

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

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.

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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:

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