

Council Assembly

Wednesday 26 January 2011

7.00 pm

Town Hall, Peckham Road, London SE5 8UB

Supplemental Agenda – Late and Urgent Report

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Date: 26 January 2011

Item No.	Classification: Open	Meeting Name: Council Assembly	Date: 26 January 2011
Report title:		Constitutional issues arising from Southwark Democracy Commission – Recording at council assembly meeting	
Ward(s) or groups affected:		All	
From:		Constitutional Steering Panel	

RECOMMENDATIONS

1. That council assembly adopts the constitutional change recommended by the Constitutional Steering Panel, to reflect the guidance set out under the heading 'General procedural provisions' (see Appendix 1 of this report) by amending council assembly procedure rule 1.9 as set out in paragraph 9 of this report to make it clear that the Mayor has the discretion to request the termination or suspension of the recording/filming/webcast if, in the opinion of the Mayor, continuing to record/webcast the meeting would prejudice the proceedings of the meeting.
2. That officers be authorised to undertake any consequential and cross referencing changes arising from recommendation 1 above.

BACKGROUND INFORMATION

3. Council assembly on 1 December 2010 considered a report on changes to the constitution arising from the Southwark Democracy Commission's consideration of the role of council assembly.
4. One of the main areas that the Democracy Commission made recommendations on was:
 - Making better use of new technology and established communication channels, including local media, to engage and communicate with residents and illicit opinion and questions on debates held at council assembly on themes and plans.
5. After considering the recommendations of the Democracy Commission on the use of new technology council assembly agreed the following:

Broadcasting and recording

1. That the rule on audio recording be relaxed and that the change be reviewed in the future, if necessary.
2. That the legal briefing together with the experiences of other local authorities form the basis on which to develop a protocol on the issues involved.

KEY ISSUES FOR CONSIDERATION

Introduction

6. Any proposal to change the constitution should seek to do so based on the following principles by making it:
- **Accessible** to all those who need to use it to understand their rights and obligations under it.
 - **Efficient:** supporting effective decision-making so that the business of the council can be delivered in line with best practice on corporate governance.
 - **Inclusive:** so that decision-making is open and transparent and involves local communities.

Part 4 – Council Assembly Procedure Rules - Broadcasting and recording (CAPR 1.9)

7. The Democracy Commission recommendations in relation to broadcasting and recording at council assembly meeting required changes to council assembly procedure.
8. The Democracy Commission recommended that the rules on the recording of audio were relaxed and all audio recording of the proceedings in council assembly be allowed. Photography and filming would remain subject to prior agreement of the chair. A detailed briefing on the implications of relaxing the rule was prepared for the council assembly on 1 December 2010. This advice is attached as Appendix 1. Council assembly agreed to amend the rules but undertook to review the change in the future, if necessary. At the meeting of council assembly in December, some members raised the possibility of a need to qualify the revised rule on recording and filming in the event that the Mayor wishes to curtail this in particular circumstances. The Constitutional Steering Panel met on 25 January 2010 to consider this issue.
9. The Constitutional Steering Panel recommended that council assembly adopt a change to the constitution and the detailed wording of the change to council assembly procedure rule 1.9 is set out below (additional text is underlined):

1.9 BROADCASTING AND RECORDING

1. Audio recording of the proceedings of a council meeting by any member of the public, media or councillor shall be allowed. Photographing or filming of the proceedings of a council meeting by any member of the public, media or councillor shall only take place with the prior agreement of the chair. The chair will make an announcement at the beginning of the meeting on any arrangement agreed.
2. The Mayor has the discretion to terminate or suspend the recording or photograph or filming if, in the opinion of the Mayor, continuing to do so would prejudice the proceedings of the meeting.
3. The circumstances in which termination or suspension might occur could include:

- a) Public disturbance or suspension of the meeting
- b) Exclusion of public and press being moved and supported
- c) The Mayor, on advice of the monitoring officer, considering that continued recording/photograph/filming/webcast might infringe the rights of any individual, and
- d) The Mayor, on advice of the monitoring officer, considering that a defamatory statement has been made.

Consequential Changes

10. As a result of the changes suggested within this report officers will be required to update the constitution. Therefore council assembly is requested to authorise officers to undertake these consequential changes.

Community impact statement

11. The work of the Democracy Commission has received significant feedback from the community which was empowered with the aim of increasing public engagement with the council and enhancing the community leadership role of the council. The work of the commission has included public consultation and involvement including

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

Council's constitution

12. This comment advises the constitutional steering panel of the legal procedure relating to changes to the council's constitution.
13. Section 37 of the Local Government Act 2000 requires the council to "prepare and keep up-to-date" a constitution. Statutory guidance from the Department for Communities and Local Government states that constitutions "should be drafted as a flexible document" but leaves it up to local authorities to determine how the constitution is to be changed. It is also recognised that council constitutions cannot cover every eventuality.
14. Article 1.5(a) of Southwark's constitution states that changes to the constitution which "can only be approved by the council assembly will require the prior consideration of the proposal by the constitutional steering panel".
15. Council assembly may approve any amendment to the constitution where the issue in general has previously been considered by the constitutional steering panel. Further, there is a distinction between changes to the constitution which clarify existing roles and functions and those which raise completely new matters which have not been considered in accordance with Article 1.5.

