



Emergency Officer Decision Record

1. Subject and details of the matter (to include reasons for the decision)

There exists in North East Lincolnshire (and nationally) circumstances that may warrant exercise of powers and decision making outside usual parameters (Coronavirus/COVID-19).

S138 Local Government Act 1972 permits that where such circumstances exist so as to affect the whole or part of their area or all or some of its inhabitants a Council may:

- (a) incur such expenditure as they consider necessary in taking action themselves (either alone or jointly with any other person or body and either in their area or elsewhere in or outside the United Kingdom) which is calculated to avert, alleviate or eradicate in their area or among its inhabitants the effects or potential effects of the event; and
- (b) make grants or loans to other persons or bodies on conditions determined by the council in respect of any such action taken by those persons or bodies.

This decision is made in the above circumstances.

2. Is it a Key Decision as defined in the Constitution?

Yes – The decision relates to the assessment and authorisation of the Deprivations of Liberty Safeguards

3. Details of Decision

All face to face assessments for Deprivation of Liberty Safeguards cases will cease, except where the information to inform the assessment can be achieved remotely
AND:

- There is evidence of an objection that may require escalation to the Court of Protection under s21a Mental Capacity Act 2005.
- The case is deemed 'High Risk' and there are no equivalent assessments that can be used to inform a decision by the Mental Health Assessor (MHA) or Best Interests Assessor (BIA).

A process to undertake desktop Deprivation of Liberty assessments will be developed and issued immediately (drawing on work previously successfully trialled). **These will include:**

- The utilisation of equivalent assessments whenever possible to avoid face to face contact if a previous assessment remains relevant and fit for purpose, regardless of the age of the assessment (taking a risk based approach)
- The administrative requirements for the assessments
- Revision of the payment structure for out of hours assessments to BIAs and MHAs where visits are not required
- Communication to all relevant partners regarding the changes as outlined above

All steps above will take into account the anticipated approach of the new Liberty Protection Safeguards (LPS) process and effectively aim to replicate the application of the principles that are believed to be integral to the forthcoming new arrangements. (accepting that the code of practice and regulations associated with LPS have not yet been published, and thus not fully known.)

4. Is it an Urgent Decision? If yes, specify the reasons for urgency. Urgent decisions will require sign off by the relevant scrutiny chair(s) as not subject to call in.

Yes

5. Anticipated outcome(s)

An authorisation process will be maintained, albeit at a reduced level

The robustness of some assessments may be diminished.

The potential for missing something crucial in respect of Patient (P) is increased i.e. the hands on expertise of the BIA/ MHA will not be fully engaged without a visit to P, so will (say) minimise their opportunities to prevent P's deterioration/ improve P's position

The potential for challenge and referral to the courts may increase due to departure from the established code of practice

Staff will get used to working in a way more akin to that expected under LPS

6. Details of any alternative options considered and rejected by the officer when making the decision

To continue with existing practice – this is not possible as it would contradict the advice issued regarding the minimisation of social contact with vulnerable individuals.

7. Background documents considered

Mental Capacity Act 2005 as Amended

Deprivation of Liberty Safeguards code of practice

ADASS Light touch approach (including local variations thereof)

Liberty Protection Safeguards – Department of Health publications to date

8. Does the taking of the decision include consideration of Exempt information? If yes, specify the relevant paragraph of Schedule 12A and the reasons

No

9. Details of any conflict of interest declared by any Cabinet Member who was consulted by the officer which relates to the decision (in respect of any declared conflict of interest, please provide a note of dispensation granted by the Council's Chief Executive)

None

10. Monitoring Officer Comments (Monitoring Officer or Deputy Monitoring Officer)

All directors have the power to determine and exercise, having regard to prevailing Council policy, the operational requirements of their functions and to manage the human and material resources available for their functions.

