



Date: 17 September 2024
Ask For: Gabriella Stewart
Direct Dial: (01843) 577207
Email: gabriella.stewart@thanet.gov.uk

CONSTITUTIONAL REVIEW COMMITTEE

24 SEPTEMBER 2024

A meeting of the Constitutional Review Committee will be held at **7.00 pm on Tuesday, 24 September 2024** in the Council Chamber, Cecil Street, Margate, Kent.

Membership:

Independent Members: Peter Tucker (Chair);

Councillors: Austin, Britcher, Everitt, W Scobie, Scott, Crittenden, D Green, Pugh, Worrow, Currie, Edwards, Fellows and Garner

A G E N D A

Item
No

Subject

6. **PORT GOVERNANCE** (Pages 3 - 8)
7. **COMPULSORY EQUALITIES TRAINING** (Pages 9 - 12)

This page is intentionally left blank

PORT GOVERNANCE

Constitutional Review Committee

24 September 2024

By

Ingrid Brown- Head of Legal and
Democracy and Monitoring
Officer

Cabinet Portfolio Member

Councillor Rick Everitt

Key Decision

No

Decision classification

Non-key

Call in status

Subject to call-in

Ward:

Central Harbour

Purpose of the Report

This report makes recommendations in respect of Governance and the Port which will ensure that the Council's arrangements in this respect are in full compliance with the Port Marine Safety Code (PMSC). In particular the report recommends that Cabinet should be the nominated 'Duty Holder' for the purposes of the PMSC.

Recommendation(s):

The Constitutional Review Committee is asked to consider the following proposals to be made to Full Council and to make any recommendations:

Full Council is asked to:

1. Agree that the council's harbour authority function rests with Cabinet (Executive) within the Council's constitutional arrangements.
2. Note that as a result of the decision taken at 1. above, Cabinet will become the 'Duty Holder' for the purposes of the Port Marine Safety Code.
3. Agree amendments to the Council's constitution to reflect the above.

1. Summary of Reasons

- 1.1 The Council is the Statutory Harbour Authority for the Ports of Ramsgate, Broadstairs and Margate. As such it is bound by the PMSC which sets out a national standard for Port Marine Safety. The PMSC requires that all statutory harbour authorities have a 'Duty Holder' who is accountable for compliance with the PMSC and ensuring safe marine operations. Harbour Authority functions are a local choice function under the Local Authorities (Functions and Responsibilities)(England) Regulations 2000. This means that they may be, but need not be, the responsibility of the Executive.
- 1.2 This report proposes that the authority's harbour functions rest with the Cabinet and that, for the reasons set out below, Cabinet, is the nominated 'Duty Holder' for the purposes of the PMSC.

2. Background

- 2.1 As indicated in paragraph 1.1 of this report, harbour authority functions are local choice functions. As such, the decision as to where the harbour authority function rests, is a decision that must be made by Full Council and the following options are available:
- Full Council takes the decision that the harbour authority function will rest with Full Council within the Council's constitutional arrangements.
 - The harbour authority's function rests with the Cabinet (Executive)
 - Full Council takes the decision that the harbour authority function is split between Full Council and the Cabinet
- 2.2 The decision taken above affects who should be the 'Duty Holder' for the purposes of the PMSC. The PMSC applies to all statutory ports and harbours. Although it is best practice guidance rather than law, statutory ports and harbours are expected to comply and failure to do so can lead to prosecution (for example under s3 Health and Safety at Work Act).

3. Relevant Issues

- 3.1 The PMSC requires that all statutory harbour authorities have a "duty holder" who is accountable for compliance with the PMSC and ensuring safe marine operations. The duty holder is publicly accountable for marine safety under the PMSC, both individually and collectively (where the duty holder is more than one person). The responsibility of the Duty Holder (once appointed) cannot be delegated.
- 3.2 The key duty of the Duty Holder is to ensure compliance with the PMSC. Requirements under the PMCS to discharge the duty include, that the Duty Holder should:
- Be aware of the organisation's powers and duties related to marine safety;
 - Ensure that a suitable Marine Safety Management System is in place

- Appoint a suitable 'Designated Person' (the person who provides audits and monitors compliance and provides independent assurance that the MSMS is being effective in ensuring compliance with the PMSC – this person should be external to the Council).
- Appoint competent people to manage marine safety
- Publication of a marine safety plan and reporting of performance against objectives and targets set; and
- Report compliance with the Code to the Maritime and Coastguard Agency (MCA) every 3 years.

3.3 The Duty Holder will need:

1. Training - role and responsibilities
2. Access to the Designated Person (and vice versa)
3. The financial authority to ensure compliance with the PMSC
4. The ability to make decisions quickly if necessary

4. Alternative Options

- 4.1 Full Council could decide that either Cabinet or full Council assume responsibility for the Statutory Harbour Authority function. Alternatively, Full Council could decide to split the function as indicated below.

