

Audit and Governance Committee

15 September 2020

Is the final decision on the recommendations in this report to be made at this meeting?

No

Corporate Health and Safety Responsibilities

Final Decision-Maker	Full Council
Portfolio Holder(s)	Councillor Alan McDermott, Leader of the Council
Lead Director	Lee Colyer, Director of Finance, Policy and Development
Head of Service	Patricia Narebor, Head of Legal Partnership and Monitoring Officer
Lead Officer/Author	Keith Trowell, Team Leader (Corporate Governance) and Deputy Monitoring Officer
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

1. The amendments to Part 3 the Constitution shown as track changes in Appendix A approved and adopted.
2. The additional Table shown in Appendix B be approved and adopted to be added to Part 3 of the Constitution.

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- To have effective leadership
- To have relevant skills
- To have high levels of wellbeing

Timetable

Meeting	Date
Constitution Review Working Party	10 January 2020
Management Board	15 January 2020
Audit and Governance Committee	15 September 2020
Council	16 December 2020

Corporate Health and Safety Responsibilities

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out and recommends several amendments to the Constitution following consultation with the Constitution Review Working Party and Management Board.
 - 1.2 The proposed amendments will strengthen and clarify responsibilities for corporate health and safety.
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2. INTRODUCTION AND BACKGROUND

- 2.1 In response to concerns raised by the Health and Safety Committee and Management Board a number of actions were identified in order to reinforce the Council's corporate responsibilities for health and safety towards its staff, contractor's and people visiting its premises.
 - 2.2 The actions identified are :
 - Delegations shown in the Constitution be amended to clarify responsibilities for corporate health and safety
 - The Health and Safety Annual Report should be reviewed and approved by Cabinet annually and reference should be made to this in the Constitution
 - A specific section on Health and Safety be added to the Constitution bringing together the responsibilities
 - The Health and Safety Policy be amended to be in line with the Constitution and to show the correct reporting lines
 - 2.3 Corporate health and safety is an executive function that sits with Cabinet. The portfolio holder for Sustainability has responsibility for "Food Hygiene and Health and Standards (including Corporate Health and Safety)".
 - 2.4 The responsibility for corporate health and safety appears to be delegated by the Constitution to the Director of Change and Communities, although this could be expressed more clearly. These duties are sub delegated to the Head of Environment and Street Scene, though again the responsibility for corporate health and safety could be more clearly defined.
 - 2.5 There is no mention in the Constitution of the role of Health and Safety Officer, the Health and Safety Policy, the Health and Safety Board or the Health and Safety Annual Report.
 - 2.6 Proposed changes to the Constitution to give effect to Management Board's outstanding recommendations were considered by the CRWP on 10 January and approved. The proposed changes are set out in Appendices A and B.
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- 2.7 The proposed changes will bring greater clarity to the Council’s health and safety responsibilities towards its employees, contractors and visitors to Council premises. The changes will also bring about a more robust approach to ensuring that the Council meets its obligations under health and safety legislation.
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3. AVAILABLE OPTIONS

- 3.1 Accept all of the recommended amendments to Part 3 of the Constitution.
- 3.2 Accept some of the recommended amendments to Part 3 of the Constitution.
- 3.3 Do nothing.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 3.1 is the preferred option as this will achieve a clear and resilient constitutional framework for managing the Council’s responsibilities for corporate health and safety.
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5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 The Council’s Corporate Safety Advisor, Management Board and the Constitution Review Working Group have been consulted and all have supported the proposed amendments in their entirety.
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6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Subject to approval by the Audit and Governance Committee, the proposed amendments will be submitted to Full Council.
- 6.2 If Full Council approves and adopts the proposed amendments, the Constitution will be deemed to have been amended with immediate effect. The relevant documents will be updated and published on the Council’s website.
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7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	The Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution. The review has been undertaken with the input the Corporate Health Safety Advisor, Management Board and the Constitution Review Working Group.	Keith Trowell, Team Leader (Corporate Governance), MKLS 06.03.20.

Finance and other resources	No financial implications have been identified.	Keith Trowell, Team Leader (Corporate Governance), MKLS 19.03.20.
Staffing establishment	No staffing implications have been identified	Keith Trowell, Team Leader (Corporate Governance), MKLS 19.03.20.
Risk Management	Protecting the health and safety of those who may be affected by the Council's activities is a crucial element of risk management and must be led by those at the highest level. Failure to include health and safety as a key business risk may have serious consequences.	Keith Trowell, Team Leader (Corporate Governance), MKLS 19.03.20.
Data Protection	There are no implications for the processing of personal data.	Sarah Lavallie, Corporate Governance Officer 19.03.20.
Environment and Sustainability	No specific impact with regards to sustainability.	Karin Grey, Sustainability Manager, 09.03.20.
Community Safety	No community safety issues arise as a consequence of this report.	Community Safety Manager 06.03.20.
Health and Safety	Protecting the health and safety of employees or members of the public who may be affected by your activities is an essential part of risk management and must be led in organisations by the board. Failure to include health and safety as a key business risk in board decisions can have catastrophic results. Many high-profile safety cases over the years have been rooted in failures of leadership. Health and safety law places duties on organisations and employers. Board members can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety.	Mike Catling Corporate Health and Safety Advisor. 11.03.20.

	<p>The Health and Safety Executive website states:</p> <p>‘In most councils, the Chief Executive is at the top of the organisational structure for the paid service and has overall responsibility for health and safety. Councillors also have an important role - including responsibility for many local policies and budgets. While not in day-to-day control, councillors need to satisfy themselves that risks are considered as part of their decision-making process and are sensibly managed. Most councils have arrangements in place that mean day-to-day management of health and safety falls to line managers.</p> <p>The Local Government Employers and the Institution of Occupational Safety and Health document ‘Health and safety in the council, Local Leadership Councillor workbook’ states:</p> <p>‘Officers and elected members have a role in ensuring that the health and safety of employees and others who may be affected by the council’s activities is safeguarded. A serious injury to an employee or a service user of course causes pain and suffering and also results in significant costs to the authority as well as the possibility of reputational damage. The importance of effective health and safety management has become even more crucial with the introduction of the offence of corporate manslaughter. This has established a direct link where breaches of health and safety law that because death can lead to a charge of corporate manslaughter. It is essential therefore that councils are confident that their health and safety governance arrangements stand up to scrutiny. Aside from the tragic loss of the individuals involved, a charge of corporate manslaughter would also bring with it significant reputational issues and is likely to damage the standing of councillors with their constituents.’</p>	
<p>Health and Wellbeing</p>	<p>Accepting the recommendations will contribute to the health and wellbeing of the</p>	<p>Keith Trowell, Team Leader</p>

	Council's staff, it's contractors and visitors to Council premises.	(Corporate Governance), MKLS 19.03.20.
Equalities	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.	Sarah Lavallie, Corporate Governance Officer 19.03.20.

8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Proposed amendments to Part 3 of the Constitution
- Appendix B: Proposed New Table 5 to Part 3 of the Constitution

9. BACKGROUND PAPERS

- Tunbridge Wells Borough Council Constitution :
<http://www.tunbridgewells.gov.uk/council/councillors-and-meetings/how-the-council-works/council-constitution>