 5 of the Protocol relates to Elected Members and states:

"Members, as participants at meetings, are in a different position to members of the public and their actions affect the reputation of the Council. Members have an obligation to pay close attention to the proceedings of meetings they attend and

demonstrate that they are playing an active part. Therefore during meetings, Committee Members are strongly discouraged from engaging in the use of social media.

This is in addition to the general point of showing respect and courtesy to other participants and other provisions of the Members' Code of Conduct. Any use of modern media tools by Members in meetings should be considered in this context, particularly in regulatory meetings”.

The Protocol for Public/Press Recording of Public Council Meetings therefore makes use of social media and electronic devices in Council and Committee meetings permissible, but to be discouraged by Members participating in any meeting, particularly regulatory meetings.

- 2.3 The Members' Code of Conduct is based on the seven Nolan principles, one of which is integrity. If a Member participating in a Committee meeting is regularly and frequently throughout the meeting using social media or a handheld electronic device, it could be argued that they are not giving the matter in hand their full attention, which could affect their integrity of decision-making.
- 2.4 Article 12 of the Councils' Constitutions deals with the principles of decision-making and provides that Elected Members must act with procedural propriety, when making decisions, in accordance with the rules of fairness and natural justice. Again, it could be argued that significant use of an electronic device by a Member in the course of a Committee meeting could lead to procedural impropriety.
- 2.5 During regulatory meetings, the role of Elected Members is a quasi-judicial role and the principles of natural justice must be complied with. It is imperative that Members give their full attention to proceedings and take into account all relevant considerations in their decision-making and disregard all irrelevant considerations.

3.0 Proposals

- 3.1 It is proposed that the Constitutions, including Council Procedure Rules and supporting guidance and protocols, be amended to provide for the following:-
 - That Members participating in a regulatory Committee meeting are prohibited from using handheld electronic devices during the meeting, other than to access Council papers relating to the meeting, and communicating with others during the meeting via media.
 - Members may at any meeting where they are observing, rather than participating, use any device for recording the meeting, sending or receiving communications in relation to the meeting and publishing the contents of the meeting, provided that it does not cause any disruption or distraction, nor relates to confidential or exempt material.

- That Members participating in a non-regulatory Committee or Council meeting are discouraged from using handheld electronic devices, other than to access Council papers relating to the meeting, or communicating via social media.

3.2 To effect these principles, it is proposed that:

- Council Procedure Rule 32.6 be amended, in accordance with Appendix A;
- The Protocol for Public/Press Recording of Public Council Meetings be amended, in accordance with Appendix B;
- A new Protocol on the use of handheld electronic devices during Council meetings be adopted, in accordance with Appendix C; and
- A new Protocol on social media for Council Members be adopted (see separate report).

4.0 Legal

- 4.1 The Councils are obliged, in accordance with the Localism Act 2011, to have a Constitution. Such Constitution contains the Members' Code of Conduct, Council Procedure Rules and various Council Policies and Protocols.
- 4.2 Openness of Local Government Bodies Regulations 2014 sets out the public's rights for filming, recording and blogging from Council meetings.

5.0 Financial implications

- 5.1 There are no financial implications arising from this report.

6.0 Recommendation

- 6.1 The Joint Governance Committee is recommended to resolve to recommend to both Adur District Council and Worthing Borough Council that:-
- 6.1.1 The Solicitor to the Council and Monitoring Officer be authorised to replace Council Procedure Rule 32.6 with wording set out at Appendix A to this report.
- 6.1.2 That the existing Protocol for Public/Press Recording of Public Council Meetings be replaced with the revised document as set out at Appendix B to this report.
- 6.1.3 That the Adur and Worthing Councils' Protocol on the Use of Handheld Electronic Devices during Council Meetings as set out at Appendix C to this report be adopted.

Local Government Act 1972

Background Papers:

Adur District Council Constitution
Worthing Borough Council Constitution

Contact Officer:

Susan Sale
Solicitor to the Council and Monitoring Officer
Worthing Town Hall,
Chapel Road,
Worthing, BN11 1HA
01903 221119
susan.sale@adur-worthing.gov.uk

Schedule of Other Matters

1.0 Council Priority

- 1.1 [Set out which of the Council's priorities the proposal meets and how.]

