

## Dispute Resolution Process – Full Delegation to Chief Officers

- Summary: Proposed update to the Constitution: dispute resolution procedure where an Elected Member disagrees with a Chief Officer in the exercise of delegated powers.
- Options considered: (1) Add a dispute resolution procedure to the Constitution  
(2) Remove emergency delegation powers  
(3) Take no action
- Conclusions: This should summarise the main conclusions of your report.
- Recommendations: **To make a recommendation to Full Council that the Constitution be updated to include a dispute resolution procedure in the event of any disagreement between a Chief Officer and Elected Member, following consultation about use of delegated powers.**
- Reasons for Recommendations: To enable there to be a process for resolving disputes and address the risk of no decision being taken, in particular, where there is an emergency

### LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

*(Papers relied on to write the report, which do not contain exempt information and which are not published elsewhere)*

<i>Tiaa Internal audit – Assurance Review of Corporate Governance (January 2021)</i>
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Cabinet Member(s)	Ward(s) affected - All
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## 1. Introduction

### 1.1 Corporate Governance Review - Current process of delegation to Chief Officers.

A review of Corporate Governance was completed by internal auditors in January 2021. It generally considered the Council response to Covid-19 in the administration of committee meetings and decision making. Included within this review was an observation, with a recommendation, regarding the use of urgent and emergency powers delegated to Chief Officers under the Constitution. It was identified that where there is a requirement that such an officer consults with the relevant Elected Member prior to engaging that power, there is no process in place to resolve a dispute where the relevant Elected Member is not in agreement.

### 1.2 The Internal Audit Recommendation

There was a recommendation that the Constitution be updated to include a dispute resolution process where there was disagreement between the Chief Officer and the relevant Elected Member, to go via the Chief Executive in the first instance.

## **2. Urgent and Emergency delegated powers – current position**

### **2.1 Constitution, Chapter 6 – Full delegation to Chief Officers**

Chapter 6 of the North Norfolk District Council Constitution deals with delegation of powers and functions to the Chief Executive and, in his absence, other Chief Officers. The current position is set out at paragraph 5.1 and 5.6 of Chapter 6, which provides delegated authority to exercise any power or function of the Council to those officers, in certain situations. Both provide for 'consultation' with specified Elected Members.

### **2.2 Urgent decisions, Chapter 6**

Paragraph 5.1 provides for delegation to such officers where there is urgency. It sets out that this delegation may be exercised in routine matters falling within established policies and within existing budgets where waiting until a meeting of the Council, Committee or Working Party would disadvantage the Council or persons within the District. In particular, the power or function is only to be used "after consultation" with the Leader of the Council or other appropriate Portfolio Member, and such other Members where the matter relates to a particular part of the District. There is then the requirement to report the exercise of the delegated power to the next available meeting of the Council, Committee or Working Part as appropriate.

### **2.3 Emergency decisions, Chapter 6**

Paragraph 5.2 provides a similar delegation to those same Chief Officers in an emergency threatening life, limb or substantial damage to property. Again there is a requirement to make all reasonable efforts "to consult" with the Leader of the Council or their Deputy, and then to report at the next meeting of Cabinet or the Council.

### **2.4 Consultation**

The review identified that there may be a risk that a decision cannot be taken should a Chief Officer consult with a relevant Elected Member who disagrees with the officer. Whilst "consulting" is different to obtaining agreement, it is understood that where there is such disagreement, this may risk that a decision cannot be taken in a timely manner or at all.

### **2.5 Disagreement in use of urgent and emergency powers**

The Constitution provides that these Chief Officers are delegated with these urgent and emergency powers. This allows for urgent matters to be dealt with quickly and for emergencies to be addressed without delay. An alternative would be for such powers to be revoked, but this may cause delay and risk in the most urgent situations, and would be contrary to the current position.

In an urgent or emergency situation, where a Chief Officer proposes to use delegated powers, and where after consultation, the relevant Elected Member is not in agreement, the following dispute resolution procedure is proposed, which can be added to paragraphs 5.1 and 5.2 of Chapter 6 of the Constitution:

### **2.6 Dispute Resolution Process**

There be added at the end of paragraphs 5.1 and 5.2 the following wording:

*On consultation with the relevant Elected Member(s), as detailed in this paragraph, if there is disagreement as to the use of the delegated power or function, the following procedure shall apply. Any Chief Officer may choose not to exercise the delegated power or function. Where he or she wishes to proceed with the delegated authority, where the Chief Officer is not the Chief Executive, the matter shall be referred to the Chief Executive who will decide if the power or function is to be exercised, having considered the views of the Elected Member and the Chief Officer.*

### **3. Corporate Plan Objectives**

#### **3.1 Customer Focus**

Ensuring that the Council's democratic process runs as transparently and as effectively as possible, building on the corporate plan objective of focussing on the customer and putting them at the heart of what we do

### **4. Financial and Resource Implications**

Chief Officers currently have delegated authority under paragraphs 5.1 and 5.2 and there are no specific costs associated with the proposals set out in this report.

### **5. Legal Implications**

There are no specific legal provisions save to cite that the Constitution provides for the delegated authority by Chief Officers under paragraphs 5.1 and 5.2.

### **6. Equality and Diversity**

The considerations and recommendations have a remote or low relevance to the substance of the Equality Act.

### **7. Section 17 Crime and Disorder considerations**

Urgent or emergency decisions may, by their nature, be required to be made quickly. Depending on the nature of the situation or emergency, the type and timeliness of the delegated power or function under consideration, may be relevant to the prevention of crime and disorder in the District.

### **8. Conclusion and Recommendations**

That the Constitution Working Party considers whether a dispute resolution procedure be added to paragraphs 5.1 and 5.2 of Chapter 6 of the Constitution. If so, that it makes the following recommendation to Full Council:

- (i) There be added to Chapter 6, Paragraphs 5.1 and 5.2 of the Constitution a dispute resolution procedure where the Elected Member(s) disagrees with the Chief Officer's proposed use of delegated powers in an urgent or emergency situation.
- (ii) That the Monitoring Officer be authorised to update the Constitution with the addition of the dispute resolution procedure.