

STANDARDS COMMITTEE	Agenda Item 6
	Brighton & Hove City Council

Subject:	Webcasting Protocol		
Date of Meeting:	21 June 2011		
Report of:	Monitoring Officer		
Contact Officer:	Name: Oliver Dixon	Tel: 01273 291512	
	E-mail: oliver.dixon@brighton-hove.gov.uk		
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 This report considers whether the council should retain or cease its Webcasting Protocol and, if the decision is to retain it, what amendments – if any – should be made.

2. RECOMMENDATIONS:

2.1 That Standards Committee agree which of the options listed in paragraphs 3.6 to 3.9 below it wishes to recommend to Governance Committee.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The council first agreed a webcasting protocol at Governance Committee in September 2008, together with a ‘Members guide to webcasting’. The intention of the protocol was to encourage and support the use of the webcasting facility and to provide Members with guidance as to how to effectively use the system whilst also seeking to protect Members and the Council from any exposure to potential risks or challenges.

3.2 The protocol was revised at Governance Committee in July 2009 to address the issue of downloading webcast images onto non-council media such as Facebook and YouTube. The relevant part of the protocol was amended to permit the posting of council webcast material onto such media, subject to the prior written consent of the Head of Democratic Services. The revised protocol also prohibited the copying or issuing (as opposed to simple viewing) of webcast images by the public without such consent. A copy of the existing protocol is reproduced at Appendix 1; see in particular clauses 4.5(i) and (ii).

3.3 In 2010 the council’s webcast provider, Public-i, enhanced the system to enable viewers to share one or more agenda items with third parties by any of the following methods:

- e-mailing the item
- embedding the item on a third party website

- including a hyperlink to the item

3.4 The First-Tier Tribunal considered the original version of the webcast protocol in November 2010 at an appeal brought by a Member against a Standards Committee finding of a breach of the Code of Conduct for Members. Upholding the appeal, the Tribunal found that the Member's action in posting a short clip onto YouTube of a webcast featuring a senior member of the council's administration at the time did not amount to a breach of the Code of Conduct on any of the grounds alleged and that did not constitute the "use of Council resources" as envisaged by the code. It should be noted that the Tribunal did not comment on the legality or validity of the protocol. It was dealing only with the question of whether the Member's actions constituted a breach of the code of conduct for Members.

3.5 In view of both the technical enhancement allowing the sharing of webcast agenda items, and the guidance given in the First-tier Tribunal decision in the above case regarding the definition of resources, the Standards Committee is invited to consider whether the council's existing webcast protocol requires further amendment or whether it is needed at all. The suggested options are set out below.

3.6 **Option 1 – retain the existing protocol**

The intention of requiring the Head of Democratic Services approval before sharing webcasting data was to protect members and the Council from exposure to potential challenge. It was anticipated that the norm would always be to grant consent but that it offered a check and balance in case the proposed use of the material could in some way not foreseen by the Member lead to a challenge.

For the reasons given in 3.3 and 3.4 above, the existing protocol is no longer enforceable: it does not take into account the latest sharing facility, and does not take account of the First-Tier tribunal's decision.

Option 1 is therefore not recommended.

3.7 **Option 2 – withdraw the protocol**

3.7.1 Apart from the rules governing distribution and onward transmission of webcast material, the protocol contains provisions relating to agenda front sheets and signage at meetings; conduct of meetings; termination or suspension of a webcast; and archiving. Even if the parts about copying and distribution are considered obsolete, the remaining provisions are still valid.

It is therefore not recommended to cease using the protocol altogether.

3.7.2 If Members considered a stand-alone protocol unnecessary, it would be possible to incorporate parts of the existing protocol into the council's procedure rules or access to information procedure rules (parts 3.2 and 8.1 respectively of the council's constitution).

