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# NOTICE OF MEETING

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## EMPLOYMENT COMMITTEE

**TUESDAY, 17 OCTOBER 2017 AT 9.30 AM**

**THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL**

Telephone enquiries to Vicki Plytas 02392 834058

Email: [vicki.plytas@portsmouthcc.gov.uk](mailto:vicki.plytas@portsmouthcc.gov.uk)

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

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### **Membership**

Councillor Donna Jones (Chair)  
Councillor Luke Stubbs (Vice-Chair)  
Councillor John Ferrett  
Councillor Jim Fleming  
Councillor Darren Sanders  
Councillor Gerald Vernon-Jackson CBE

### **Standing Deputies**

Councillor Simon Boshier  
Councillor Ryan Brent  
Councillor Leo Madden  
Councillor Lynne Stagg  
Councillor Linda Symes  
Councillor Matthew Winnington

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(NB This agenda should be retained for future reference with the Minutes of this meeting.)  
Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the contact officer (above) by 12 noon of the working day before the meeting, and must include the purpose of the deputation (for example, for or against the recommendation/s). Email requests are accepted.**

## **A G E N D A**

### **1 Apologies for Absence**

**2 Declarations of Members' Interests**

**3 Substance Misuse - Drug and Alcohol Testing Policy - Port (Pages 3 - 32)**

The purpose of the report is to provide clarity on points raised at the Employment Committee of 12 September 2017 and recommend the introduction of a drug and alcohol testing policy for employees and third parties working at Portsmouth International Port (the Port).

**RECOMMENDATIONS:**

**It is recommended that Members:**

- i. **Note the clarification provided on points raised at the Employment Committee of 12 September 2017.**
- ii. **Agree the recommendations presented at the Employment Committee of 12 September 2017, these being;**
  - a. **Introduce drug and alcohol testing for all roles at the Port with both "random" and "with cause" testing.**
  - b. **Adopt the Substance Misuse - Drug and Alcohol Testing Policy with the proposed changes, in order to implement the testing process fairly and consistently, in accordance with the Authority's approach to substance misuse (Appendix 1).**
  - c. **Delegate authority to the Director responsible for HR and the Port Director, to review the Substance Misuse - Drug and Alcohol Testing Policy after an initial 1 year period and thereafter in line with all policy reviews.**

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# Agenda Item 3



**Portsmouth**  
CITY COUNCIL

Agenda item:

**Title of meeting: Special Employment Committee**

**Date of meeting: 17 October 2017**

**Subject: Substance Misuse - Drug and Alcohol Testing Policy - Port**

**Report by: Jon Bell, Director of HR, Legal and Performance**

**Wards affected: N/A**

**Key decision:** No

**Full Council decision:** No

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## **1. Purpose of report**

The purpose of the report is to provide clarity on points raised at the Employment Committee of 12 September 2017 and recommend the introduction of a drug and alcohol testing policy for employees and third parties working at Portsmouth International Port (the Port).

## **2. Recommendations**

### **2.1. It is recommended that Members:**

- i. Note the clarification provided on points raised at the Employment Committee of 12 September 2017.
- ii. Agree the recommendations presented at the Employment Committee of 12 September 2017, these being;
  - a. Introduce drug and alcohol testing for all roles at the Port with both "random" and "with cause" testing.
  - b. Adopt the Substance Misuse - Drug and Alcohol Testing Policy with the proposed changes, in order to implement the testing process fairly and consistently, in accordance with the Authority's approach to substance misuse (Appendix 1).
  - c. Delegate authority to the Director responsible for HR and the Port Director, to review the Substance Misuse - Drug and Alcohol Testing Policy after an initial 1 year period and thereafter in line with all policy reviews.

## **3. Background**

- 3.1. At the Employment Committee of 12 September 2017 a drug and alcohol testing report was presented. The report was considered and during discussion, Members of the

Committee agreed that there was a need for a drug and alcohol testing policy but had reservations about some of the provisions. Members sought the opportunity to reconsider a number of issues, namely,

1. The scope of the policy - Concern that testing applies to administrative staff.
2. The alcohol test results – The level of reading where action can be taken. Clarification of the type of action possible.
3. Implementation concerns and the impact on staff.
4. Random testing – Clarifying the need for random testing.

#### **4. Points requiring clarification**

##### **4.1. The scope of the policy - Concern that testing applies to administrative staff**

The decision to include all roles at the Port within the scope of the policy is a proportionate response as all staff including administrative staff have access to determined restricted areas of the Port as part of day to day activities.

Due to the geographical nature of the Port, administrative staff at the Port have to cross busy freight areas which would be more hazardous if the member of staff was under the influence of drugs or alcohol.

The Port is a unique commercial industrial working environment. The driver for this policy is overall safety at the Port. The focus of application to the Port is to respond to, address and mitigate health and safety issues within this environment.

Data collected shows that all 7 Ports that have shared their policy with Portsmouth City Council (PCC) extend their policy to cover all roles and do not distinguish between operational and administrative roles.

##### **4.2. The alcohol test results - Level of reading where action can be taken**

In relation to alcohol testing, concern was raised about an employee facing action if they provide an alcohol breath sample of 35 micrograms (µg) of alcohol per 100 millilitres of breath or below (but above 0). However, the policy states that the Health and Safety delegate(s) of the Port will undertake a risk assessment to determine the action to be taken. The emphasis is on a mechanism of support for staff and the employer's duty of care. Any risk assessment will consider the circumstances of the case and the level of any impairment which would impact on the ability to undertake the work safely.

