

# Agenda



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## Management Review Committee

**Tuesday, 20 March 2018 at 12.00 pm,**  
Scaitcliffe House, Ormerod Street, Accrington

### Membership

Chair: Councillor Miles Parkinson

Councillors Paul Cox and Tony Dobson

## A G E N D A

**1. Apologies for Absence, Substitutions, Declarations of Interest and Dispensations**

**2. Minutes of Last Meeting** *(Pages 3 - 4)*

To submit the Minutes of the meeting of the Management Review Committee held on 28<sup>th</sup> November 2017 for approval as a correct record.

**Recommended** - **That the Minutes be received and approved as a correct record.**

**3. Draft Communications Policy** *(Pages 5 - 18)*

To present a draft Communications Policy.

**Recommended** - **That the proposed draft Policy be considered and agreed.**



**4. Proposed Amendment to the Pensions Discretion Policy Statement** *(Pages 19 - 22)*

To present a proposed amendment to the Pensions Discretion Policy Statement.

**Recommended** - That the proposed amendment be accepted and added to the published Policy Statement.

**5. Draft Workplace Smoke-Free Policy** *(Pages 23 - 28)*

To present a draft Workplace Smoke-Free Policy.

**Recommended** - That the proposed draft Policy be considered and agreed.

**6. Draft Drugs and Alcohol Policy** *(Pages 29 - 64)*

To present a draft Drugs and Alcohol Policy.

**Recommended** - That the proposed draft Policy be considered and agreed.

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## MANAGEMENT REVIEW COMMITTEE

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**Tuesday, 28th November, 2017**

**Present:** Councillor Miles Parkinson (in the Chair), Councillors Paul Cox and Tony Dobson

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**238 Apologies for Absence**

There were no apologies for absence.

**239 Declarations of Interest or Dispensations**

There were no declarations of interest or dispensations.

**240 Minutes of Last Meeting**

The Minutes of the meeting of the Management Review Committee held on 6<sup>th</sup> September 2017 were submitted for approval as a correct record.

**Resolved** - That the Minutes be received and approved as a correct record.

**241 Draft Recruitment and Selection Policy**

The Head of Human Resources submitted a report and presented a draft Recruitment and Selection Policy, as attached at Appendix 1 to the report and drew attention to the proposed amendments set out in Paragraph 3.3 of the report. The current Policy was attached at Appendix 2 to the report.

The Head of Human Resources informed the Committee that the current Policy had been agreed in 2009 and although still relevant, the toolkit and framework included in the Policy made it very lengthy with some duplication in both documents. The draft Policy was more concise and practical for managers and provided clear guidance on the key stages of the recruitment and selection process.

Unison disagreed with the proposed approach to allow for internal only advertising of vacancies in the first instance for at least 5 days unless (i) there were exceptional reasons for placing an external advert or (ii) the role was at service manager level or higher. Unison believed that all vacancies should be advertised internally first and the Hyndburn Unison Branch Secretary and Branch Treasurer present at the meeting, spoke on the reasons for that viewpoint. The Head of Human Resources presented senior management's reasons for the proposed approach.

**Resolved** - That the draft Recruitment and Selection Policy be approved and adopted, subject to the wording contained in the Paragraph relating to internal / external advertising being replaced with the wording "All posts

**will be advertised to internal candidates first, for a minimum period of five working days”.**

Signed:.....

Date: .....

Chair of the meeting  
At which the minutes were confirmed

# Agenda Item 3.

<b>REPORT TO:</b>		Management Review Committee	
<b>DATE:</b>		20 March 2018	
<b>PORTFOLIO:</b>		Cllr Gareth Molineux - Resources	
<b>REPORT AUTHOR:</b>		Kirsten Burnett	
<b>TITLE OF REPORT:</b>		Draft Communications Policy	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>Options</b>	Not applicable	
<b>KEY DECISION:</b>	<b>No</b>	If yes, date of publication:	

## 1. **Purpose of Report**

- 1.1 To present a draft Communications Policy (Appendix 1).

## 2. **Recommendations**

- 2.1 That Management Review Committee considers and agrees the proposed draft Policy.

## 3. **Reasons for Recommendations and Background**

- 3.1 This policy was last updated in February 2014 and was due for review. This was carried out jointly by the Head of HR, the Head of Audit and Investigations and the Principal ICT Officer. When reviewing it, we had in mind cases that have been dealt with concerning the policy and also the need to keep it up to date with ICT security measures.

