

PORT GOVERNANCE

Council	10 October 2024
By	Ingrid Brown, Head of Legal and Democracy and Monitoring Officer
Cabinet Portfolio Member	Councillor Rick Everitt, Leader of Council
Key Decision	No
Decision classification	Non-key
Call in status	N/A
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 proposed to Full Council the following recommendations, 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. Constitutional Review Committee Recommendations

- 4.1 The Constitutional Review Committee met on 24 September 2024 and considered the options detailed in section 5 of the report.
- 4.2 They agreed that it was pertinent that the role of Duty Holder be assigned to one decision making body of the council. As a result the committed that Agree that the council's harbour authority function rests with Cabinet and there Cabinet should become the Duty Holder.
- 4.3 The Committee made the recommendation that is outlined at the beginning of this report.

5. Alternative Options

- 5.1 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

- 5.2 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.
- 5.3 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.
- 5.4 For the reasons set out at 4.3, this option is the preferred option.

Full Council

- 5.5 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

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.

- 5.6 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.
- 5.7 For the reasons set out at paragraph 4.6 above, this is not the preferred option.

Split Responsibility

- 5.8 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.
- 5.9 This option is not the preferred option since in terms of the management of safety at the Ports, it is practically easier to arrange a meeting of Cabinet members than of Full Council. In addition it is considered to be more appropriate and prudent to assign this role to one decision making body.

An individual person (for example the Portfolio Holder)

- 5.10 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.
- 5.11 For the reasons set out above this is not the preferred option.

6. Consultation

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

7. Corporate Implications

- 7.1 **Finance and Resources**

7.1.1 The Port has already incurred the cost to appoint a suitable 'Designated Person' but there will be training costs associated with this decision if all members of Full Council receive Duty Holder training.

7.2 Legal and Constitutional

7.2.1 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.

7.2.2 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.

7.2.3 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.

7.3 Council Policies and Priorities

7.3.1 This report relates to the following corporate priorities: -

- To keep our district safe and clean
- To protect our environment
- To work efficiently for you]

7.4 Risk

7.4.1 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.

7.5 Climate Change and Biodiversity

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

8. Equality, Equity and Diversity Implications

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

9. Crime and Disorder Implications and Community impact

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

10. Subject History

10.1 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

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Report Sign Off

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