By removing action in the form of a risk assessment for readings of 35 micrograms (µg) of alcohol per 100 millilitres of breath or below (but above 0) the City Council would be removing the provision of support that can ultimately lead to a safer working environment. The risk assessment undertaken will highlight when safety is or could be compromised. As an example, an employee whose alcohol test showed that they were only slightly under the 35 micrograms (µg) limit at the end of a shift may have been above the limit at the start of a shift and so could have been exposing themselves and others to danger at that point.

Alternative cut off points for action are not suitable as the current proposal ensures that the level of support necessary can be assessed on a case by case basis and covers all results above 0.

In response to the concern raised at Employment Committee on 12 September 2017, Members agreed that the first sentence in the paragraph regarding "An employee may also face action if they provide an alcohol breath sample of between 0 and 35 micrograms (µg) of alcohol per 100 millilitres of breath" should be deleted and the paragraph reworded to reflect and clarify the appropriate support available in these cases.

*The revised paragraph will read:*

*With a result of 35 micrograms (µg) of alcohol per 100 millilitres of breath or below (but above 0), the Health and Safety delegate(s) of the Port will undertake a risk assessment to determine the action to be taken. The action taken and appropriate support given will be dependent on the circumstances of the case.*

#### **4.3. Implementation concerns and the impact on staff**

##### **4.3.1. Reason for impairment**

Concern was raised that an illness could be the cause of an impairment rather than it being caused by drugs or alcohol.

Where staff are impaired because of an illness rather than due to drugs or alcohol, the member of staff would be able to discuss these circumstances and explain the situation. This would form part of normal and existing management activity.

The driver for the drug and alcohol testing policy is overall safety at the Port.

##### **4.3.2. Method of testing**

Drug and alcohol testing using a breath test for alcohol and/or an oral fluid (mouth swab) test for drugs is considered to be a reliable method of testing. The tests are suitable to be undertaken in the workplace in a private and suitable location and are undertaken by trained representatives using approved testing devices and methods. The use of a physical impairment test (e.g. walk in a straight line, turn around and walk back) is not suitable for City Council managers to use on staff. Management assessment of situations arising is already in place.

Data collected shows that all 7 Ports that have shared their policy with PCC use tests completed using a breath test and urine or oral fluid test.

##### **4.3.3. Individual tolerance rates**

Any concerns raised regarding individual tolerance rates can be clarified with reference to the inclusion of voluntary disclosure and the 30 day amnesty. This would be considered under the normal management response.

Non-negative results that indicate a legally prescribed drug are considered within the policy. A risk assessment will be undertaken that will allow for discussions relating to any impairment to be accounted for.

#### **4.3.4. Selection of provider**

The trade unions would not be part of the selection process for the testing company, however, the trade unions have been informed that if they have any substantive concerns regarding the preferred supplier once confirmed and announced, these concerns should be raised with HR and will be given due consideration.

The preferred testing company has provided PCC with the following accreditation statement and information regarding companies they work with.

*The Company is a UKAS (United Kingdom Accreditation Service) accredited testing laboratory. The Company has held accreditation to ISO 17025 since 2008. ISO 17025 General Requirements for the competence of testing and calibration laboratories is the "Gold Standard" used by testing and calibration laboratories. In most major countries, ISO 17025 is the standard for which most testing laboratories must hold accreditation in order to be deemed technically competent.*

*This demonstrates an ongoing commitment to delivering the highest quality standards. In addition to an extensive internal audit programme, the Company is externally audited once every year to ensure that the laboratory conforms to this international standard.*

*The Company currently works with many various organisations in relation to drug and alcohol testing. This includes large local authorities, organisations within the maritime industry and large transportation companies who rely on the organisation to carry out all levels of the testing and the Company works closely with them to manage this.*

#### **4.3.5. Occupational Health**

During the initial consultation, a request was made to remove reference to Occupational Health and management expectation of engaging with the GP. The points raised at Employment Committee has resulted in the revised policy containing a specific support paragraph which references Occupational Health and the need for employees to engage with their own medical practitioner.

#### **4.3.6. Privacy and confidentiality**

With regard to concerns about privacy, confirmation is provided that tests will take place privately to preserve the dignity of the person concerned. A reference to a 'private and suitable location' has been added to the drug and alcohol testing policy.

With regard to the anonymised lists, these will be produced from HR records and will be provided to the testing company in accordance with the Data Protection Act.

#### **4.3.7. Job adverts**

It is agreed that a statement regarding the drug and alcohol testing policy is included on all adverts recruiting to any Port position. It is important for any prospective employee of

the Port to be made aware of the drug and alcohol testing policy at the point of application.

#### **4.4. Random testing - Clarifying the need for random testing**

Random testing is required in addition to "with cause" testing as this type of testing deters misuse and ensures a pro-active rather than a reactive approach to health and safety.

Data collected shows that all 7 Ports that have shared their policy with PCC extend their policy to both random testing and with cause testing.

#### **4.5. Suspension**

The draft drug and alcohol testing policy refers to the consideration of suspension. The emphasis is on ensuring that before making a decision to suspend an employee, all relevant circumstances are taken into account which includes considering whether or not there are reasonable alternatives to suspension that could be imposed. This could be for example, a period of work outside of the Port environment within the City Council if the role and situation is deemed suitable by management. The draft policy also states that a record should be made of the decision and the alternatives considered.

### **5. Trade union consultation and feedback**

Formal consultation for the draft drug and alcohol testing policy took place with the recognised trade unions between the dates of 3 to 17 August 2017. Discussion regarding introducing drug and alcohol testing at the Port took place at the monthly HR/Trade union meetings in July, August and September 2017. Discussion took place at the Port Joint Negotiating Forum of 30 May 2017 and 26 September 2017 and the Port Director further discussed the draft policy with trade union representatives on 3 October 2017.