Cabinet

- 4.2 If Council takes the decision that the harbour authority function will rest with the Cabinet then it is most appropriate that Cabinet is also the Duty Holder. This is the case, even if a Harbour Management Committee (HMC) (see below) is established, as an HMC established under Executive (Cabinet) arrangements can be advisory only in its capacity. As such it cannot ensure compliance with the PMSC. This is because the PMSC makes it clear that the Duty Holder cannot assign or delegate its accountability for compliance with the Code.
- 4.3 The advantages of Cabinet being the Duty Holder are that there is more than one person appointed (mitigating issues associated with absence for illness etc. by the Duty Holder set out below) but that the number of people to be trained and required to have a good understanding of their responsibilities and the role is lower than Full Council. In addition, practically it is easier to arrange a meeting of Cabinet than a meeting of Full Council.
- 4.4 For the reasons set out at 4.3, this option is the preferred option.

Full Council

- 4.5 If Full Council takes the decision that the harbour authority function will rest with Full Council then it is most appropriate for Full Council to be the Duty Holder. This is the

Agenda Item 6

case, even if a HMC is established, as generally, although an HMC established under Full Council arrangements can have decision making capabilities, it is not appropriate for the HMC to be the Duty Holder because, as indicated above, usually it would have limited financial authority, meaning that it does not have sufficient resources to ensure compliance with the PMSC. The PMSC makes it clear that the Duty Holder cannot assign or delegate its accountability for compliance with the Code.

- 4.6 This option requires all members of Full Council to receive Duty Holder training and to be properly aware of their roles and responsibilities as the Duty Holder (as outlined above). The larger the number of people that require training and a good understanding of their responsibilities and the role, the more challenging and expensive it can be. In addition, the cycle of Full Council meetings and requirements re publication cut offs for meeting papers etc. can mean that it is more difficult to make decisions quickly.
- 4.7 For the reasons set out at paragraph 4.6 above, this is not the preferred option.

Split Responsibility

- 4.8 If Full Council takes the decision to split the statutory harbour authority function between Full Council and Cabinet the Duty Holder role should be held by the one that has sufficient financial authority and decision making powers to ensure compliance with the PMSC.
- 4.9 This option is not the preferred option as it is considered to

An individual person (for example the Portfolio Holder)

- 4.10 Whilst it is possible for an individual person to be the Duty Holder, it is less common and there are practical difficulties with this option. There are clear advantages in the role being fulfilled by more than one person jointly and severally. This mitigates issues associated with absence for illness etc. by the Duty Holder and by allocating the duty to more than one person it can aid visibility of the role and understanding of its importance.
- 4.11 For the reasons set out above this is not the preferred option.

5. Consultation

- 5.1 There is no public law or statutory duty to consult in relation to the proposals in this report.

6. Corporate Implications

6.1 Finance and Resources

- 6.1.1 There are no financial implications arising from the decision sought in this report.

6.2 Legal and Constitutional

- 6.2.1 The relevant legal provisions are set out in the body of this report. As a Statutory Harbour Authority the Council is bound by the Port Marine Safety Code which sets out a national standard for Port Marine Safety. The PMSC requires that all statutory harbour authorities have a 'Duty Holder' who is accountable for compliance with the PMSC and ensuring safe marine operations. Harbour Authority functions are a local choice function under the Local Authorities (Functions and Responsibilities)(England) Regulations 2000. This means that they may be, but need not be, the responsibility of the Executive.
- 6.2.2 The main responsibilities of the Duty Holder are also set out in the body of this report at paragraph 3.2. In relation to any liability of Councillors assuming responsibility for this role, this is the same as any other Health and Safety responsibility held for the Council and Councillors will benefit from any indemnities / protections as to liability that they hold in respect of other Council functions. The same standards of care will also apply in how this role is discharged.
- 6.2.3 It is the responsibility of Full Council to determine whether a matter that is a local choice function shall be the responsibility of the Executive or should remain with Full Council. Once this matter is determined the necessary amendments will be made to the Council's constitution to reflect this.

6.3 Council Policies and Priorities

- 6.3.1 This report relates to the following corporate priorities: -
- To keep our district safe and clean
 - To protect our environment
 - To work efficiently for you]

6.4 Risk

- 6.4.1 There is significant risk to the Council of failing to implement these recommendations or to appoint a Duty Holder to ensure compliance with the PMSC. These risks are legal, financial, health and safety as well as reputational.

6.5 Climate Change and Biodiversity

- 6.5.1 There are no direct climate change or biodiversity implications arising from the decisions in this report.

7. Equality, Equity and Diversity Implications

- 7.1 An equalities screening tool has been completed which demonstrates that there are no particular equalities considerations arising from the decision sought in this report.

8. Crime and Disorder Implications and Community impact

- 8.1 There are no crime and disorder or implications for the community arising out of the decisions sought in this report.

9. Subject History

- 9.1 This matter has not previously been considered by Cabinet, the Council or any of its committees.