- 3.2 The main changes are:

- (i) Changes in S1.2 to reflect that staff approach the Head of Audit and Investigations rather than the Head of Legal Services. This has been agreed with both officers.
- (ii) S1.10 covers the loss of suspected loss of Council equipment and the need to report this as soon as possible.
- (iii) S2.1(d) includes using a Council email.
- (iv) S2.1(f) reflects that managers should be able to access the email account of a team member where necessary if the person is absent from work, for example for unplanned sickness absence.
- (v) S2.1(p) broadens the point to include any discriminatory material and also asks for Audit as well as ICT to be informed if a website is visited accidentally.
- (vi) S2.1(s) reflects that there may be authorised occasions for employees to access or amend their own data.

- (vii) S2.1(t) is about taking care to protect the Council from viruses etc, and specifically gives the example of not plugging a mobile phone into a Council PC.
- (viii) S7 gives a line manager as the first point of contact for raising concerns.
- (ix) S4.3 of Appendix 1, Social Media Guidelines, cautions employees that even if one social media site does not list Hyndburn Borough Council as their employer, another might. It is therefore fairly easy to work out that offensive statements, for example, are being made by one of our employees.
- (x) S4.5 of the Social Media Guidelines is about considering how working relationships might be affected – this can include “liking” or retweeting a post.

#### **4. Alternative Options considered and Reasons for Rejection**

- 4.1 We could retain the existing arrangements but we believe changes are required as detailed within this report.

#### **5. Consultations**

- 5.1 Consultation has taken place and the Trade Unions are in agreement with the proposed changes.

#### **6. Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	
<b>Legal and human rights implications</b>	Breaches of the Communications policy could lead to further investigation under other HR policies, e.g. Disciplinary, Grievance, Dignity at Work. There are also links with Data Protection. Defamatory postings on social media could give rise to legal claims.
<b>Assessment of risk</b>	N/a
<b>Equality and diversity implications</b> <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	A CFA is attached.

## **1. Purpose**

- What are you trying to achieve with the policy / service / function?

Review of Communications Policy to ensure there is clear guidance on the use and misuse of the council's communications equipment and also use of personal equipment connected with work. It sets out how the council will monitor use of communications equipment.

- Who defines and manages it?

Jointly between ICT, Audit and HR.

- Who do you intend to benefit from it and how?

The Council, its staff and service users, by having a robust policy in place.

- What could prevent people from getting the most out of the policy / service / function?

Lack of awareness of the rules in place.

- How will you get your customers involved in the analysis and how will you tell people about it?

Staff briefing through Newsround.

## **2. Evidence**

- How will you know if the policy delivers its intended outcome / benefits?

Reduced cases of misuse. Avoiding cases where employees' use of social networking cause difficulties at work.

- What existing data do you have on the people that use the service and the wider population?

We have data relating to employees and know who has access to particular equipment or applications. We have data regarding disciplinary cases relating to misuse.

- What other information would it be useful to have? How could you get this?

n/a

- Are you breaking down data by equality groups where relevant (such as by gender, age, disability, ethnicity, sexual orientation, marital status, religion and belief, pregnancy and maternity)?

Yes

### **3. Impact**

The policy applies to all staff and will be communicated across all teams. Data on disciplinary cases does not suggest that a particular group / characteristic is experiencing a different impact.

### **4. Actions**

- If the evidence suggests that the policy / service / function benefits a particular group – or disadvantages another - is there a justifiable reason for this and if so, what is it?

n/a

- Is it discriminatory in any way?

No

- Do you need to consult further?

Yes, with Management Team, Trade Unions, Management Review Committee.

Kirsten Burnett  
Head of HR  
November 2017

# Hyndburn Borough Council

## Communications Policy

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### 1. Introduction

1.1 This policy statement deals with the manner in which Council communications equipment may be used, the use of employee's own communications equipment at work, the circumstances which constitute misuse and how the Council monitor the policy and deal with suspected or actual misuse or misconduct connected with misuse.