3.7.3 It should be noted that even if the council were to withdraw the protocol or remove the restrictions on copying, editing and distribution, the way in which

Members use webcast footage would still be subject to the Code of Conduct. For example, its use must not fail to treat others with respect; nor should it be used in ways that may reasonably be regarded as bringing the member's office or authority into disrepute. Naturally, any allegation of a breach of the code would need to be assessed against established principles, including freedom of speech

3.8 Option 3 – amend the protocol

- 3.8.1 An amended protocol would take account of the sharing technology now available, by affirming that Members may share any complete agenda item using the facility provided. Although the Public-i technology does not allow the sharing of edited clips within an agenda item, this may be technically possible by other means.
- 3.8.2 A revised protocol could encourage Members, when posting any webcast material onto a non-council site, to provide the context. It could expressly prohibit the alteration of words or images originating from a council webcast, so as not to create a false representation of council proceedings. It could also draw a distinction between individual use and use for commercial purposes.
- 3.8.4 A revised protocol also needs to state the council's position in relation to copyright. The existence of the new sharing facility suggests the council is willing for viewers to copy and issue webcast material without entering into or paying for a copyright licence, even though the council owns the copyright in the webcast sound and images. In the absence of any statement regarding copyright, it is unclear whether the council is providing an implied licence to all persons who share the material or is simply not intending to take any action for copyright infringement.
- 3.8.5 For the avoidance of doubt, the council could include a copyright statement in its protocol, as well as on the webcast pages themselves, indicating the extent of copying and communication it is willing to allow. The statement should mention any limitations or exclusions, such as a prohibition against adaptation.
- 3.8.6 A suggested amendment to paragraph 4.5 of the protocol reflecting the above is attached in Appendix 2.

3.9 Option 4: Remove the restriction on use of webcast

- 3.9.1 This involves simply deleting paragraph 4.5 so that all webcast material becomes free for any use by anyone for any purpose. Use by Members would be covered by the Code of Conduct for Members itself without reference to the protocol. This means the Council losing the ability to influence or regulate the way that webcast material is used. It also brings an element of uncertainty regarding the copyright position. On the other hand, it has the advantage of simplicity and is less susceptible to challenge on the grounds of freedom of speech as contained in the Human Rights Act.

4. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 4.1 There are no financial implications arising from this report

Finance Officer Consulted: Anne Silley Date: 10/06/11

Legal Implications:

- 4.2 The report invites the Standards Committee to make a recommendation to Governance Committee which will consider and decide the matter at its meeting on 26 July 2011.

- 4.3 There is no legal requirement on the council to adopt a webcasting protocol but there are certain democratic and legal benefits in having one as it helps clarify for Members and the public what the Council considers acceptable.

Lawyer Consulted: Oliver Dixon Date: 10/06/11

Equalities Implications:

- 4.4 The webcasting protocol supports the council's objective of facilitating access to council meetings and of enabling greater transparency of the decision-making process.

Sustainability Implications:

- 4.5 There are no sustainability implications arising directly from this report

Crime & Disorder Implications:

- 4.6 There are no crime and disorder implications arising from this report

Risk and Opportunity Management Implications:

- 4.7 A webcasting protocol makes clear the conduct expected of Members during webcast meetings, and any limitations as to the dissemination of archived footage. It therefore reduces the risk of a challenge to or complaint about Member conduct in those circumstances.

Corporate / Citywide Implications:

- 4.8 There are no corporate or citywide implications arising from this report.

SUPPORTING DOCUMENTATION

Appendices:

1. The council's existing webcasting protocol
2. Suggested amendment to the protocol

Documents In Members' Rooms

None

Background Documents

None

The council's existing Webcasting Protocol (as amended in July 2009)

1.0 Agenda Front Sheets and Signage at Meetings

- 1.1 Advanced notice of the intention to web cast a meeting will be given on each agenda with the inclusion of the following:

“WEBCASTING NOTICE

This meeting may be filmed for live or subsequent broadcast via the Council's web site. At the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act 1988. Data collected during this web cast will be retained in accordance with the Council's published policy (*Guidance for Employees' on the BHCC website*).

Therefore by entering the meeting room and using the seats around the meeting tables, you are deemed to be consenting to being filmed and to the possible use of those images and sound recordings for the purpose of web casting and/or Member training. If members of the public do not wish to have their image captured they should sit in the public gallery area.

If you have any queries regarding this, please contact the Head of Democratic Services or the designated Democratic Services Officer listed on the agenda.”

- 1.2 In addition signs will be displayed inside and outside the meeting room (see overleaf).

