

Westmorland and Furness Council

Report Title:	Remote Licensing Hearings
Meeting:	Council
Meeting Date:	23 November 2023
Report Author:	Linda Jones – Chief Legal and Monitoring Officer Rachel Ireland – Trainee Solicitor
Lead Cabinet Member(s):	Cllr Andrew Jarvis - Cabinet Member for Finance
Wards Affected?	All
PUBLIC, PART EXEMPT OR FULLY EXEMPT	Public
List of Appendices (if any)	1. Protocol for Remote Licensing Hearings 2. Amendments to the Council's Constitution – Remote Licensing Hearings

1. Executive Summary

- 1.1 Following a meeting of the Licensing Committee on 28 September 2023 whereby the Committee resolved to implement Remote Licensing Hearings, the Constitution Review Working Group at their meeting on 13 October 2023 resolved to recommend the Remote Licensing Hearings Protocol to Council and that any arising amendments considered necessary to the Constitution be delegated accordingly to the Chief Legal and Monitoring Officer.

2. Recommendation

For the reasons set out in this report, it is recommended that Council -

- 2.1 adopt the Protocol on Remote Licensing Hearings, as detailed at Appendix 1, and approve the proposed amendments to the Constitution (as outlined in Appendix 2) in light of the proposed adoption of the Protocol; and
- 2.2 delegate authority to the Chief Legal and Monitoring Officer to update the Constitution with the amendments in Appendix 2 and any further minor amendments necessary in order to implement the Protocol following consultation with the Chair of the Licensing Committee and the Head of Public Protection.

3. Information: the Rationale and Evidence

- 3.1 On 25 March 2020 Parliament passed the Coronavirus Act 2020 in response to the Covid-19 pandemic. Section 78 of that Act authorised regulations (the Flexibility of Local Authority and Police and Crime Panels Meetings (England and Wales) Regulations 2020) to make provision for (among other things) “the manner in which persons may attend, speak at, vote in, or otherwise participate in, local authority meetings. The provisions in the Coronavirus Act 2020 was

limited in application to local authority meetings required to be held, or held, before 7 May 2021.

- 3.2 In anticipation of the expiry of the 2020 Act, Hertfordshire County Council (and others) issued proceedings and sought a declaration from the Court that (in effect) “meetings” held under the Local Government Act 1972 did not have to be in the same physical space and might occur by way of a remote or virtual hearing.
- 3.3 On 25 March 2021 the Divisional Court in Hertfordshire County Council and others v Secretary of State for Housing, Communities and Local Government [2021] EWHC 1093 (Admin) focussed on local authority meetings held under the provisions of the Local Government Act 1972. The High Court held that the provisions relating to local authority meetings in Schedule 12 to the Local Government Act 1972 (LGA 1972) do not permit local authority meetings to be held remotely and that primary legislation would be required by Parliament. However, the decision did not focus on local authorities acting in their capacity as licensing authorities holding licensing hearings under the provisions of the 2003 Act and specifically the Licensing Act 2003 (Hearings) Regulations 2005 made under the Act.
- 3.4 For the avoidance of doubt, the recent proposed amendment (which was not approved by the House of Lords) to the Levelling Up and Regeneration Bill in relation to the provision of Local Authorities being able to hold remote meetings, does not apply to Licensing Hearings.
- 3.5 On 17 April 2023 District Judge Nermine Abdel Sayed, sitting at Bromley Magistrates' Court, held that the London Borough of Lewisham could determine its own procedure when conducting licensing meetings. The Council argued in the case that neither the Licensing Act 2003 nor the Licensing Act (Hearing) Regulations expressly require a hearing to take place in person implying that Licensing Committees can regulate their own procedure.
- 3.6 The judgment found the relevant legislative framework uses the word ‘place’ to describe where a licensing hearing is to be held but it is not defined in either LA 2003 or the regulations.
- 3.7 Although, as a decision of the Magistrates’ Court, this judgment is not technically binding on any other case, it is so far the only case that has considered the issue and is therefore persuasive authority. It remains to be seen whether the High Court will be asked to give a definitive ruling on this important issue.
- 3.8 At the Constitutional Review Working Group’s meeting on 18 May 2023 the Group passed a resolution that the Licensing Committee consider the option to hold remote licensing hearings in light of the London Borough of Lewisham judgment. Members of the Licensing Committee were consulted via email on the option to hold remote hearings and were asked to formally consider the implementation at their meeting on 28 September 2023. Members were also

presented with a Draft Remote Licensing Hearing Protocol which can be found at Appendix 1 to this report.