Recording/reporting of Council Assembly proceedings

16. It will need to be ensured that the proposed relaxation of recording/reporting of Council Assembly proceedings complies with the requirements set out in section 100A of the 1972 Act which states:

100A.- Admission to meetings of principal councils.

(7) Nothing in this section shall require a principal council to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.

This raises the issue of how and to what extent the Mayor will give consent to the recording/reporting of proceedings as well as whether the consent of members of the public who speak at council assembly ought to be sought. A fuller legal briefing on the implications is set out in Appendix 1.

REASON FOR URGENCY

17. Council assembly consideration of this rule will allow all the changes made in response to the recommendations of the Democracy Commission to be incorporated into the revised council assembly procedure rules, which are due to be printed following the changes in December and in advance of the meetings scheduled for the remainder of the year.

REASON FOR LATENESS

18. The Constitutional Steering Panel met on 25 January 2010 to consider this change.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet report and minutes	Tooley Street, London SE1 2TZ	Paula Thornton 020 7525 4395
Democracy Commission reports and agenda	Tooley Street, London SE1 2TZ	Julie Timbrell 020 7525 0514
Council assembly reports and minutes	Tooley Street, London SE1 2TZ	Lesley John 020 7525 7228

APPENDICES

No.	Title
Appendix 1	Briefing on Recording/Reporting of Council Assembly proceedings

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Communities, Law & Governance	
Report Author	Ian Millichap, Constitutional Manager Lesley John, Constitutional Officer	
Version	Final	
Dated	26 January 2011	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	Yes	Yes
Date final report sent to Constitutional/Community Council/Scrutiny Team	26 January 2011	

Briefing for members on legal implications of relaxing recording/broadcasting of Council Assembly meetings

Background

The general position with regard to meetings is that the Council is not required “to permit the taking of photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later) or the making of any oral report on any proceedings as they take place” (Section 100A Local Government Act 1972).

In short, no form of photography, filming, recording or broadcasting of Council Assembly meetings can take place unless the Council gives permission. Such permission is given through the Mayor at the meeting.

If the Council decides to relax the recording/broadcasting of Council Assembly meetings to include, for example, webcasting consideration needs to be given to the following:

- The provisions of the Data Protection Act 1998.
- The Human Rights Act 1998.
- A number of procedural matters.
- Aspects of the law on defamation.
- Copyright for usage of any footage.

Data Protection Act 1998 ('DPA 1998')

Images of members of the public that may be captured by, for example, webcasting cameras are potentially 'personal information' and therefore subject to the requirements of the DPA 1998. Under the DPA 1998 personal information must be used fairly and, ordinarily, only for purposes for which the individual has given their consent.

Care must therefore be taken to ensure that there has been compliance with data protection requirements and that members of the public have given effective consent to their own appearance in any webcasts etc.

The Council could take the following steps to ensure such compliance:

- Using communications with members of the public who are likely to be filmed, for example deputations and questioners, to make them aware that the meeting is to be webcast/recorded.
- Putting notices on the order of business for Council Assembly meetings to make members of the public aware that the meeting is being webcast/recorded.
- Using appropriate signage to be displayed inside and outside the Council Chamber.
- Making the public aware of the webcast/recording during the informal session which it has been proposed takes place prior to the formal Council Assembly meetings.

In addition, the current practice whereby the Mayor makes a formal announcement at the start of the meeting should be continued.

By remaining in the Council Chamber members of the public will then be deemed to have given their consent (impliedly) for any images etc of themselves that may be taken to be used for broadcast and any other appropriate purposes e.g. training purposes within the Council.

Anyone wishing to make a deputation, present a petition or ask a public question who had concerns about broadcasting/webcasting could be directed to a designated officer on the Constitutional Team. However the expectation is that this would only happen in exceptional circumstances as members of the public making a deputation, presenting a petition or asking a question are likely to be seeking maximum publicity.

There may also be a requirement to address the responsibilities of members of the public who record or photograph Council Assembly proceedings towards other individuals who are in attendance. This would include coverage by media outlets and citizens journalists for example on twitter.

Human Rights Act 1998/European Convention on Human Rights

The recording and broadcasting of images of individuals might also engage Article 8 of the European Convention. That is, the Right to respect for private and family life. However, Council Assembly meetings are required by law to be held in public (section 100A Local Government Act 1972) and individuals will, if as proposed above, be made aware that a meeting is being webcast/recorded. Consequently, insofar as images of the public may be recorded, it is likely any interference with Article 8 Rights would have a lawful basis, and can be considered proportionate with regard to the rights and freedom of others to engage in the democratic process.