2.0 Specific Action Plans

- 2.1 (A) [Set out the specific outcomes from the Corporate Plan the proposal is aimed at achieving and how]
(B) [Set out any specific government target the proposal is aimed to achieve]

3.0 Sustainability Issues

- 3.1 [Details of any sustainability issues, checklist to be completed and submitted to Community Wellbeing]

4.0 Equality Issues

- 4.1 [Details of any equality issues or how the proposal improves the current position]

5.0 Community Safety Issues (Section 17)

- 5.1 [Details of how the proposal helps reduce crime and disorder and to meet the Council's duty regards crime and disorder reduction targets]

6.0 Human Rights Issues

- 6.1 [Does the proposal impinge on anyone's human rights and if so how is it justified under the Human Rights Act? Human rights include:
Right to a fair trial, respect for family life, private life, home and correspondence, freedom of thought, expression, assembly and association and protection and quiet enjoyment of property and possessions. Also ask, is the action proportionate to the anticipated response or outcome?]

7.0 Reputation

- 7.1 [Is the proposal likely to have an impact on the reputation of the Council(s)]

8.0 Consultations

- 8.1 (A) [Details of relevant internal (staff UNISON etc) and external (including Stakeholder Groups; etc.) consultation]
(B) Include how have you used the feedback from the consultation in this proposal

9.0 Risk Assessment

- 9.1 [Details of risks of doing or not doing? Are there insurance or public liability issues? Is there a statutory duty on the Council to do what is proposed and what are the consequences of not doing it? Highlight if this report meets an element in the corporate business continuity plan]

10.0 Health & Safety Issues

- 10.1 [Details of any health and safety issues]

11.0 Procurement Strategy

- 11.1 [Confirm that the report complies with the Procurement Strategy or explain why the Strategy had not been complied with. Include how your recommendation meets the strategy making reference to Best Value principles if necessary]

12.0 Partnership Working

- 12.1 [Detail any partnership working the report/proposal seeks to promote]

Appendix A: Council Procedure Rule 32.6

32.6 - Electronic Devices

This Council Procedure Rule should be read in conjunction with the following documents:-

- Protocol on the Use of Handheld Electronic Devices during Council Meetings;
 - Councils' Social Media Policy for Elected Members.
- (a) Subject to (d) below, Members attending, but not participating in, any meeting of the Council or its Committees, may use any device for:
- i. The recording of the meeting;
 - ii. The sending or receiving of communications in relation to the meeting;
 - iii. The publication of the contents of the meeting.
- (b) Subject to (d) below, Members may at any non-regulatory meeting of the Council or its Committees, where they are a participant of such a meeting, use any device for:
- i. The recording of the meeting;
 - ii. The sending or receiving of communications in relation to the meeting;
 - iii. The publication of the contents of the meeting.
- However, such use of electronic devices in these circumstances is discouraged. Should Members use electronic devices in these circumstances, they must ensure that such use does not interfere with their participation and attention to the business of the meeting, nor affect the integrity of their decision-making process.
- (c) Members participating in a regulatory meeting of the Council and its Committees are prohibited from using any electronic handheld device for:
- i. The recording of the meeting;
 - ii. The sending or receiving of communications in relation to the meeting;
 - iii. The publication of the contents of the meeting.
- (d) Paragraphs (a) and (b) above are subject to the following restrictions, namely that:
- i. Such device does not emit any audible warning or other disruptive signal;
 - ii. The Member does not record or communicate any matter or information relating to the contents of any meeting or part of a meeting which is in relation to information which is confidential or from which the Members have agreed to exclude the press and public in accordance with the Access to Information Procedure Rules;

- iii. The use of the device does not disrupt the meeting or distract members of the public or other Members from the content of the meeting;
 - iv. It is not permissible to record an oral commentary during the course of the meeting.
- (e) Where a Member's use of a device does not comply with this Council Procedure Rule then the person presiding at that meeting shall consider whether or not action should be taken, including the removal of the device or ultimately removal of the Member from the meeting.