- 3.9 On 28 September 2023 Members of the Licensing Committee resolved to adopt the implementation of remote licensing hearings and provided feedback on the Draft Protocol. Members expressed that the introduction of remote licensing hearings should be the exception and not the norm. A number of Members conveyed that the option to hold meetings remotely would be beneficial to those Members of the public who were unable to easily travel to Council offices to attend in person hearings. However, Members also recognised that there were a number of issues related to holding remote licensing hearings such as internet issues and that Members of the public may have problems with accessing technology such as access to a smart phone, laptop or tablet.
 - 3.10 Members provided feedback that any licensing hearing held remotely should only take place with the agreement of all parties, which is in accordance with the Draft Protocol proposed in Appendix 1. Members did express that in-person hearings facilitated fair meetings and allowed all parties to communicate easily in one central place. However, the option to hold virtual meetings could be beneficial for Councillors, Officers and members of the public for the reasons of inclusivity and accessibility, and in terms of resources.
 - 3.11 On 13 October 2023 the Constitution Review Working Group resolved to recommend to Council to agree any amendments to the Constitution in light of the adoption of the Protocol found at Appendix 1 to this report. Outlined at Appendix 2 are the proposed amendments to the Constitution with explanatory notes; the proposed amendments are considered necessary in order for the Council to facilitate Remote Licensing Hearings.
 - 3.12 It should also be noted that following the adoption of the Protocol, further minor amendments may be required to the Protocol and subsequently the Constitution following the implementation of Remote Licensing Hearings to address for example practicalities of implementing remote meetings. Therefore, Members are also asked to authorise the Chief Legal Monitoring Officer to make any further required amendments to the Constitution which will be reported to Council following consultation with the Chair of the Licensing Committee and the Head of Public Protection.
- 4. Link to Council Plan Priorities: (People, Climate, Communities, Economy and Culture, Customers, Workforce)**
- 4.1 This report relates to all the Councils priorities. The use of remote Licensing Sub-Committee hearings avoids the physical attendance at hearings without the economic and environmental costs of individuals travelling to physical in person hearings.

5. Consultation Outcomes (with services, ward councillors & public consultation where required)

- 5.1 A report was considered by the Constitution Review Working Group at their meeting on 18 May 2023. The Licensing Committee were consulted by email circulation on the implementation of remote Licensing Hearings, and on 28 September 2023 at their formal meeting approved the implementation of remote licensing hearings and the adoption of the Draft Protocol at Appendix 1. It was also resolved that a report be brought back to the Constitution Review Working Group following this consultation to consider any amendments to the Constitution if required and provide any feedback from Members. On the 13 October 2023 at a further meeting the Constitution Review Working Group Members passed a resolution recommending to Council that any required amendments to the Constitution be implemented.
- 5.2 The Protocol has also been reviewed by the Council's Head of Public Protection. In accordance with the resolution passed by the Licensing Committee, the Protocol will be finalised in consultation with the Chief Legal Monitoring Officer, the Chair of the Licensing Committee and the Council's Head of Public Protection.

6. Alternative Options Considered

- 6.1 The Council could continue with in person hearings.

7. Financial Implications and risk

- 7.1 There would be net financial savings with remote hearings and these will need to be quantified.

8. Legal & Governance Implications

- 8.1 Section 9(2) of the Licensing Act 2003 provides that regulations may make provisions for the proceedings of Licensing Sub-Committees including public access to the meetings. Subject to such regulations, each Licensing Committee may regulate its own procedure and that of its Sub-Committees. The Licensing Act 2003 (Hearings) Regulations 2005 are made pursuant to section 9(2) of the Act. Remote hearings are permitted under the language of the regulations and Act. The Licensing Committee is entitled to set its own procedures, subject to the regulations. Given that the regulations are silent on the subject of remote hearings, Licensing Committees can lawfully set its own procedures for virtual hearings.
- 8.2 There is a legal requirement to hold Licensing Sub-Committee hearings in a fair manner. This applies whether a hearing is held in-person or remotely. Care needs to be taken when holding remote hearings to ensure all parties are present throughout the meeting, to ensure any loss of connection is picked up and resolved as soon as possible, and that the hearing is adjourned on resuming the meeting that a repetition and/or summary of what the party missed during loss of connectivity is provided. The Protocol only applies where all parties agree to

proceed with a remote hearing. Applicants may still request that their hearing is held in-person.

