Neutral Citation Number: [2021] EWHC 1145 (Admin)

Case No: CO/1172/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/05/2021

Before:

PRESIDENT OF THE QUEEN'S BENCH DIVISION
and
MR JUSTICE CHAMBERLAIN

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Between:

(1) HERTFORDSHIRE COUNTY COUNCIL **(2) LAWYERS IN LOCAL GOVERNMENT** **(2) THE ASSOCIATION OF DEMOCRATIC SERVICES OFFICERS**	**Claimant**
- and –	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
- and –	
(1) LOCAL GOVERNMENT ASSOCIATION **(2) NATIONAL ASSOCIATION OF LOCAL COUNCILS** **(3) WELSH GOVERNMENT MINISTER FOR HOUSING AND LOCAL GOVERNMENT**	**Interested Parties**

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Peter Oldham QC and Leo Davidson (instructed by **Legal Services, Hertfordshire County Council**) for the **Claimant**
Jonathan Moffett QC and Rose Grogan (instructed by **the Government Legal Department**) for the **Defendent**
Jonathan Auburn QC (instructed by **the Local Government Association**) for the **First Interested Party**

Hearing date: 21 April 2021

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Approved Judgment

Dame Victoria Sharp, P. and Mr Justice Chamberlain:

Introduction

1 On 28 April 2021, we handed down our main judgment in this claim: [2021] EWHC 1093 (Admin). The claim's principal purpose was to obtain declarations that the "meetings" required by the Local Government Act 1972 ("the 1972 Act") could take place remotely on or after 7 May 2021, when the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (SI 2020/392: "the Flexibility Regulations") cease to have effect. We refused to grant declarations to that effect and held that, in this particular statutory context, a "meeting" must take place at a single, specified geographical location; "attending" such a meeting involves physically going to it; and being "present" at such a meeting involves physical presence at the location: see at [89].

2 In the circumstances described at [92]-[93] of our main judgment, we invited the parties to make further submissions on the question whether a meeting which is required by the 1972 Act to take place in person is "open to the public" or "held in public" if the only means by which the public are permitted to access it are remote. As we made clear at [11] of our main judgment, the phrase "open to the public" appears in a number of statutory provisions, including the Public Bodies (Access to Meetings) Act 1960, Part VA of the 1972 Act and s. 9G of the Local Government Act 2000. Regulations 3 and 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089) refer to meetings being "held in public".

The parties' submissions

3 Jonathan Moffett QC drew attention to paragraphs 58 and 64 of the Secretary of State's Detailed Grounds for Resisting the Claim, in which it had been submitted that the proper approach to the construction of the 1972 Act was to construe "meeting", which was described as "the primary concept", first. Other terms, such as "attend", "present", "place of a meeting", "open to the public" and "held in public" were "ancillary" and should be construed accordingly.

4 In submissions filed in the light of our main judgment, Mr Moffett said this:

> "3. Accordingly, the Court having determined that a "meeting" does not include a remote meeting, the Secretary of State's argument on "open to the public" and "held in public" falls away: the Secretary of State did not, and does not now, advance a free-standing argument to the effect that "open to the public" and "held in public" are to be interpreted as referring to remote access regardless of whether "meeting" includes a remote meeting.
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> 4.. The Secretary of State considers that the legislative scheme should be interpreted consistently and as a whole and therefore, if the expressions referred to in paragraph 89 of the Court's judgment are to be interpreted in the manner there set out, references to a meeting being "open to the public"

> or "held in public" should equally be interpreted as referring to physical attendance by the public."

5 The Claimants and the Local Government Association filed short submissions indicating their support for this approach.

Discussion

6 At [75] of our main judgment, we did not accept that it was correct to construe the 1972 Act by first ascertaining the meaning of "meeting" and then treating the terms "place", "attend" and "present" as "ancillary". The 1972 Act had to be construed as a whole. Nonetheless, the phrases "open to the public" and "held in public" are descriptive phrases. Their meaning depends on the meaning of what is being described. Here, it is a "meeting". If, as we have found, a meeting involves participants gathering to meet face-to-face at a designated physical location and "attending" a meeting involves physically going to that location, a requirement that this meeting is to be "open to the public" or "held in public" means that members of public must be admitted in person to the place where the meeting is being held.

7 The current requirements to hold meetings are imposed by the 1972 Act, but there were similar requirements in the predecessor legislation. As we have said, requirements that meetings be "open to the public" or "held in public" are imposed by several different statutory provisions, but they all deal with the same subject matter and may therefore be described as *in pari materia*. They are therefore "to be taken together as forming one system, and as interpreting and enforcing each other": *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed., 2020), §21.5.

8 The terms of s. 1(5) of the Public Bodies (Admission to Meetings) Act 1960 provide a further reason to construe the requirement that the meetings be "open to the public" as requiring in-person admission. That sub-section provides that the publication of an agenda, or associated statements and particulars, attracts qualified privilege for the purposes of the law of defamation "[w]here a meeting of a body is required by this Act to be open to the public during the proceedings or any part of them" and the agenda, statement or particulars are "supplied to a member of the public attending the meeting". This is a further indication that the mode by which Parliament intended the public to have access was by physical attendance at the meeting.

9 None of this, of course, prevents a local authority from broadcasting or live-streaming some or all of its meetings so as to allow wider public access. But such broadcasting or live-streaming does not, on its own, satisfy the requirement for the meeting to be "open to the public" or "held in public". We say nothing about the numbers of the members of the public who should admitted in person, which will no doubt be subject to current public health or Government guidance. But subject to that practical consideration, or any other legislative intervention, where the requirement for the meeting to be "open to the public" or "held in public" applies, members of the public must be admitted in person as well.

10 As we made clear in our main judgment (see esp. at [75]), the conclusions we have reached depend on the construction of these phrases in the particular statutory context

in which they arise. Nothing we say here should be taken as settling the interpretation of the phrase “open to the public” or other similar phrases in different statutory contexts.