Appendix B: Protocol for Public/Press Recording of Public Council Meetings

1.0 BACKGROUND

- 1.1 This protocol provides guidance on acceptable conduct for audio and visual recording and the use of social media tools at public Council meetings.
- 1.2 Adur and Worthing Councils support the principle of transparency in the decision-making process and therefore will allow, subject to the control of the Person Presiding of the relevant meeting, the recording of the public section of Full Council, Committee and Sub-Committee meetings by members of the press and public.
- 1.3 The Councils audio record Full Council, Committee and Sub-Committee meetings and retain a copy of the recording along with the written minutes of the meeting. More detail on this procedure can be found within the Council Procedure Rules at Part 4 of the Constitution.

2.0 WHAT IS 'REPORTING'?

- 2.1 Reporting means:
 - a) Filming, photographing or making an audio recording;
 - b) Using social media, such as Twitter, Facebook, blogging or similar;
 - c) Using any other means for enabling a person not present to see or hear proceedings at a meeting, as it takes place or later.

3.0 WHEN IS REPORTING PERMITTED?

- 3.1 Subject to the following rules, the public and press are permitted to record in any meetings of the Councils that are held in public, except where the public have been excluded as permitted by law.
- 3.2 Where meetings are held in private, due to confidential or exempt information being included, no recording by the press or public is permitted.
- 3.3 No recording equipment may be left in the meeting room during any part of a meeting which is conducted in private.

4.0 RULES ON REPORTING

- 4.1 Anyone wishing to undertake recording should notify Democratic Services, by email at democratic.services@adur-worthing.gov.uk or by telephone on 01903

239999, 24 hours prior to the commencement of the meeting and comply with any requests made by the Person Presiding.

- 4.2 All recording must take place from a fixed position in the meeting room (i.e. public gallery) approved by the Person Presiding.
- 4.3 Recording should be directed at Members of the Council and members of the public seated in the public gallery should not be recorded. This also applies to a member of the public asking a question, presenting a petition or making a representation.
- 4.4 No recording of anyone under the age of 18 is permitted.
- 4.5 If a member of the public is concerned about being recorded at a Council meeting, please inform the Democratic Services Officer present at the meeting. No image or recording of a member of the public should be used if consent is refused by that individual. The Person Presiding can suspend recording when a member of the public is speaking and has expressed that they do not wish to be recorded.
- 4.6 The Democratic Services Team will ensure signs are prominently displayed at meetings to remind attendees that recording may be undertaken and that the Council has no control over where a recording might appear (for example posted on the internet). Meeting agendas will also carry this message and at the commencement of a meeting, the Person Presiding will announce if any requests to record have been made by the public.
- 4.7 Persons recording meetings are not permitted to carry out an oral commentary or report whilst the meeting is in session.
- 4.8 The use of flash or additional lighting in connection with recording at meetings will not be permitted without the prior notification and agreement of the Person Presiding.
- 4.9 Where any part of a meeting is held in private, no recording by the press or public will be permitted. All recording equipment must be removed from the meeting room during the exclusion.
- 4.10 Where the Person Presiding considers any recording is disrupting the meeting, the operator of the equipment will be required to stop and may be asked to leave the meeting room, removing their equipment at the same time.
- 4.11 Anyone who has been asked to leave a meeting because they have refused to comply with the Person Presiding's request with regard to recording may be prohibited from recording at future meetings.
- 4.12 Members of the public and press must ensure the recording will not be edited in a way that could lead to misinterpretation of the proceedings of a meeting. This includes refraining from editing the views being expressed in a way that may ridicule or show a lack of respect towards those being filmed/recorded.

- 4.13 Persons recording meetings are advised that the law of the land still applies when publishing recordings, for example the law of defamation and the law on public order offences. Freedom of speech within the law should also be exercised with personal and social responsibility, showing respect and tolerance towards the views of others.
- 4.14 Recognised media organisations and educational institutions may be given greater flexibility to record meetings for the purposes of news bulletins, programmes and education. These requests must be directed through the Democratic Services Manager and approved by the Mayor or Chairperson of the relevant Council in the case of meetings of the Full Council, or the Person Presiding in the case of Committees and Sub-Committees.
- 4.15 Any decision taken by the Person Presiding on the interpretation of this protocol is final.