- 8.3 The Constitution Review Working Group has responsibility for reviewing and making recommendations to Full Council on amendments and improvements to the Council Constitution (Standards and Governance Committee Terms of Reference, paragraph 2.25). In accordance with 14.1 of Part 1 of the Constitution, Council is responsible for adopting and agreeing changes to the Constitution. Appendix 2 to this report outlines the proposed amendments to the Constitution in order to implement remote licensing hearings. This report also seeks a delegation to the Chief Legal and Monitoring Officer to effect further minor amendments to the Constitution in order to implement the final Remote Licensing Hearings protocol. Appendix 2 includes further explanation regarding the proposed amendments.
- 8.4 There will be data protection implications arising from implementing remote licensing hearings and the Council will take appropriate advice to manage these. The Council will process personal information through audio and video recordings of Committee meetings using the collaboration and conversational platform Microsoft Teams. The Council will keep personal information as long as required by law or by a Council's specific business requirements. The Council has a Records Retention Policy and Schedule in place setting out the types of records it will hold, and how long the Council will hold them. Where required, the Council will publish the relevant Privacy Notices in relation to Remote Licensing Hearings.
- 8.5 There are times when council meetings are not open to the public, when confidential, or "exempt" issues (as defined in Schedule 12A of the Local Government Act 1972) are under consideration. Where the technology is available, the Democratic Services Officer or meeting facilitator will ensure that there are no members of the public in remote attendance or remotely accessing the meeting are able to hear or see the proceedings once the exclusion has been agreed by the meeting. Any Remote Member should confirm by verbal declaration, prior to participating in any confidential and/or exempt item of business, that they are in a secure private location and that there are no other persons present (or other recording devices) who are not entitled to be (either hearing or seeing) consideration of such items and that no one else is able to hear the proceedings from the device being used by that Remote Member and that no recording is being made. Any member in remote attendance who failed to disclose that there were in fact persons present who were not so entitled would be in breach of their Code of Conduct responsibilities. The same rules apply in relation to adjournments of the meeting to exclude the press and public where Members make their decision and retire in accordance with Regulation 14 (2) of the Licensing Act 2003 (Hearings) Regulations 2005 (as amended) in order to further consider the application.
- 8.6 For the purposes of transparency and conducting a fair hearing, all parties due to attend the Sub-Committee will be provided prior to the Hearing with the relevant guidance, procedure, protocol and etiquette rules in relation to Remote

Licensing Hearings. Copies should also be made available on the Council's website.

9. Human Resources Implications

9.1 The Council accepts that there are technical and staffing implications connected with the introduction of remote attendance. There will be a need to provide appropriate training for Officers and Members who might become involved in remote attendance, both to familiarise them with the requirements of the Protocol and procedure and to cover the practical issues involved.

10. Equality & Diversity Implications (including the public sector equality duty, Armed Forces Families, Care Leavers and Health inequalities implications)

10.1 There are no equality and diversity implications arising out of the recommendations in this report.

11. Background Information & Sources (used in preparation of this Report)

Name of Background document	Where it is available
Judgment of District Judge Nermine Abdel Sayed in the Magistrates' Court case of Walk Safe Security Services Limited v London Borough of Lewisham – 17 April 2023	walk-safe-security-services-v-lb-lewisham.pdf (instituteoflicensing.org)
Licensing Act 2003	Licensing Act 2003 (legislation.gov.uk)
The Licensing Act 2003 (Hearings) Regulations 2005	The Licensing Act 2003 (Hearings) Regulations 2005 (legislation.gov.uk)
Licensing Committee and Sub-Committee Hearings Procedure	Appendix 1 - Licensing Committee Hearings Procedure 110523.pdf (moderngov.co.uk)
Licensing Committee 28 September 2023 (Item No.10 – Report on Remote Licensing Hearings)	28-09-2023 Report on Remote Licensing Hearings - Clean.pdf (moderngov.co.uk)
Licensing Committee 28 September 2023 Minutes	Minutes Template (moderngov.co.uk)