General procedural provisions

The Mayor would retain the discretion to request the termination or suspension of the recording/webcast, if in the opinion of the Mayor, continuing to record/webcast the meeting would prejudice the proceedings of the meeting.

The circumstances in which termination or suspension might occur could include:

- Public disturbance or suspension of the meeting.
- Exclusion of public and press being moved and supported.
- The Mayor, on advice, considering that continued recording/filming might infringe the rights of any individual.
- The Mayor, on advice, considering that a defamatory statement has been made.

No exempt or confidential agenda items would be recorded/webcast.

Defamation

It is important that members appreciate that statements made at Council Assembly meetings are subject to the law of defamation. Extending the reporting/recording of Council Assembly meetings will therefore bring any defamatory statement into the public domain more quickly and potentially to a much wider audience.

What is defamation? A person is entitled to his/her reputation and good name: particularly if they hold public or professional office and their position and reputation depends on a large degree of public trust and confidence. Accordingly, communication of a matter which is untrue and likely to disparage substantially a person's reputation is, on the face of it, defamation. Defamation is defined as the publication to another person of an oral or written statement which:-

- Exposes a person to hatred, ridicule or contempt; or
- Causes him/her to be shunned or avoided; or
- Has the effect of lowering his/her reputation in the estimation of right-thinking members of the public generally; or
- Injures him/her in their office, profession or trade.

A defamatory spoken word or gesture will usually amount to a slander whereas a libel may be contained in a written or printed statement, or in a painting, talking film, caricature,

advertisement or any disparaging object. Reading out a defamatory document in a Council Assembly meeting would not be slander but the publication of a libel. A defamatory statement broadcast on radio, television the internet or a social networking site is treated as the publication of a libel and not slander.

There are a number of defences available to an action for defamation. The defence most commonly available to a defamatory statement made in local authority proceedings is known as privilege. It is a complete defence to an action for defamation to show that the statement was made on a privileged occasion. Privilege may be absolute or qualified, however absolute privilege does not attach to Council Assembly meetings. Qualified privilege exists where:-

- the person who makes a communication has an interest or duty (whether legal, social or moral) to make it to the person to whom it is made; and
- the person to whom it is made has a corresponding interest or duty to receive it; and
- the person who makes the communication is not motivated by malice.

Qualified Privilege will attach to statements made at Council Assembly whether contained in a report or spoken. It will be a complete defence to prove that the person had a duty or interest to make the statement, that there was a corresponding duty or interest on the part of the recipient to receive it and that he was not motivated by malice. So long as a person believes in the truth of what is said malice cannot normally be inferred. Malice may be inferred however, if it can be shown that he or she was motivated by a purpose other than their interest or duty to make the statement.

Under the Local Government Act 1972 the press and public must on request be allowed access to or in certain circumstances be supplied with the agenda and certain other documentation relating to matters to be considered by the Council or a Committee. The 1972 Act provides that where such matter is made available to the press or to the public, the agenda and other documents are privileged unless publication is proved to have been made with malice. However, further publication by the press and/or public will not be privileged unless it satisfies the usual conditions for Qualified Privilege to attach.

Other defences include:-

- Justification - i.e. the defamatory statement is true and if so provides a complete defence.
- Fair Comment - this defence is intended to allow any person (but in particular the press) to express their views honestly and fearlessly on matters of public interest even though that may involve "strong" criticism of the conduct of persons in the public arena or who hold public office. In this connection the administration of local affairs by the Council is a matter of public interest.
- Unintentional Defamation - in cases of unintentional and non-negligent defamations, a defendant may avoid liability to pay damages if he is willing to publish a reasonable correction and apology and to pay the claimants costs and expenses reasonably incurred as a consequence of the publication in question (e.g. costs of consulting a solicitor, obtaining Counsel's opinion etc.)

The existing checks which are in place to ensure that any potentially defamatory statement is removed from reports etc prior to publication of the agenda will need to be re-enforced. The Council will also need to ensure that it does not (or appear to) endorse any defamatory statement made by a member of the public at the meeting itself. As stated above it would be prudent for the Mayor, on advice, to terminate or suspend the recording/filming of a meeting where a defamatory statement is made. In addition consideration ought to be given to the Monitoring Officer having appropriate powers to remove, for example, webcasts or parts of webcasts from the Council's website where a breach of any legal provision is likely to arise.

A defamatory statement made by a member could also constitute a breach of the Code of Conduct and webcasts may be used as evidence in any subsequent investigation.

Copyright

If the Council wishes to enforce copyright it would need to publish appropriate terms and conditions for the use of footage of any webcasts including a statement that the footage is the copyright of the Council and that any download or upload of the footage is not permitted without the written permission of the Council and those featured in the same. Any terms and conditions of use would also need to contain a reminder that video sharing sites such as YouTube and Google Video, state under their terms and conditions that in order to upload videos onto their sites you must be the copyright owner and have the permission of all those involved.