*For meetings held in the Town Hall, Worthing, members of the press and public are welcome to use the Public Wi-Fi facilities which can be accessed by selecting **Adur & Worthing Councils** from the list of available networks on your device.*

Appendix C – Protocol on the Use of Handheld Electronic Devices

1.0 INTRODUCTION

This protocol provides guidance on the acceptable use of handheld electronic devices and social media by Elected Members, during meetings of the Councils and their Committees.

Use of handheld electronic devices includes:

- Making and receiving telephone calls;
- Texting;
- Reading and sending emails;
- Accessing Twitter, Facebook and other social media;
- Perusing Committee Reports and background papers;
- Taking, receiving and sending photographs.

Social media is the term used for online tools, websites and interactive media that enables users to interact with each other by sharing information, opinions, knowledge and interests.

2.0 USE OF HANDHELD ELECTRONIC DEVICES DURING MEETINGS OF THE COUNCILS AND THEIR COMMITTEES

The use of electronic devices is encouraged by Adur and Worthing Councils, in certain circumstances. For example, it is quick, efficient and environmentally friendly for Members to receive electronic documents relating to Council and Committee meetings, to be read via electronic handheld devices. However, the use of such devices should be exercised with caution. In particular, it is important that the public perception of a Member's use of electronic devices during a meeting is not that it takes their attention away from the business of the meeting. Excessive or inappropriate use of electronic devices could damage the integrity of the decision-making process and could lead to a challenge of a Council decision by an aggrieved applicant, interested party or member of the public.

2.1 Exempt parts of Council and Committee Meetings

It is not permissible for a Member observing or participating in a meeting of the Councils or their Committees, to record, communicate, publish, or receive communication in respect of any matter which is confidential or is being considered when Members have agreed to exclude the press and public, in accordance with the Access to Information Procedure Rules.

2.2 Regulatory Meetings

A Member is prohibited from recording, communicating, publishing or receiving communications in respect of information relating to the contents of any meeting of a Council's Regulatory Committee, including Planning Committee and Licensing Committee. Further, the use of handheld electronic devices and social media to express or receive views or comment during such

meetings is not permitted. Regulatory Committees are making quasi-judicial decisions and Members are required to come to a decision on the merits of the facts as presented to them, taking into account all relevant considerations and not taking into account any irrelevant considerations. The purpose of this protocol is to preserve the integrity of decision-making at such meetings.

2.3 Non-Regulatory Meetings

In respect of Part A of such meetings, where non-exempt and non-confidential information is being considered, Members may make use of electronic devices.

Where Members are participants of such meetings, the use of handheld electronic devices to record, communicate and publish material is discouraged and should only be used in a limited way. Significant or excessive use of electronic devices by Members participating in any meeting could call into question the level of attention given to the business of the meeting and consequently the integrity of decision-making.

Where Members are observing, rather than participating, in such meetings, but are not Members of the decision-making body, use of electronic devices for recording, sending or receiving communications and publishing content of the meeting, is permitted.

3.0 APPROPRIATE USE OF ELECTRONIC DEVICES

When using electronic devices, Members should:

- Set any such device to silent mode during meetings;
- Use the device unobstructively, without disturbing others;
- Ensure that usage of the device does not impact on the Member's ability to fully participate in the meeting.

Access to social media from a handheld electronic device during the course of any Council or Committee meeting, must also comply with the provisions of the Council's Social Media Policy.

If, during the course of any Council or Committee meeting, the Chair of that meeting considers that an individual's use of handheld electronic devices, or access to social media, has become inappropriate then the Member may be asked to cease use of the device immediately. Alternatively the Chair of the meeting may ultimately, if the disturbance continues, require the Member to leave the meeting.

4.0 FILMING, RECORDING AND PHOTOGRAPHING MEETINGS

Members are prohibited from filming, recording or photographing any parts of meetings of Regulatory Committees and any parts of any Council or Committee meetings where confidential information is being discussed or information where the press and public have been excluded.

In other circumstances, filming, recording and photographing proceedings of a meeting by a Member is permissible, with the prior approval of the Chair of that meeting, and in accordance with the above provisions.