The trade unions have provided comments on the draft policy during the August consultation period which resulted in some of their views being incorporated into the draft policy. The main trade union comments and employer responses raised prior to the Employment Committee of 12 September 2017 were summarised in the report of that date.

The areas of concern raised as a deputation at the Employment Committee of 12 September 2017 have been responded to in writing and the trade unions have been given the opportunity to provide feedback prior to the Special Employment Committee meeting.

Trade union feedback received post 12 September 2017 Employment Committee has resulted in further changes being incorporated into the draft policy. This is specifically in terms of including that the decisions are made by the Health and Safety delegate(s) of the Port who will be responsible for deciding whether or not to implement a with cause test following line manager identification of a concern and for undertaking any risk assessment necessary as a result of any random or with cause test result. A statement has also been added with regards to the timing of random testing to ensure the process is equitable. The random visits will be made at various times of the day and

at weekends, which will ensure that shift workers are captured within the testing and are not disproportionately selected.

Trade union feedback received post 12 September 2017 Employment Committee has been summarised in Appendix 2. A response has been provided to the trade unions in writing with the revised draft policy.

In 2017, the Port Director introduced monthly Drop-In sessions, in which he would spend time at a selected mess room or meeting room with the staff to have a general discussion and allow feedback. These commenced in February 2017 and the Port Director has discussed the intention to introduce a drug and alcohol testing policy at these sessions.

## **6. Equality impact assessment (EIA)**

A preliminary EIA has been completed and a full EIA is not required.

The EIA has been reviewed since 12 September Employment Committee in order to clarify the measures in place for staff who are taking prescribed or over the counter medication. The importance of voluntary disclosure and the 30 day amnesty where an employee can disclose information prior to any testing being introduced are highlighted in the EIA which can help resolve any potential issues.

The EIA states that employees have a responsibility to inform their line manager and engage with their own medical practitioner regarding any substance misuse problem or issues relating to prescribed or over the counter medication.

## **7. Legal implications**

The basis for the policy is sound and consistent with the appropriate Portsmouth City Council policy. It would be justifiable to seek to test within a structured way and is consistent with balancing the rights of the individual as against the need to promote collective employee safety within a high risk commercial environment.

## **8. Finance comments**

Any financial implications arising from the recommendations in this report will be met from the Port revenue budget.

.....  
  
Signed by:

## **Appendices:**

Appendix 1 - Draft Substance Misuse - Drug and Alcohol Testing Policy (Port)

Appendix 2 - Summary of trade union feedback received post 12 September 2017 Employment Committee



**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
Employment Committee Report and appendices - Substance Misuse - Drug and Alcohol Testing Policy - Port - 12 September 2017	<a href="http://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=138&amp;MId=3725&amp;Ver=4">http://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=138&amp;MId=3725&amp;Ver=4</a>

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**Contents:**

Introduction  
Scope  
Policy Statement  
Substance Misuse  
Enforcement of the Policy  
Procedure  
Voluntary Disclosure  
Support

<b>ID</b>	HR 044b
<b>Last Review Date</b>	Draft 6 October 2017
<b>Next Review Date</b>	December 2018
<b>Approval</b>	Director responsible for HR/Port Director
<b>Policy Owner</b>	Director responsible for HR
<b>Policy Author</b>	Anna Buxcey
<b>Advice &amp; Guidance</b>	Please contact HR
<b>Location</b>	Policyhub
<b>Related Documents</b>	HR Policy - Substance Misuse Policy
<b>Applicability</b>	This policy applies to all Portsmouth City Council employees working at the Port. It also applies to third parties working on the Port premises, namely, contractors, consultants, agency staff and individuals participating in a secondment, internship, or work experience placement

## **1. INTRODUCTION**

- 1.1. The inappropriate use of substances, such as alcohol and drugs (including those legally prescribed) can have a damaging effect not only on the employee concerned but also on those they make contact with at work, socially and at home.
- 1.2. The nature of the business for those working at Portsmouth International Port (the Port) means that much of the day to day operation takes place in a safety critical environment where any issues of substance misuse (drug and/or alcohol misuse) can have a serious adverse effect on safety.

The policy applies to all roles in the Port regardless of whether they are safety critical roles or not as it is deemed that all have access to areas where the individual's own safety or others may be at harm if their judgement is impaired due to substance misuse.

- 1.3. The City Council has a general duty under the Health and Safety at Work Act 1974 to ensure, so far as is reasonably practicable, the health, safety and welfare of its employees and of other third parties on the premises.

Should the City Council knowingly allow an individual under the influence of substances (drug and/or alcohol) to continue working where this places the individual or others at risk, it may be prosecuted. Similarly, the individual also has a duty to take reasonable care of themselves and others who could be affected by what they do.

- 1.4. For these reasons the City Council has introduced measures that actively encourage employees to manage their lives in such a way that safety at work is not jeopardised.
- 1.5. The policy will be reviewed after 1 year and every 2 years thereafter.

## **2. SCOPE**

This policy applies to all Portsmouth City Council employees working at the Port. It also applies to third parties working on the Port premises, namely, contractors, consultants, agency staff and individuals participating in a secondment, internship, or work experience placement. Herein known in the policy as "Employees and third parties"

The term "While on duty" is defined as during working time, including when visiting potential or existing customers.

## **3. POLICY STATEMENT**

- 3.1. The City Council reserves the right under this policy to undertake drug and/or alcohol testing. When requested, individuals will be required to undertake a breath test for alcohol and/or an oral fluid (mouth swab) test for drugs.

An external company undertakes the testing procedures on behalf of the City Council in accordance with the Data Protection Act.

