

Item 05 – Liability for Trees on Common Land

The attached report was considered by the Cleaner & Greener Advisory Committee on 13 June 2023. The relevant Minute extract is below.

Cleaner & Greener Advisory Committee (13 June 2023, Minute 12)

The Chairman introduced the report which updated Members on the current management of a number of Commons pursuant to a scheme made under the Commons Act 1899 and the extent of the Council's liability. The Head of Direct Services advised that the Council made a scheme for the regulation and management of any Common within the District, under Section 1 on the Commons Act 1899 which was approved in 1925 by the Secretary of State and amended in 1963 and 1966. The Scheme identified approximately 280 hectares of commons land.

Legal advice on the Council's liability for trees on commons land had significantly changed. The Council's primary obligation is to preserve and protect the trees from harm, such as stopping unauthorised felling, rather than to active arboriculture management. As there were identified owners of the Commons, the duty of care under the Occupiers Liability Act imposed a statutory duty on the occupier on visitors' safety. The Council should thus also change its working practice, to reflect Counsel's advice and recent case law, as it was not reasonable to expect the Council to bear all costs for arboriculture works across the commons land scheme.

Members discussed the report. The Head of Direct Services explained that the Council could intervene in cases where land owners were not responding to health & safety issues, such as diseased trees. In these instances the Council would be able to recoup costs after the fact. This change would not affect any ongoing tree works.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That it be recommended to Cabinet that the report be approved.