

# Broads Authority

19 November 2021

Agenda item number 15

## Remote meetings

Report by Chief Executive

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### Purpose

Members are asked to consider whether it is appropriate for the Broads Authority's advisory, non-decision-making committees, namely Navigation Committee and Audit and Risk Committee, to have the option to hold meetings virtually.

### Recommended decision

Subject to consultation with the Chairs of Audit and Risk Committee and Navigation Committee once the agendas have been prepared, that meetings of these Committees be permitted to meet virtually, and that Standing Orders be amended accordingly.

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## 1. Introduction

- 1.1. Holding formal meetings of the Broads Authority and its committees online (in other words, as virtual meetings) during the Covid-19 pandemic has worked rather better than many people had thought possible. There have been a number of advantages, and some members and, the Navigation Committee in particular, have indicated that they would like the option of virtual meetings to continue. We therefore sought legal advice on this matter, specifically in respect of the Authority's advisory, non-decision-making committees (namely, Audit and Risk Committee and Navigation Committee).
- 1.2. There are three principal advantages of the on-line meetings. Firstly, it saves on travel time and thereby reduces carbon emissions if members normally travel to the meetings by car. Secondly, more members are able to attend as it is less disruptive to the working day, and thirdly it provides greater access to the public who can view the meeting on-line. Members will see from the legal advice note (Appendix 1) that this is a grey area of the law and that decisions by the Government on future arrangements are awaited.
- 1.3. The advice states: *"there is currently no clear-cut answer, and therefore the Broads Authority should think carefully before holding meetings virtually and look to balance the commercial risks involved as there will be a possibility of challenge. Our advice therefore is that as a starting point the Broads Authority should take a risk-based approach. If controversial business is to be determined at a meeting, there is a higher risk of challenge. The Broads Authority need to weigh the risk of challenge against the benefits of holding a virtual meeting for its members."*

- 1.4. The advice note also states that: *“There is a strong legal consensus that purely advisory committee meetings can continue to be held virtually as they are only making recommendations, which are not required to be accepted by the council in question.”*.
- 1.5. The views of the Authority are sought on this matter. If members decide that virtual meetings should be an option open to the Audit and Risk Committee and Navigation Committees then it is proposed that, following preparation of the agenda for each meeting, the Chief Executive consults the Chair and Vice-Chair of the relevant Committee, on whether it would be appropriate for the meeting to be held face-to-face or virtually. The Authority’s Standing Orders would need to be amended accordingly to enable this choice.

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Appendix 1 – Legal advice on remote meetings

## **BROADS AUTHORITY – VIRTUAL MEETINGS ADVICE NOTE**

### **1. BACKGROUND**

- 1.1 From 7 May 2021 the ability to hold virtual local authority meetings ceased due to the expiry of the coronavirus regulations. In the legal challenge following this the High Court refused to apply a modern interpretation to Schedule 12 of the Local Government Act 1972 (**LGA 1972**), and ruled a meeting must take place at a single, specified geographical location; attending a meeting at such a location means physically going to it; and being "present" at such a meeting involves physical presence at that location. Therefore, new primary legislation is required for councils to meet and make decisions virtually. Furthermore, it was held "open to the public" or "held in public" under the LGA 1972 requires physical attendance by the public, and remote access *alone* does not satisfy this requirement.
- 1.2 Despite this, some local authorities have continued to hold virtual meetings, particularly when meetings are purely advisory and non-decision making (i.e. committees appointed under section 102(4) of the LGA 1972).

### **2. ADVICE NOTE**

- 2.1 There is a strong legal consensus that purely advisory committee meetings can continue to be held virtually as they are only making recommendations, which are not required to be accepted by the council in question. However, there is currently no clear cut answer, and therefore the Broads Authority should think carefully before holding meetings virtually and look to balance the commercial risks involved as there will be a possibility of challenge.
- 2.2 The Standing Orders do not currently expressly provide or prohibit virtual committee meetings. However, under Standing Order 24(1) (Quorum of Committees and Sub-Committees) of the Broads Authority it states:
- "Except where authorised by a statute or ordered by the Authority business must not be transacted at a meeting of any Committee unless at least one quarter of the whole number of the voting members of the Committee or four voting members (whichever is more) are present."*
- 2.3 As the High Court ruled being "present" involves physical attendance where the meeting is taking place. Nevertheless, it could be argued that Standing Order 24(1) is not applicable to the Navigation Committee as it does not have "voting members" since it is a consultative and advisory non-decision making committee, and therefore members do not need to be "present" for a valid meeting to take place and can attend virtually.

- 2.4 However, as detailed above the High Court has expressly ruled that primary legislation is required for valid virtual meetings, which depends on the passage of parliamentary legislative procedures. Consequently, it should be reiterated there is currently no absolute clarity on this matter and it remains a grey area of law.
- 2.5 It must also be noted that under section 100(2) of the LGA 1972 committee meetings are open to the public and the press. In addition, three clear days' notice must be given to the public. Therefore, thought must be given by the Broads Authority to physical public attendance and public participation where it has been permitted.
- 2.6 Our advice therefore is that as a starting point the Broads Authority should take a risk based approach. If controversial business is to be determined at a meeting, there is a higher risk of challenge. The Broads Authority need to weigh the risk of challenge against the benefits of holding a virtual meeting for its members.
- 2.7 Primary legislation is anticipated to reflect the demand for virtual meetings, but until then the position remains uncertain.

**Birketts LLP 2021**