- 3.2. In order to comply with the policy, employees and third parties working on the Ports premises:
- Must not consume alcohol or have the smell of alcohol on their breath while on duty.
  - Must not present themselves for duty under the influence of alcohol. A positive test for the purpose of alcohol testing is defined as a test exceeding the UK driving limit of 35 micrograms (µg) of alcohol per 100 millilitres of breath. In addition, with a result of 35 micrograms (µg) of alcohol per 100 millilitres of breath or below (but above 0), the Health and Safety delegate(s) of the Port will undertake a risk assessment to determine the action to be taken (Full details are provided at section 5.7.2).
  - Must comply with the Port's zero tolerance approach to illegal drugs. Any use, possession or trafficking of illegal drugs and the misuse, whether intentional or not, of prescription or over the counter medication, new psychoactive substances, glue and solvent abuse is prohibited while on duty. All civil and criminal legislations apply to City Council policy.
  - Must undertake a breath test for alcohol and/or an oral fluid (mouth swab) test for drugs when requested.
- 3.3. Any breach of these rules will result in the application of the City Councils Formal Action Policy which may lead to summary dismissal (subject to 5.7.2 below). Due consideration will be given to each test result
- 3.4. Any issue that could lead to with cause testing being implemented will be brought to the attention of the Health and Safety delegate(s) of the Port.
- The Health and Safety delegate(s) of the Port will be informed of all test results and will be responsible for undertaking any risk assessment necessary as a result of any random or with cause test result.
- 3.5. The Port Director (or Officer with delegated authority) will be informed of all decisions made with regards to the drug and alcohol testing.
- 3.6. For third parties (for example an agency worker), any breach of these rules will result in the Port no longer using the individual and the employer/individual being informed as appropriate.
- 3.7. If an employee or third party has or suspects they may have a substance misuse problem they are encouraged to speak to their line manager. Whether or not an employee or third party has or declares that they have an alcohol or drug addiction problem, this will never be accepted as an excuse or reason for committing any form of misconduct, negligent act or omission.
- 3.8. All employees or third parties taking prescribed or over the counter medication must check with their medical practitioner or pharmacist whether

the medication may impair performance, conduct or attendance (e.g. cause drowsiness, impair reflexes or judgment) and/or affect their capacity to safely and effectively undertake the duties of their post. They must inform their line manager and always follow the prescribed dose carefully.

- 3.9. Before making a decision to suspend an employee, all relevant circumstances should be taken into account which includes considering whether or not there are reasonable alternatives to suspension that could be imposed. This could be for example, a period of work outside of the Port environment within the City Council if the role and situation is deemed suitable by management. A record should be made of the decision and the alternatives considered.

The employee may be asked to refrain from work whilst suspension or an alternative are considered.

For an employee, any time lost through suspension will be with pay.

## **4. SUBSTANCE MISUSE**

**The following defines what the City Council considers to be substance misuse:**

- Drug/alcohol dependency/addiction and intoxication/excessive consumption.
  - Substance dependency/addiction is defined as a condition where an individual's consumption of substances occurs frequently or repeatedly and it interferes with his/her health, attitude to safety, attendance or general work performance.
  - Substance intoxication is defined as excessive consumption which may result in irresponsible behaviour or impaired judgment but which is not necessarily related to a physical or psychological dependence.
- Solvent misuse, e.g. inhalation of gases, glues or other substances which impair judgment and safety of the individual and his/her work colleagues.
- Using, possession or trafficking of illegal drugs.
- The use of other substances identified as psychoactive substances.
- Misuse of legal substances such as prescribed or over the counter medication (Refer to section 3.8 regarding informing the line manager).

## **5. ENFORCEMENT OF THE POLICY**

- 5.1. The City Council must exercise due diligence and a key part of the policy is the enforcement of the limits set.

The testing will be undertaken by trained representatives of the testing company, using the approved testing devices and methods agreed by the City Council.

5.2. The Port may choose to conduct testing in the following situations (this list is not exhaustive):

- New employee
- Random
- With cause / Post incident/ Under the influence
- Rehabilitation
- Return to work

### 5.3. **Random testing**

The Port reserves the right to conduct random (unannounced) alcohol and/or drug testing on a regular basis.

Four random visits will be made each year and 8 people working on the Port premises will be selected for testing on each occasion (approximately 10% of the workforce in the Port on each occasion).

A random testing selection of more than 10% of the workforce may be authorised if supported by a business case.

The selection will be made at random by the testing company representative using an anonymised list of all people working on the day of the random testing. Using employee payroll number/third party reference number or similar made available to the testing company and held in accordance with the Data Protection Act. All new employees will be selected for testing as soon as is reasonably possible after recruitment.

To ensure the process is equitable, the random visits will be made at various times of the day and at weekends. This will ensure that shift workers are captured within the testing and are not disproportionately selected.

An individual may be randomly selected for testing on more than one occasion per year.

If a new employee has started working since the previous random testing session this employee will be selected for testing and the number of people randomly chosen for testing on that occasion will be reduced as a result.

The Health and Safety delegate(s) of the Port will be informed of all test results and will be responsible for undertaking any risk assessment necessary as a result of any drug and alcohol test result.

### 5.4. **With cause testing**

The Port reserves the right to carry out with cause testing. This may be as a result of an incident or near miss, e.g. a collision, resulting in or having potential to result in serious damage/injury and/or invoking suspicion of the influence of alcohol or drugs; or dysfunctional behaviour invoking suspicion of the influence of alcohol or drugs. This list is not exhaustive.

Any issue that could lead to with cause testing being implemented will be brought to the attention of the Health and Safety delegate(s) of the Port who will be responsible for deciding whether or not to implement a with cause test.

