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Applicability	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 $0\mu\text{g}$ reading), a second test is not required.
- If the breath test shows a reading greater than $0\mu\text{g}$ (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.