

Agenda item:

**Title of meeting: Employment Committee**

**Date of meeting: 12 September 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 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 approve the policy to:

- i. Introduce drug and alcohol testing for all roles at the Port with both "random" and "with cause" testing.
- ii. Adopt the Substance Misuse - Drug and Alcohol Testing Policy at Appendix 1, to implement the testing process fairly and consistently, in accordance with the Authority's approach to substance misuse.
- iii. 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. The City Council recommends that a drug and alcohol testing policy is introduced at the Port for all employees and third parties working on the Port premises due to the safety critical nature of the work undertaken at the Port. When requested, employees and third parties in all roles will be required to undertake a breath test for alcohol and/or an oral fluid (mouth swab) test for drugs.

3.2. The new policy will stipulate the following conditions:

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.

A positive test for the purpose of alcohol testing is defined as a test exceeding the UK driving limit of 35 micrograms ( $\mu\text{g}$ ) of alcohol per 100 millilitres of breath. In addition, a range of action may be taken for a reading of between 0 and 35 micrograms ( $\mu\text{g}$ ) of alcohol per 100 millilitres of breath.

- 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. Due consideration will be given to each test result as it comes to the notice of the Port Director or Officer with delegated authority.
- 3.4. The policy contains a voluntary disclosure section. Where an employee volunteers to disclose to the line manager that they have drug or 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.
- 3.5. The policy details how employees and third parties who are taking prescribed or over the counter medication that impairs performance, conduct or attendance and/or affects their capacity to safely and effectively undertake the duties of their post will be managed.
- 3.6. Consultation has taken place with the recognised trade unions.

The trade unions have provided comments on the draft policy during the consultation period which has resulted in some of their views being incorporated into the policy.

The main trade union comments raised and employer responses have been summarised in Appendix 4.

#### **4. Implementation**

- 4.1. In order to effectively implement this policy, the City Council will contract an external testing company (appointed from the 3 companies the City Council has received quotations from) to perform the tests under appropriately controlled conditions and in accordance with industry standards.

- 4.2. Implementation of the policy is proposed as of 1 January 2018, however, an amnesty period where an employee can disclose information will start 30 days prior to this date.
- 4.3. In accordance with the policy, the Port will 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, which is 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). All new employees will be selected for testing as soon as is reasonably possible after recruitment.

- 4.4. With cause testing will be carried out in accordance with the policy. 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.

## **5. Contractual implications**

Implementing this Drug and Alcohol Testing policy will impact on new staff and existing staff working at the Port. This will be enforced by implementation of the policy and will not impact on the contractual terms and conditions of employment.

## **6. Cost**

Appendix 2 provides a breakdown of costs for random and with cause testing.

## **7. Legitimate business aim**

A requirement for employees to undergo drug and alcohol testing could be challenged by individuals asserting their right to a private life under Article 8 of the European Convention on Human Rights. Legal expertise suggests that in the situation of drug and alcohol testing, safety at work is a legitimate business aim which is legally defensible, but that employers must still take care that any measures introduced to test employees for drugs and alcohol are appropriate and necessary with a view to achieving that aim and that they are not excessive in scope or content.

Testing of employees for out-of-work consumption of drugs and alcohol when the employee's work appears unaffected may not be justified if workplace safety is not at risk. Under the Data Protection Act 1998, information about an individual's physical or mental health (which includes drug and alcohol testing) is regarded as "sensitive data".

**8. Examples from other Ports**

Appendix 3 summarises information received from other Ports regarding drug and alcohol testing.

**9. Reasons for recommendations**

- 9.1. The nature of the business for those working at the Port means that much of the day to day operation takes place in a safety critical environment where any issues of substance misuse can have a serious adverse effect on safety.
- 9.2. The recommendations introduce a measure that actively encourages employees to manage their lives in such a way that safety at work is not jeopardised.
- 9.3. The City Council has an overarching Substance Misuse policy for all council employees which states that where there is additional sensitivity surrounding substance misuse appropriate policy can be devised locally. As part of the implementation of the Substance Misuse - Drug and Alcohol Testing policy (Port), the overarching Substance Misuse policy will be updated to highlight that there is a separate testing policy at the Port.
- 9.4. It is recommended that 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.

**10. Equality impact assessment (EIA)**

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

**11. 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.

**12. 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
- Appendix 2 - Costs for random and with cause testing
- Appendix 3 - Summary of information from other Ports
- Appendix 4 - Trade union consultation

**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