The Health and Safety delegate(s) of the Port will be informed of all test results and will be responsible for undertaking any risk assessment necessary as a result of any drug and alcohol test result.

## **5.5. Testing procedure time period**

Where an employee or third party is selected for random testing or with cause testing near the end of their working period and the testing procedure time period will exceed their working hours, the line manager may authorise additional paid working time so that the testing procedure can be completed. If exceeding the working hours causes difficulties, the individual should raise the issue with their line manager. Where an individual is unable to stay beyond their working hours or is incapacitated after an incident to such an extent that testing is not possible; they may be tested at a future date to be decided by the City Council.

## **5.6. Awareness**

All employees and third parties must;

- Comply with the policy.
- Be aware of their own tolerance to alcohol.
- Be aware of current drinking guidelines. An employee or third party may wish to seek advice from their medical practitioner on sensible limits of alcohol consumption.
- Be aware of their own shift patterns and regulate their alcohol intake accordingly.

## **5.7. Action**

5.7.1. An employee will be subject to the City Councils Formal Action Policy which may lead to summary dismissal if they:

- Consume illegal drugs or alcohol while on duty or misuse prescription or over the counter medication, new psychoactive substances, glue or solvents.
- Provide a confirmed positive (above 35ug) alcohol breath sample on an approved device or a confirmed positive drug sample (above 0) following laboratory testing.
- Do not engage in an appropriate substance misuse treatment programme where it has been identified that their use of substances is impacting upon their ability to perform that role safely.
- Are found to be trafficking or in possession of illegal drugs.
- Fail to provide a valid sample for testing.
- Refuse to be screened/Refuse to provide a sample for testing.



This list is not exhaustive

- 5.7.2. With a result of 35 micrograms (µg) of alcohol per 100 millilitres of breath or below (but above 0), the Health and Safety delegate(s) of the Port will undertake a risk assessment to determine the action to be taken. The action taken and appropriate support given will be dependent on the circumstances of the case.

Any risk assessment will consider the circumstances of the case and the level of any impairment which would impact on the ability to undertake the work safely.

- 5.7.3. Advice is available from HR.

## **6. PROCEDURE**

### **6.1. Alcohol Testing Procedure**

- The employee or third party is informed that they have been selected to be tested for alcohol.
- The individual should not have had anything to eat or drink, or smoked for at least 20 minutes prior to the test.
- The employee or third party attends a private and suitable location, where the breath test is to be administered using the approved testing device (electronic breath-alcohol testing device).
- The employee or third party may be accompanied by a trade union representative or work colleague if immediately available. The procedure will not be delayed or rearranged due to the unavailability of a representative.
- The testing procedure is explained and the individual is required to sign a consent form regarding the impending test.
- If the employee or third party refuses to give a breath specimen when requested, the employee is informed that such a refusal or obstruction is a failure to comply with this policy. For an employee this will invoke the City Councils Formal Action Policy which may lead to summary dismissal for gross misconduct.
- The breath test is administered according to the equipment's procedure.
- If the first test is negative (a 0µg reading), a second test is not required.
- If the breath test shows a reading greater than 0µg (using the electronic testing device), then the individual is asked to wait 20 minutes when a second breath test is administered.
- The results of the second breath test are taken to be definitive.
- The Health and Safety delegate(s) of the Port will be informed of all test results and will be responsible for undertaking any risk assessment necessary as a result of any test result.
- If the second test reading is higher than the first, this indicates the individual may have been drinking recently as it appears the breath alcohol level is rising. If the second test reading is lower than the first, the breath alcohol level is falling; this indicates that the individual may have been drinking some time prior to the test.

- If the second test is positive (above 35 µg), the individual will be asked to refrain from work whilst suspension or an alternative to suspension is considered. The individual will be escorted off the premises and advised that they should not drive their own vehicle if they are above the drink driving limit and that alternative travel arrangements should be made. If they choose to drive a vehicle, then the Police will be informed immediately.
- An employee will be subject to an investigation in accordance with the Formal Action Policy and suspension or alternative to suspension will continue to take place if appropriate.

## **6.2. Drug Testing Procedure**

- 6.2.1. There are different methods of testing for drugs in the body. Testing for drug misuse depends on the collection of samples for analysis, which can be achieved by the use of a portable testing kit for preliminary screening or the sample can be sent to a toxicology laboratory for analysis.
- 6.2.2. To dispel any doubts over the validity of the testing methods, the City Council uses methods of testing that are currently recognised throughout the industry. Disposable drug testing kits will be used for preliminary screening. A UKAS accredited analytical laboratory is used for detailed analysis and confirmation of samples. The City Council recognises that these methods are the current best practices and best available technology with which to implement the policy.
- 6.2.3. Drug testing procedures involve up to five stages depending on whether a non-negative result is obtained; all are strictly controlled by a process referred to as "Chain of Custody". The stages involved are summarised here:
1. Sample Collection.
  2. Preliminary Screening.
  3. Confirmatory Analysis.
  4. Medical Review (MRO), if required.
  5. Reporting of Results.

### **6.2.4. Sample Collection and Preliminary Screening**

The individual will be asked to provide an oral fluid sample (mouth swab) for screening using the procedures for sample collection provided by the manufacturer and/or the analytical laboratory.

The individual will witness the sample collection and also the record keeping and identification procedure for the sample.

Chain of Custody is the name given to the procedures that are employed to ensure that the integrity of a sample is maintained from providing the sample up to and including the reporting of the laboratory results and possible medical review.