Constitutionally where there is an urgent need or where there is a recess in meetings (in my view, *howsoever arising*) the Chief Executive and all Directors shall be empowered on behalf of and in the name of the Council to deal with matters of urgency or routine business normally requiring a Cabinet or Committee decision which may arise between the meetings of Cabinet / Committees or during any period when the Cabinet / Committees are in recess; provided that

(i) there is no conflict with the Budget and Policy Framework (unless the urgency provisions in the Budget and Policy Framework Procedure Rules are followed)

(ii) If a Key Decision is involved, the matter is contained in the Forward Plan (or the general exception or special urgency provisions are satisfied); and

(iii) In respect of any matter falling within the terms of reference of a Committee the Officer shall first consult with the Chairman or, in his/her absence, the Deputy Chairman; and a report of the decision taken shall be submitted to the next ordinary meeting of the Committee; or in the case of all Executive matters the Officer shall first consult with the Chief Executive, relevant Portfolio Holder(s) and a report of the decision taken shall be submitted to the next ordinary meeting of the Cabinet.

(iv) The Monitoring Officer and Section 151 Officer are consulted in respect of the proposed decision.

The Chief Executive has directed that all decisions made in the above circumstances shall be in consultation with the Leader and Portfolio Holder for Finance and Resources (where available)

11. Section 151 Officer Comments (Deputy S151 Officer or nominee)

The Government has indicated that the Council will be fully funded for implementing any measure to tackle the coronavirus pandemic. A proper record of any costs incurred should be maintained.

12. Human Resource Comments (Head of People and Culture or nominee)

The wellbeing and safety during this time is paramount, the decision to cease face to face assessments supports our aim to achieve this

13. Risk Assessment (in accordance with the Report Writing Guide)

Risks will be mitigated by applying the anticipated principles of the LPS in terms of maintaining face to face visits to P where there are objections. Maintaining visits will also take place where the application is risk assessed as high risk in terms of the ADASS guidance and the equivalent assessments are either inadequate or absent.

Risks will be managed to all other applications, assessments and renewals by utilising all the information available, and conducting telephone consultations where possible, along with the scrutiny of equivalent assessments for quality and relevance in relation to P's ongoing circumstances.

The waiting list will be unaffected, and will continue to be monitored using the existing risk assessment process.

<p>14. Decision Maker(s):</p> <p><i>In in the absence of the named Director or Delegatee a confirmatory email which is annexed to this record</i></p>	<p>Name: Robert G Walsh</p> <p>Title: Joint Chief Executive</p> <p>Signed: Robert G Walsh</p> <p>Dated: 6th April 2020</p>
<p>15. Consultation carried out with Leader:</p> <p>Portfolio Holder for Finance and Resources (Cllr Shreeve)</p> <p><i>In in the absence of the above named a confirmatory email which is annexed to this record</i></p>	<p>Signed: Cllr Philip Jackson</p> <p>Dated: 3rd April 2020</p> <p>Signed: Cllr Stan Shreeve</p> <p>Dated: 3rd April 2020</p>
<p>16. If the decision is urgent then consultation should be carried out with the relevant Scrutiny Chair/Mayor/Deputy Mayor</p> <p><i>In in the absence of the named Member the Director has secured a confirmatory email which is annexed to this record</i></p>	<p>Name: Cllr Paul Silvester</p> <p>Title: Chair of the Communities Scrutiny Panel</p> <p>Signed: Cllr Paul Silvester</p> <p>Dated: 2nd April 2020</p>

In the event of absence or incapacity of the Leader and/or Portfolio Holder for Finance and Resources the Director has consulted with the following (tick one box) and has secured either a signature above or a confirmatory email which is annexed to this record.

Name	Tick
Deputy Leader and Portfolio Holder for Regeneration, Skills and Housing (Cllr Fenty)	
Portfolio Holder for Environment and Transport (Cllr S Swinburn)	
Portfolio Holder for Health, Wellbeing and Adult Social Care (Cllr Cracknell)	
Portfolio Holder for Tourism, Heritage and Culture (Cllr Procter)	
Portfolio Holder for Children, Education and Young People (Cllr Lindley)	
Portfolio Holder for Safer and Stronger Communities (Cllr Shepherd)	

NOTE

Upon the expiration of the circumstances outlined above (or sooner if appropriate) this Emergency Officer Decision Record shall be referred to the Communities Scrutiny Panel to note.

Appendix 1 - Copy of email confirmation

From: Rob Walsh (NELC) <Rob.Walsh@Nelincs.gov.uk>
Sent: 06 April 2020 10:42
To: Simon Jones (Chief Legal and Monitoring Officer) (NELC)
<Simon.Jones1@Nelincs.gov.uk>
Subject: RE: Emergency Decisions

Take it as read.thanks.