Appendices

There are no appendices

Background Papers

- Port Marine Safety Code

Report Author(s) Contact: Ingrid Brown- Head of Legal and Democracy and Monitoring officer

telephone:

email: Ingrid.brown@thanet.gov.uk

Report Sign Off / Signed off by / Date sent / Date signed off / Initials

Legal Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)

Finance Matthew Sanham (Head of Finance and Procurement)

Compulsory Equalities Training

Constitutional Review Committee	24 September 2024
By	Ingrid Brown
Cabinet Portfolio Member	Cllr Heather Keen
Key Decision	No
Decision classification	Unrestricted
Call in status	Not subject to call-in
Ward:	All

Purpose of the Report

This report seeks to amend the constitution to extend the mandatory training to be provided to all Councillors to include Equalities, Diversity and Inclusion (EDI) training.

Recommendation(s):

It is recommended that the Constitutional Review Committee:

1. Consider the proposal that a change be made to the Constitution making it mandatory for all Councillors to attend Equalities, Diversity and Inclusion training.

1. Summary of Reasons

- 1.1 The first meeting of the Council's equalities CAG was held on the 17th June 2024. One of the recommendations of the CAG was that equalities training be made compulsory for all Councillors. This will assist Councillors to have a greater understanding of equalities and the Public Sector Equality duty. This will support good governance and decision making and also a more inclusive environment within the Council.

2. Background

- 2.1 The Council is bound by a legal duty to ensure that in all its decision making the necessary regard is given to equalities considerations. This means that it must consider the impact of any decision it makes on those with protected characteristics as defined in equalities legislation, both positive and negative. It must have regard to that impact at the time of making its decision. This is referred to as the Public Sector Equality duty.

- 2.2 As part of the discussion at the CAG it was felt that all Councillors and staff should take part in EDI training. Councillors are not currently under any obligation to undergo EDI training as mandatory. From the best practice perspective, from the perspective of supporting residents from diverse backgrounds as well as from the perspective of protecting the Council's interests and preventing the threat of any legal action for failing to give equalities considerations the necessary regard, the CAG felt that EDI training should be compulsory for Councillors.

3. Relevant Issues

- 3.1 These are set out in the section above.

4. Alternative Options

- 4.1 In accordance with the recommendation the Constitutional Review Committee could decide to recommend to Full Council that EDI training be made mandatory for all Councillors. This would ensure that all Councillors have a level of knowledge and understanding of EDI both from a legal perspective in terms of the requirement to consider equalities implications when making a decision. They will thus be best placed to make sound decision making. It will also assist Councillors to think about their actions and behaviours from an equalities perspective and ensure that the Council chamber is an inclusive environment where Councillors from diverse backgrounds are able to participate.
- 4.2 It is open to the Constitutional Review Committee to recommend that Full Council do not approve this recommendation or to propose an amendment to this recommendation. For the reasons set out at 4.1 above, this is not the preferred option.

6. Consultation

- 6.1 There is no public law or statutory duty to consult in respect of the decision set out in this report.

7. Corporate Implications

7.1 Finance and Resources

- 7.1.1 There are no financial implications arising from the decision sought in this report.

7.2 Legal and Constitutional

- 7.2.1 Section 9P of the Local Government Act 2000 provides that:

(1) A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—

- (a) a copy of the authority's standing orders for the time being,
- (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
- (c) such information as the Secretary of State may direct, and
- (d) such other information (if any) as the authority considers appropriate.

- 7.2.2 A local authority has considerable discretion as to the content of its constitution though it should reflect relevant statute, regulation and guidance. There is nothing in either of the aforementioned to prevent the amendments sought being agreed.
- 7.2.3 The Constitutional Review Committee is not able to mandate that all Councillors should undertake mandatory EDI training. This is a decision that has to be agreed at Full Council following consideration by the Constitutional Review Committee.

7.3 Council Policies and Priorities

- 7.3.1 This report relates to the following corporate priorities: -
- To create a thriving environment
 - To work efficiently for you

7.4 Risk

- 7.4.1 There is a risk of successful legal challenge if the Council does not properly comply with its duties under the Public Sector Equality Duty.

7.5 Climate Change and Biodiversity

- 7.5.1 The decisions sought in this report will not have any impact on climate change or biodiversity.

8. Equality, Equity and Diversity Implications

- 8.1 There are no direct equalities implications arising from the decisions sought in this report. It is expected however by adopting the new EDI policy and by making it mandatory for all Councillors to attend EDI training, that there will be a positive impact on equalities across the Council and that the Council will be able to more fully demonstrate its compliance with the Public Sector equality Duty.

9. Crime and Disorder Implications and Community impact

- 9.1 There are no crime and disorder implications arising from the decision sought in this report.

10. Subject History

- 10.1 This matter was considered by Cabinet on the 25 July 2024.

Annexes

There are no annexes

Background Papers

There are no background papers.

Report Author(s) Contact: Ingrid Brown- Head of Legal and Democracy and Monitoring Officer

telephone:

email: Ingrid.brown@thanet.gov.uk

Report Sign Off / Signed off by / Date sent / Date signed off / Initials

Legal Ingrid Brown- Head of Legal and Democracy and Monitoring Officer

Finance Matthew Sanham (Head of Finance and Procurement)