### **6.2.5. Confirmatory Analysis**

If the sample proves to be non-negative (above 0), then the two samples (in the sealed containers) obtained at collection will be sent to the analytical laboratory for confirmatory analysis. The laboratory will firstly ensure that the samples have not been tampered with to confirm the Chain of Custody. One of the sample containers is then opened for laboratory analysis to exclude adulteration (e.g. tampering/substitution) and then the sample is subject to extensive analysis to confirm the drug or drugs identified as non-negative in the preliminary screening. The second sample will be retained in storage by the laboratory for reference purposes.

### **6.2.6. Medical Review and Reporting of Results**

All stages are carefully monitored by analytical laboratory toxicologists.

The results will subsequently be reported confidentially to the Health and Safety delegate(s) of the Port.

Once the process is completed and reported to the employer, the employee or third party is entitled to a copy of their results via a written request.

### **6.2.7. Drug Testing Collection Procedure**

- The employee or third party is informed that they have been selected to be tested for drugs.
- The employee or third party attends a private and suitable location where the samples are to be collected.
- The employee or third party may be accompanied by a trade union representative or work colleague if immediately available. The procedure will not be delayed or rearranged due to unavailability of a representative.
- The testing procedure is explained and the individual is required to sign a consent form regarding the impending test.
- If it is ascertained that adulteration (e.g. Tampering/substitution) has occurred, then this will constitute an invalid sample and application of the City Councils Formal Action Policy up to and including dismissal.
- If an employee or third party refuses to provide an oral fluid sample when requested, they will be informed that refusal or obstruction is a failure to comply with this policy. For an employee this will invoke the City Councils Formal Action Policy which may lead to summary dismissal for gross misconduct.
- If the screening is non-negative (above 0) the individual will be informed of the result and will be required to provide information of any drug(s) and prescription or over the counter medication taken (including dosage and frequency).
- The Health and Safety delegate(s) of the Port will be informed of all test results and will be responsible for undertaking any risk assessment necessary as a result of any test result.
- The sample will be sent to a UKAS accredited analytical laboratory for confirmatory analysis. During this time the individual will either be asked

to return to work or be asked to refrain from work whilst suspension or an alternative to suspension is considered, dependent on the circumstances (i.e. if the test result is consistent with declared prescription or over the counter medication). A risk assessment will be undertaken in order to make this decision.

- If the analytical laboratory result is positive the employee will be subject to an investigation in accordance with the Formal Action Policy and suspension or alternative to suspension will continue to take place if appropriate. A copy of the sample result must be given to the employee.

## **7. VOLUNTARY DISCLOSURE**

7.1. Where an employee volunteers to disclose to the line manager that they have a drug/alcohol dependency, and the employee will readily accept help and rehabilitation, the employee will be referred to Occupational Health (where appropriate) and informed about the Employee Assistance Programme.

7.2. Where substance misuse is identified as a cause of deteriorating performance/conduct/attendance and the employee accepts and takes appropriate action to remedy the problem, the City Council will offer as much support and assistance as is reasonably possible. Action under the City Councils other procedures (i.e. Formal Action Policy, Managing Absence Policy) may be taken where for example;

- Performance/conduct/attendance is of an unacceptable standard and the employee fails to accept the reason for the problem.
- Performance/conduct/attendance is of an unacceptable standard and the employee accepts the reason for the problem but refuses or fails to take appropriate remedial action.
- The problem is recognised by both parties and remedial action is or has been taken but little or no improvement in performance/conduct/attendance has been achieved after a period of time.

7.3. Where an employee is unfit for work, normal sickness rules in accordance with the Managing Absence Policy apply.

7.4. The line manager is expected to discuss any instances of possible substance misuse with the individual concerned in a sensitive and confidential manner. However they should not be involved in counselling or therapy. If this is deemed appropriate, the employee should be referred to the Employee Assistance Programme who can signpost services available.

7.5. The line manager (with advice from Occupational Health where appropriate) will discuss and agree with the individual a strategy for dealing with the problem so that performance can be brought up to the required standard. Wherever reasonable and practical, support and assistance will be offered by the City Council. The strategy will usually include timescales and review periods during which time performance/conduct/ attendance will be monitored.

- 7.6. Any attempts to disclose “voluntarily” that they have a dependency problem after being selected for random testing or with cause testing in anticipation of a positive result, will not be accepted by the City Council.

## **8. SUPPORT**

All employees have access to the Employee Assistance Programme (EAP). Information is available on the intranet.

The City Council strongly encourages employees to seek assistance from the EAP for any substance misuse problem before reaching a point where their judgment, performance, conduct, attendance or positive drug or alcohol test has led to disciplinary action under the Formal Action Policy.

Employees have a responsibility to inform their line manager and engage with their own medical practitioner regarding any substance misuse problem or issues relating to prescribed or over the counter medication.

A referral to Occupational Health will be made as and when deemed appropriate by management.

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## APPENDIX 2

### TRADE UNION FEEDBACK

Trade union feedback received post 12 September 2017 Employment Committee has resulted in further changes being incorporated into the draft policy. The feedback received has been summarised in the table below:

Summary of feedback from trade unions	Response	Impact on draft policy
View that the policy should stipulate that a small number of individuals at the Port be named as "Designated Persons".	The Health and Safety delegate(s) can undertake this role and this can be written into the policy.	Draft policy now includes reference to role of Health and Safety delegate(s) of the Port in terms of their responsibility. Responsibility for deciding whether or not to implement a with cause test following line manager identification of any concern and for undertaking any risk assessment necessary as a result of any random or with cause test result.
View that there is not an issue with substance misuse at the Port. Policy should not include random testing and should include only with cause testing - described as a 'light touch' approach by the trade unions.	Random testing is required in addition to "with cause" testing as this type of testing deters misuse and provides a pro-active approach rather than a reactive approach to health and safety.  Data collected shows that all 7 Ports that have shared their policy with Portsmouth City Council (PCC) extend their policy to both random testing and with cause testing.	No change to policy.
Random testing proposals have a disproportionate focus on operational staff. The policy is not equitable for night time staff as 8 people chosen would be higher than 10% due to	The random visits will be made at various times of the day and at weekends, which will ensure that shift workers are captured within the testing and are not disproportionately selected.	A statement has been added with regards to the timing of random testing to ensure the process is equitable.