From: Simon Jones (Chief Legal and Monitoring Officer) (NELC)
<Simon.Jones1@Nelincs.gov.uk>
Sent: 03 April 2020 17:11
To: Rob Walsh (NELC) <Rob.Walsh@Nelincs.gov.uk>
Cc: Sharon Wroot (NELC) <Sharon.Wroot@nelincs.gov.uk>
Subject: Emergency Decisions
Importance: High

Rob.

The email thread below reflects:

1. Consent to urgency by Scrutiny Chair;
2. Consultation with PFH Finance and Resources;
3. Consultation with Leader.

You are the decision maker.

Having complied with the emergency governance framework I will need either an electronic signature on each Emergency ODR or (preferably) an email from you confirming that as decision maker all attached decisions, being:

1. Adult Social Care (ASC) decisions;
2. DoL's (Deprivation of Liberties);
3. Economy and Growth Schedule of decisions;
4. Finance and Treasury Management; and
5. Immingham Community Recycling Centre (CRC).

are deemed made and completed.

I will then forward to Democratic Services.

Regards,
Simon.

Simon D Jones,
Chief Legal and Monitoring Officer
North East Lincolnshire Council
Municipal Offices, Town Hall Square, Grimsby, DN31 1HU | DX13536 Grimsby 1|
Telephone number (01472) 324004 | simon.jones1@Nelincs.gov.uk|

From: Cllr Philip Jackson (NELC) <philip.jackson@nelincs.gov.uk>
Sent: 03 April 2020 13:46
To: Rob Walsh (NELC) <Rob.Walsh@Nelincs.gov.uk>; Cllr Stanley Shreeve (NELC) <Stanley.Shreeve@Nelincs.gov.uk>
Cc: Sharon Wroot (NELC) <Sharon.Wroot@nelincs.gov.uk>; Simon Jones (Chief Legal and Monitoring Officer) (NELC) <Simon.Jones1@Nelincs.gov.uk>
Subject: RE: Emergency Decisions

I'm content to sign these off, too, though share the concerns voiced by Stan Shreeve.

Kind regards

Councillor Philip Jackson
Leader of North East Lincolnshire Council
Municipal Offices, Town Hall Square, Grimsby, DN31 1HU
Email: Philip.jackson@nelincs.gov.uk
Office: 01472 325905
Alternative: 01472 823740

From: Cllr Stanley Shreeve (NELC) <Stanley.Shreeve@Nelincs.gov.uk>
Sent: 03 April 2020 13:32
To: Rob Walsh (NELC) <Rob.Walsh@Nelincs.gov.uk>; Cllr Philip Jackson (NELC) <philip.jackson@nelincs.gov.uk>
Cc: Sharon Wroot (NELC) <Sharon.Wroot@nelincs.gov.uk>; Simon Jones (Chief Legal and Monitoring Officer) (NELC) <Simon.Jones1@Nelincs.gov.uk>
Subject: RE: Emergency Decisions

Good afternoon,

Attached are signed decision notices as forwarded this morning.
I have signed all as requested, but can I put on record my disquiet with the ASC measures which are many and seem to be blanket covering just about everything, with no financial impact assessment at present. Please keep these closely under review as the situation develops and close down where possible.

Cllr Stan Shreeve
Portfolio Holder Finance and Resources
Ward Councillor for Humberston and New Waltham
North East Lincolnshire Council
Email: stanley.shreeve@nelince.gov.uk
Tel: 07702 343340

From: Rob Walsh (NELC)
Sent: 03 April 2020 11:43
To: Cllr Philip Jackson (NELC); Cllr Stanley Shreeve (NELC)
Cc: Sharon Wroot (NELC); Simon Jones (Chief Legal and Monitoring Officer) (NELC)
Subject: Emergency Decisions

Importance: High

Philip / Stan

Here is a suite of delegated emergency decisions for your perusal and sign off. In each instance officers have consider all relevant issues and risks and I , with your support, seek authority to formally sign them off for the record.

This is going to become a system / process that will iterate over the coming weeks / months.

