

## **PE1731/P**

COSLA submission of 29 October 2019

Thank you for providing the opportunity for COSLA to submit a view on the action called for in the above petition. It should be noted that it has not been possible to obtain full political oversight of this response due to the short time available to respond. Our response then is based on existing COSLA positions and information recently secured from officers in our member councils.

### **GENERAL COMMENTS**

Firstly, and having carefully read the petition, its background information and the questions set out in your covering letter, we would underline the significant difference between i) a change in the law to permit audio recording of public council meetings by members of the public [without the need to secure permission from the Council first] and ii) any potential requirement for councils to make and provide access to their own audio/video recordings. These two scenarios would likely have significantly contrasting cost implications to councils at a time when budgets are under extreme pressure.

Secondly, we note that the committee letter might lead to a conflated understanding of the aim of the original petition, which effectively seeks removal of the requirement for members of the public to seek permission prior to making audio recordings of a public Council meetings; and the questions posed by the Committee, which centre on the potential for Councils to record meetings. To clarify this, Council colleagues have been reassured that the Committee's questions arose during discussion at their meeting on the 29<sup>th</sup> September 2019 and it is on these questions that perspectives are sought (see below).

Further clarification might also be needed given the reference to 'webcasting' in the petition background information. Webcasting would, of course, involve an additional requirement to provide a live video stream which may or may not require storage and archiving as well as the administrative/legal diligence required to ensure compliance with General Data Protection Regulations and the Data Protection Act.

### **COMMITTEE QUESTIONS**

The Committee will appreciate that the commentary herein comprise a summary of the views of COSLA's member councils and that if more detailed responses were required from individual councils, the committee would require to contact them separately. Nevertheless, below we provide a summary of the information councils have provided in response to the questions asked by the Committee.

#### **To what extent is the cost of recording public local authority meetings prohibitive and does it act as a barrier to recording meetings?**

*A range of perspectives have been secured from councils on this question. While some indicate that they do not consider cost to be prohibitive, some councils who have audio recording in place noted the possibility that such services may be at risk of being cut due to the severe financial constraints currently facing councils.*

*While audio-recording technology may not be prohibited by financial concerns, other related resources to make recordings available increase costs and resources. In particular, concerns were raised about the cost of potential additional requirements to facilitate a high-quality service – such as professional filming, editing, subtitles, etc. Other related concerns were raised about aspects of low-tech audio recording, such*

*as lack of navigational options for users to specific agenda items, discouraging potential engagement.*

*Having said that, it has also been noted that recording of meetings may also have some financial benefits to Councils because, without the necessity of attending meetings in person, officers are able to make more efficient use of their time by listening to meeting proceedings from their desk, monitoring progress of meetings and attending when relevant items are discussed, or catching up later.*

*Overall, respondents did not perceive costs to be a significant barrier to Councils undertaking basic audio recording meetings (notwithstanding that this is not what the petition seeks).*

**With regard to the recording of public local authority meetings, what is considered to be:**

- **good practice**

*Current information indicates that there is no general consensus on what is considered 'good practice'. However, it is significant that there is a consistent view that if members of the public wish to record, permission from the Council should be sought prior to the meeting.*

*It was noted that audio recording has been particularly well received in areas where members of the public do not have easy access to meetings.*

*Where members of the public are allowed to make audio recordings on their own devices, concerns were raised that members of the public recording meetings may pick up and disseminate comments not made as part of official proceedings, which may be perceived as an invasion of privacy.*

- **a basic minimum expected by all local authorities, even with limited resources?**

*There is no strong view or consensus regarding a basic minimum expectation. However, Councils who have audio or video recording in place appear to value it.*

*Notably, the majority of the councils that responded to COSLA's query for information had some form of audio or video recording in place.*

## **CONCLUSION**

Whilst we firmly believe such decisions are for local determination, it is unclear whether removing the requirement for a council to grant a request for permission to allow members of the public to make audio recordings of public Council meetings, would be beneficial to the local democratic process; or whether it would better facilitate the open, transparency being sought by the petitioner. Indeed the minimal burden of seeking permission to make a recording might be seen as a signal of commitment and acknowledgement of the responsibilities and mutual trust required in the democratic processes of an open and transparent governance approach.

We sense a number of aspects of this issue would benefit from further exploration including the use that will be made of the recording e.g. whether this should be restricted to personal use and whether personal use would exclude wider public dissemination or broadcast via any medium or channel (e.g. social media). Furthermore, the current legal position allows Councils to adopt a default position to grant permission whilst preserving

the option, when justifiable, to protect the democratic debate space, from potential vexatious activity.

This might all be somewhat academic given the difficulty of detecting the use, for example, of a smart phone to record a meeting and the practical challenges were enforcement to be a priority.

In terms of councils providing recordings (audio or video) of public council meetings we know that many have decided, and are able, to provide this facility. We would however argue strongly against a requirement for councils to be legally compelled to provide audio or indeed video recordings either recorded or streamed on line; not least due to potentially significant cost, administrative and GDPR/Data Protection compliance considerations.