Summary of feedback from trade unions	Response	Impact on draft policy
the smaller number of workers at night time.		
Concern that testing could be used to intimidate or bully staff.	<p>There is no potential for bullying as it is a random process.</p> <p>The Health and Safety delegate(s) of the Port have responsibility for deciding whether or not to implement a with cause test and for undertaking any risk assessment necessary as a result of any random or with cause test result.</p> <p>Normal PCC procedures would be followed for any incident of bullying.</p>	No change to policy.
Medical treatment should not be delayed to undertake with cause testing.	This follows normal management practice. Normal practice of duty of care, no one is placed at risk if requiring medical treatment. The driver for the policy is overall safety at the Port.	No change to policy.
Would it be more beneficial to test starters prior to commencing employment rather than after.	All new employees will be selected for testing as soon as is reasonably possible after recruitment. Therefore they will be part of the first available random testing session.	No change to policy.
Voluntary disclosure - The policy could do more to encourage individuals that may have a dependency issue to make themselves known.	<p>The policy references the support and assistance available. The policy refers to the Employee Assistance Programme and referral to occupational health as appropriate.</p> <p>The policy is also clear that line managers need to be informed about drugs that may impair</p>	No change to policy.



Summary of feedback from trade unions	Response	Impact on draft policy
	performance, conduct or attendance (e.g. cause drowsiness, impair reflexes or judgment) and/or affect their capacity to safely and effectively undertake the duties of their post.	
Concerned that it is not council wide.	The Leader confirmed at the Employment Committee of 12 September 2017 that there were no plans to extend the policy across the whole of PCC.	No change to policy.
Current corporate Substance Misuse policy refers to all staff.	The current policy will be updated once the Employment Committee decision is made.	Only minor changes will be necessary to the PCC corporate policy to reflect the implementation of the testing policy at the Port.
Where does advice come from out of normal working hours.	The Health and Safety delegate(s) of the Port. The Port Director (or Officer with delegated authority).	No change to policy.
How are positions manned when the testing is being completed.	Health and Safety will not be compromised. It will be managed in the normal way. Not all randomly selected staff will be removed from work at the same time.	No change to policy.

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# Equality Impact Assessment

Preliminary assessment form v5 / 2013

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

The preliminary impact assessment is a quick and easy screening process. It should:

- identify those policies, projects, services, functions or strategies which require a full EIA by looking at:
  - negative, positive or no impact on any of the equality groups
  - opportunity to promote equality for the equality groups
  - data / feedback
- prioritise if and when a full EIA should be completed
- justify reasons for why a full EIA is not going to be completed

**Directorate:**

Director of HR, legal and performance

**Function e.g. HR,  
IS, carers:**

HR

**Title of policy, service, function, project or strategy (new or old) :**

Substance Misuse - Drug and Alcohol Testing Policy (Port)

Updated for Special Employment Committee

**Type of policy, service, function, project or strategy:**

- ☐ Existing
- ☒ New / proposed
- ☐ Changed

## **Q1 - What is the aim of your policy, service, function, project or strategy?**

The aim is to introduce a drug and alcohol testing policy at Portsmouth International Port (the Port) for all employees and third parties in all roles working on the Port premises due to the safety critical nature of the work undertaken at the Port. The policy provides information regarding the rules and the procedure for testing.

Employees and third parties (as defined in the policy) at the Port:

- Must not consume alcohol or have the smell of alcohol on their breath while on duty.
- Must not present themselves for duty under the influence of alcohol.
- Must comply with the Port's zero tolerance approach to illegal drugs. Any use, possession or trafficking of illegal drugs and the misuse, whether intentional or not, of prescription or over the counter medication, new psychoactive substances, glue and solvent abuse is prohibited while on duty. All civil and criminal legislations apply to City Council policy.
- Must undertake a breath test for alcohol and/or an oral fluid (mouth swab) for drugs when requested.

Any breach of these rules will result in the application of the City Councils Formal Action Policy which could lead to summary dismissal.

## **Q2 - Who is this policy, service, function, project or strategy going to benefit or have a detrimental effect on and how?**

The policy applies to all Portsmouth City Council (PCC) employees working at the Port. It also applies to third parties working on the Port premises, namely, contractors, consultants, agency staff and individuals participating in a secondment, internship, or work experience placement.

The implementation of the policy will benefit all employees and third parties at the Port by making the workplace safer. The new measures actively encourage individuals to manage their lives in such a way that safety at work is not jeopardised.

In order to effectively implement this policy, the City Council will contract an external testing company to perform the tests under appropriately controlled conditions and in accordance with industry standards.

Privacy and confidentiality:

No practical difficulties have been identified as the chosen types of testing procedure are less invasive than other types of testing available. The policy states that a "suitable location" will be chosen for testing - this will ensure privacy for staff and confidentiality.

The revised draft policy now includes the wording "private and suitable location" to emphasise the importance of privacy.

The tests are suitable to be undertaken in the workplace in a private and suitable location and are undertaken by trained representatives using approved testing devices and methods.