For transparency, the full governance trail is set out below.

Rgs

Rob

From: Simon Jones (Chief Legal and Monitoring Officer) (NELC)
<Simon.Jones1@Nelincs.gov.uk>
Sent: 02 April 2020 13:45
To: Rob Walsh (NELC) <Rob.Walsh@Nelincs.gov.uk>
Cc: Paul Windley (NELC) <Paul.Windley@nelincs.gov.uk>
Subject: Emergency Decisions
Importance: High

Rob.

I have this morning received confirmation from the Communities Scrutiny Chair, Cllr Silvester, as to his consent to the attached decisions. Below.

You are now able to brief Leader and Portfolio Holder for Finance and Resources in accordance with the emergency framework of governance implemented as a result of the COVID-19 emergency.

Confirmatory emails from yourself and Members are sufficient in that scheme to evidence the decision.

Upon completion the decisions and supporting email threads will be subject to publication.

Regards,
Simon.

Simon D Jones,
Chief Legal and Monitoring Officer
North East Lincolnshire Council
Municipal Offices, Town Hall Square, Grimsby, DN31 1HU | DX13536 Grimsby 1 |
Telephone number (01472) 324004 | simon.jones1@Nelincs.gov.uk|

From: PAUL SILVESTER
Sent: 02 April 2020 11:54
To: Simon Jones (Chief Legal and Monitoring Officer) (NELC)
<Simon.Jones1@Nelincs.gov.uk>
Subject: Re: >>PLEASE READ AND RESPOND<< Emergency Decisions

Good morning Simon

I have read all of the emergency decision notices and my response as Chair of the Communities Scrutiny panel is as follows

1. Adult Social Care (ASC) decisions; - consent
2. DoL's (Deprivation of Liberties); - consent
3. Economy and Growth Schedule of decisions; - consent
4. Finance and Treasury Management; - consent
5. Immingham Community Recycling Centre (CRC). - consent

Kind regards
Councillor Paul Silvester

From: Simon Jones (Chief Legal and Monitoring Officer) (NELC)
Sent: 01 April 2020 19:04
To: Cllr Paul Silvester (NELC) <Paul.Silvester@nelincs.gov.uk>
Cc: Paul Windley (NELC) <Paul.Windley@nelincs.gov.uk>
Subject: >>PLEASE READ AND RESPOND<< Emergency Decisions
Importance: High

Councillor.

To address the COVID-19 crisis, the Council has invoked emergency powers and put in place an emergency framework of governance.

This provides for the Chief Executive to be a decision maker in consultation with Leader and PFH for Finance and Resources.

Such decisions are captured on an Emergency Officer Decision Record.

Some records will relate to a single decision, others will contain a schedule of decisions.

In the main they are key decisions, usually the remit of Cabinet, but due to urgency cannot be entered onto the Forward Plan nor the usual 28 day notice given.

There are "special urgency" provisions in the Constitution whereby emergency decisions can be made, as long as the Chair of the appropriate Scrutiny Panel consents. This is a conscious consent.

Emergencies and civil contingencies are the remit of the Communities Scrutiny Panel.

As a matter of course, once the emergency dissipates and business can return to normal, ALL emergency decisions will be referred to your panel for noting.

As a result of social distancing and isolation, wet signatures cannot be obtained.

Therefore there will be reliance on an exchange of emails to evidence your consent.

This email and your response will be subject to publication in the interests of transparency.

On behalf of the Chief Executive I therefore seek your consent to the following (attached) decisions.

1. Adult Social Care (ASC) decisions;
2. DoL's (Deprivation of Liberties);
3. Economy and Growth Schedule of decisions;

4. Finance and Treasury Management; and
5. Immingham Community Recycling Centre (CRC).

I would suggest that in your response to simply state:

1. Consent/Don't consent;
2. Consent/Don't consent.....etc with the appropriate option.

I look forward to hearing from you as soon as possible.

Regards,
Simon.

Simon D Jones,
Chief Legal and Monitoring Officer
North East Lincolnshire Council
Municipal Offices, Town Hall Square, Grimsby, DN31 1HU | DX13536 Grimsby 1 |
Telephone number (01472) 324004 | simon.jones1@Nelincs.gov.uk