2.0 Conduct of meetings

- 2.1 At the start of each meeting to be filmed, an announcement will be made to the effect that the meeting is being web cast, and that the Chairman may also terminate or suspend the web casting of the meeting, in accordance with this protocol. This will be confirmed by the Chairman making the following statement:-

“I would like to remind everyone present that this meeting will be broadcast live to the internet and will be capable of repeated viewing.”

3.0 Termination or suspension of web cast

- 3.1 The Chairman of the meeting has the discretion to terminate or suspend the web cast if, in his/her opinion, continuing to web cast would prejudice the proceedings of the meeting.

This would include:

- (i) Public disturbance or other suspension of the meeting;
- (ii) Exclusion of public and press being moved and supported;
- (iii) Any other reason moved and seconded and supported by the Committee.

- 3.2 No exempt or confidential agenda items shall be webcast.

4.0 Access to Webcasts

- 4.1 Subject to paragraph 4.2 below all archived webcasts will be available to view on the Council's website for a period of six months. Meetings are recorded onto DVD, which will be stored in accordance with records management procedures.
- 4.2 Archived webcasts or parts of web casts shall only be removed from the Council's website if the Monitoring Officer considers that it is necessary because all or part of the content of the webcast is or is likely to be in breach of any statutory provision or common law doctrine, for example Data Protection and Human Rights legislation or provisions relating to confidential or exempt information.
- 4.3 If the Monitoring Officer has decided to take such action he must notify all elected Members in writing as soon as possible of his decision and the reasons for it.
- 4.4 The Council expects the Chairman and the Monitoring Officer to ensure that all meetings are conducted lawfully. Therefore, the Council anticipates that the need to exercise the power set out above will occur only exceptionally.
- 4.5 The actual webcasts and archived material, and copyright therein, remain the property of the Council, and the right to copy, issue, rent, perform, communicate or adapt any of the webcast or archived material is restricted as follows:
- (i) Any Member wishing to use a web cast or part thereof on their individual council web pages may do so as long as the whole agenda item is displayed; however, should they wish to post any material onto externally based media such as You-tube or Facebook, prior written approval must be obtained from the Head of Democratic Services;
 - (ii) The use of a webcast or part thereof by any person who is not an officer or Member of the council is prohibited without the prior written approval of the Head of Democratic Services;
 - (iii) A DVD copy of a webcast can be obtained for a fee of £75 from Democratic Services and shall not be altered in any way or played in public.
- 4.6 Any elected Member who is concerned about any webcast should raise their concerns with the Head of Democratic Services or the Monitoring Officer.

5.0 Review & Monitoring

- 5.1 Operation of the webcasting will be monitored and reviewed from time to time and reported to the Governance Committee.

WEBCASTING

**PLEASE NOTE THAT BRIGHTON &
HOVE CITY COUNCIL MAY
BROADCAST THIS MEETING LIVE ON
ITS WEBSITE AND THE RECORD
ARCHIVED FOR FUTURE VIEWING
YOUR PICTURE MAY BE INCLUDED IN
THE BROADCAST / RECORD
ACCESSIBLE AT**

**[www.brighton-
hove.gov.uk/yourcouncil/webcasts/default.htm](http://www.brighton-hove.gov.uk/yourcouncil/webcasts/default.htm)**

**FOR FURTHER INFORMATION, PLEASE CONTACT
MARK WALL, HEAD OF DEMOCRATIC SERVICES (01273
291006 e-mail mark.wall@brighton-hove.gov.uk**

- 4.5 The actual webcasts and archived material, and copyright therein, remain the property of the Council, and the right to copy, issue, rent, perform, communicate or adapt any of the webcast or archived material is restricted as follows:
- (i) Subject to (ii) and (iii) below, any person may copy and use webcast material or part thereof providing the facility is not used in a way that otherwise breaks the law;
 - (ii) The use of any webcast involving the alteration or editing of the material which results in changing the message or context without the prior written approval of the Head of Democratic Services is prohibited;
 - (iii) The use of webcast for commercial purposes involving simple reproduction is prohibited unless the prior approval of the Head of Democratic Services is obtained.
 - (iv) A DVD copy of a webcast can be obtained for a fee of £75 from Democratic Services and shall not be altered in any way or played in public.