No data protection issues have been raised from the use of an external company for testing. The selection will be made at random by the testing company representative using an anonymised list of employees and third parties.

Dependency/addiction/medical issues:

Those with a drug or alcohol dependency are provided with the opportunity to voluntarily disclose this information.

Those taking prescribed or over the counter medication are informed in the policy of what to do in these circumstances.

Anyone taking prescribed or over the counter medication are requested via the policy to check with their medical practitioner or pharmacist whether the medication will impair performance, conduct or attendance (e.g. cause severe drowsiness, impair reflexes or judgment) and/or affect their capacity to safely and effectively undertake the duties of their post. The policy states that they must inform their line manager and always follow the prescribed dose carefully.

This part of the policy helps ensure that anyone taking medication is given the opportunity to raise it with their line manager.

The support section of the policy provides information that can be utilised by staff taking prescribed medication. The policy states:

All employees have access to the Employee Assistance Programme (EAP). Information is available on the intranet.

The City Council strongly encourages employees to seek assistance from the EAP for any substance misuse problem before reaching a point where their judgment, performance, conduct, attendance or positive drug or alcohol test has led to disciplinary action under the Formal Action Policy.

Employees have a responsibility to inform their line manager and engage with their own medical practitioner regarding any substance misuse problem or issues relating to prescribed or over the counter medication.

A referral to Occupational Health will be made as and when deemed appropriate by management.

The implementation period will contain a 30 day amnesty where an employee can disclose information prior to any testing being introduced.

**Q3 - Thinking about each group below, does, or could the policy, service, function, project or strategy have a negative impact on members of the equality groups below?**

Group	Negative	Positive / no impact	Unclear
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transgender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Other excluded groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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If the answer is "negative" or "unclear" consider doing a full EIA

**Q4 - Does, or could the policy, service, function, project or strategy help to promote equality for members of the equality groups?**

Group	Yes	No	Unclear
Age	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disability	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Race	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transgender	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy or maternity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other excluded groups	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If the answer is "no" or "unclear" consider doing a full EIA

**Q5 - Do you have any feedback data from the equality groups that influences, affects or shapes this policy, service, function, project or strategy?**

Group	Yes	No	Unclear
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Transgender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other excluded groups	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If the answer is "no" or "unclear" consider doing a full EIA

**Q6 - Using the assessments in questions 3, 4 and 5 should a full assessment be carried out on this policy, service, function or strategy?**

☐ yes ☒ No

**Q7 - How have you come to this decision?**

Initial consultation took place in July with union representatives at the Port. The issue was discussed at the HR/TU meeting in July 2017. Full consultation took place during August 2017 and included representatives from all recognised unions across the council.

Feedback has been received and changes to the policy implemented where necessary. During the consultation, the trade unions have raised a number of points, including requesting how supervisors/managers will be trained to differentiate between behaviour attributed to substance/alcohol misuse or behaviour attributed to the many other possible causes illness/disability.

To resolve this issues it has been agreed that trade unions may attend initial training with the chosen testing company.

The trade unions have raised that the employer is not qualified to dictate what course of treatment an employee may choose. The trade unions have been informed that the policy is not suggesting that the employer dictates to the employee on their course of medical action/support/advice as this would not be appropriate action by the employer. However, it is stating that formal action may be considered if an employer is aware that a set course of action or contact with relevant agencies is not undertaken where conduct for example continues at an unsatisfactory level.

Formal consultation for the draft drug and alcohol testing policy took place with the recognised trade unions between the dates of 3 to 17 August 2017. Discussion regarding introducing drug and alcohol testing at the Port took place at the monthly HR/Trade union meeting in July, August and September 2017. Discussion took place at the Port Joint Negotiating Forum of 30 May 2017 and 26 September 2017 and the Port Director further discussed the draft policy with trade union representatives on 3 October 2017.

The trade unions have provided comments on the draft policy during the August consultation period which resulted in some of their views being incorporated into the draft policy. The main trade union comments and employer responses raised prior to Employment Committee of 12 September 2017 were summarised in the report of that date.



have been responded to in writing and the trade unions have been given the opportunity to provide feedback prior to the Special Employment Committee meeting.

Trade union feedback received post 12 September 2017 Employment Committee has resulted in further changes being incorporated into the revised draft policy, specifically in terms of including that the decisions made are taken by the Health and Safety delegate(s) of the Port who will be responsible for deciding whether or not to implement a with cause test and for undertaking any risk assessment necessary as a result of any random or with cause test result. A statement has also been added with regards to the timing of random testing to ensure the process is equitable. The random visits will be made at various times of the day and at weekends, which will ensure that shift workers are captured within the testing and are not disproportionately selected.

Trade union feedback received post 12 September 2017 Employment Committee has been summarised in the report to EC and a response has been provided to the trade unions in writing with the revised draft policy.

In 2017 the Port Director introduced monthly Drop-In sessions, in which he would spend time at a selected mess room or meeting room with the staff to have a general discussion and allow feedback. These commenced in February 2017 and the Port Director has discussed the intention to introduce a Drug and Alcohol Testing Policy at these sessions.

If you have to complete a full EIA please contact the Equalities and diversity team if you require help  
Tel: 023 9283 4789 or email:equalities@portsmouthcc.gov.uk

**Q8 - Who was involved in the EIA?**

Anna Buxcey  
Karen Everitt

**This EIA has been approved by:** Jon Bell

**Contact number:** 02392841962

**Date:** Updated 06/10/17

Please email a copy of your completed EIA to the Equality and diversity team. We will contact you with any comments or queries about your preliminary EIA.

Telephone: 023 9283 4789

Email: equalities@portsmouthcc.gov.uk