By Email dated 17th March 2020 to MHCLG
CC: LGA Thelma Stober

Dear Secretary of State

Covid – 19 – Implications for Local Authority Governance

We are writing to you to highlight a number of governance issues facing local authorities arising from the Covid – 19 emergency and the further restrictions likely to be imposed by Government.

Our associations represent local authority lawyers, monitoring officers and governance staff within English principal councils. We have issued advice to our members in relation to the holding of local authority meetings during the emergency measures but need to draw your attention to some issues which may require urgent legislative attention. We believe that many can be addressed by emergency regulations under the Civil Contingencies Act 2004.

1. Holding of Public Meetings and Attendance of Councillors

We have advised local authorities to hold only essential meetings and with the minimum number of people attending to satisfy a quorum. Where possible, Councils should be using urgency powers within their Constitutions to take decisions outside of public meetings. This will be possible in most instances but not in others. For example, Schedule 12 of the Local Government Act 1972 requires Councils to hold an Annual meeting during March, April or May depending on whether it is an election year or not. As you will be aware, important business is conducted at these meetings including the election of Mayor/Chairman of the Council and appointments to Committees etc to enable decision-making processes to function effectively.

Paragraph 39 of Schedule 12 to the Local Government Act 1972 states that any decision taken at a local authority meeting (including committees and sub committees) shall be decided by a majority of those present and voting. This means that it is impossible to have a meeting unless a quorum is present in the room. Whilst the law permits other members to join the meeting virtually, they cannot vote. This will become increasingly more difficult as further restrictions on peoples’ movements are imposed. For example, a high proportion of councillors are over 70 years of age and could be prevented from attending even essential meetings if currently publicised Government measures are imposed for that age group. We appreciate that this will require an amendment to the Local Government Act 1972, but we feel it essential to ensure continuity in local authority decision making and the provision of essential services. An alternative could be that local authority members could be counted as being present in a meeting if they are in a location where they can hear the conversation in the meeting room and persons present in the room can hear what they are saying.
At the time of drafting this letter, we understand that the Government is rethinking the rules around remote meetings following talks with the LGA as part of the emergency measures to deal with coronavirus. We would support all measures in this regard.

Section 85 of the Local Government Act 1972 states that a member of a local authority loses office if they do not attend a meeting at least once in any six-month period. The Council can excuse non-attendance in advance, but this has to be a decision of full council. We have explained above that such meetings may not be possible, and councillors could, in consequence, automatically be removed from office. Indeed, we are aware of existing councillors who will fall foul of this provision as early as April if they now self-isolate upon government advice. If this happens, Councils can be compelled by any two electors to hold a by-election within 35 days. Given the current circumstances this will inevitably cause major complications.

**Action Requested**

We ask you to urgently consider:

(a) suspending the requirement to hold Council annual meetings until further notice

(b) permitting the remote participation and voting by councillors at essential Council meetings as is currently being considered.

(c) temporarily waiving the requirement for a councillor to attend a meeting of their local authority at least once in any six-month period where the technological capabilities available to members preclude the ability to take part remotely (dependent upon the outcome of (b) above).

(d) Delay any by-elections that are required until the local elections in 2021

**2. Education Appeals**

In regard to school appeals, paragraph 2.3 of the Admission Appeal Code states that appeals must be heard within 40 days of the deadline for logging the appeal. The full text is as follows:

"Admission authorities must ensure that appeals lodged by the appropriate deadlines are heard within the following timescales:

a) for applications made in the normal admissions round, appeals must be heard within 40 school days of the deadline for lodging appeals;

b) for late applications, appeals should be heard within 40 school days from the deadline for lodging appeals where possible, or within 30 school days of the appeal being lodged;

c) for applications to sixth forms:
   i) where the offer of a place would have been conditional upon exam results, appeals must be heard within 30 school days of confirmation of those results;"
ii) where the offer of a place would not have been conditional upon exam results, appeals must be heard within 40 school days of the deadline for Timetable lodging appeals;

d) for applications for in-year admissions, appeals must be heard within 30 9 school days of the appeal being lodged.

2.4 Any appeals submitted after the appropriate deadline must still be heard in accordance with whatever timescale is set out in the timetable published by the admission authority.”

Deadlines this year are as follows:

Primary:

National Offer Day is 16 April; the deadline for appeals to be submitted is 18 May; appeals to be heard between 1 June and 20 July; with late appeals by 22 July or September onwards.

Secondary:

National Offer Day was on 2 March; deadline for appeals to be submitted is 30 March, appeals are to be heard by 16 June (if reached by deadline); with appeals submitted late to be heard by 22 July or September onwards if very late.

Paragraph 2.11 of the Admissions Appeal Code requires a presenting officer to present the decision not to admit a child to a particular school. In addition, appellants already have the right to not attend in person and it may not be practical (with the possible non availability of staff) for a small school to attend and cope with the constant rearranging of appeals in authorities that may have thousands of appeals each year.

A large majority of Education Appeal panel members nationally are retired individuals; many of whom are well over 70. If restrictions for this age group are imposed, Councils will have severe problems in finding enough people to serve on these statutory panels. Paragraph 1.5 of the Code requires an experienced clerk, a chair and at least two other panel members. This could also prove problematic as the situation worsens. Exclusion appeals could be similarly affected.

Action Requested

We ask you to urgently consider:

(a) an extension up until 31 July 2020 for all Education appeals to heard – including exclusion appeals;
(b) written representation from schools and appellants be allowed instead of the requirement to personally attend panel meetings so that the requirement for a face-to-face hearing is dispensed with, together with provision for virtual hearings.

3. Registrars Compelled to Perform Marriages

Registrars have a statutory obligation which requires them to be present at a marriage and civil partnerships to which appropriate notice has been given under s27(5) Marriage Act 1949. Social distancing together with the curtailment of large gatherings likely to take effect will not negate the performance of this statutory obligation.

Meeting deadlines for registering certain births and deaths could also be adversely impacted as the situation worsens.

Action Requested

We ask you to urgently consider:

(a) provision to restrict the obligation to gatherings below the threshold set by the government in pursuit of social gathering
(b) where appropriate temporarily waiving deadlines for the registration of births and deaths within certain timeframes

Our associations have extensive reach and breadth of professional experience and we are available to discuss these issues and support you in whatever way we can. If you would like to discuss the contents of this letter please contact LLG’s Head of Public Services, Helen McGrath at Helen@llg.org.uk or the Chair of ADSO, John Austin at john.austin@adso.co.uk.

Yours faithfully

Phillip Horsfield
LLG President

John Austin
ADSO Chair