#### 1.2 Employees are advised:

- a) to ensure that you have read and understand the provisions of this policy;
- b) to remember the Council's values and reflect these in your communications;
- b) that if you have any doubt about whether an action you intend to take using Council communications equipment is permitted by this policy, you should seek advice from a manager or the Head of Audit and Investigations, as appropriate, before you undertake the action;
- c) that if you believe that it is necessary, to do your job, to be able to do something which is prohibited by this policy, you should seek advice from your line manager, the Head of ICT, or the Head of Audit and Investigations as appropriate, before you undertake the action.

1.3 This policy statement sets out what is acceptable and unacceptable use of the Council's electronic communications equipment.

1.4 The Council provides employees with a range of electronic communications equipment to enable them to undertake the business of the Council. This equipment is provided primarily for the business purposes of the Council. In this policy, communications equipment means:

- (a) fixed point telephones;
- (b) PCs (fixed and lap-top – e mail, internet, instant messaging systems and installed software);
- (c) fax machines;
- (d) mobile phones and smartphones;
- (e) iPads and other tablet computers; and
- (f) other equipment of a similar nature, as technology is moving rapidly.

1.5 This policy applies both to business and personal use of the Council's equipment with the aim of ensuring that:

- All employees are clear about how and when they may use communications equipment at work and what constitutes misuse;

- Personal use of communications equipment is incidental to work use;
  - Personal use of communications equipment in work time is kept to a minimum;
  - Communications equipment is not used to cause offence or disturbance to others;
  - Employees use communications equipment lawfully and do not expose themselves or the Council to potential liability, either civil or criminal;
  - Employees comply with the Data Protection Act and General Data Protection Regulations, including reporting potential breaches without delay to the Data Protection Officer;
  - Employees' behaviour does not risk bringing the Council or its officers into disrepute; and
  - Employees' behaviour does not compromise Council systems or their security
- 1.6 **Employees must not assume that their communications, made using Council equipment, whether business related or personal, are private.** While the Council does not seek to make unreasonable intrusions into employees' communications, the Council reserves the right to monitor communications to ensure that Council systems are being used lawfully and appropriately and that this policy is being complied with.
- 1.7 Employees must have regard to the special risks associated with the speed and ease with which emails can be composed and sent.
- (a) Employees must be aware that an electronic communication, even after it has been deleted, may leave a permanent record of the correspondence between sender and recipient which may be used in the future as evidence of misconduct and/or the Council's or the individual's liability for their action.
- (b) Employees should also be aware that it is impossible to ensure the confidentiality of email communications and of the ease with which an email which is sent as confidential could be disseminated by its recipient to any number of inappropriate people at the touch of a key. Section Two below specifies some examples of misconduct relating to confidential information and personal data. Employees are advised, however, to consider very carefully the risks of sending confidential information by email, even if they have authority and it is lawful to do so.
- (c) Employees should be mindful that non-verbal clues to your meaning are lost in written communication and there is potential for misunderstanding – what's funny to you may appear rude and offensive to a recipient who only has your text to go off.
- (d) Employees must avoid typing text wholly in capitals. This is understood as shouting, which is an unacceptable form of communication in the workplace.
- (e) Trust your instincts – it's very tempting to reply instantly to emails, but if you've composed a message and 'gut feeling' tells you not to send it, for whatever reason - **don't!** Think about the matter further before committing yourself. In particular, venting rage by email is no more acceptable than shouting in someone's face and sarcastic or angry emails sent in haste are likely to be regretted and may give reasonable grounds for a complaint.
- 1.8 Employees must be aware of the dangers of inadvertently making or varying contracts over the telephone or by e-mail. Very little is required for a legally binding contract to arise and a quick, apparently informal, phone call or email to a prospective employee or an outside supplier of works, goods or services may result in the inadvertent creation or variation of a contract on terms which are unfavourable to the Council. The Council's contract procedure rules should be followed at all times.. **(Employees should note that nothing in this provision prevents staff making their own personal purchases over the telephone or by using the internet).**
- 1.9 You should not give your email password to other people or leave your email/internet access open to others when you are away from your computer.
- 1.10 Any loss or suspected loss, of authority-provided communication equipment, must be reported as soon as practicable to ICT Services to allow available security measures to be put in place.
- 1.11 Under the Data Protection Act and the General Data Protection Regulation (GDPR) the Council has a duty to report certain types of personal data breach to the relevant supervisory authority. Under GDPR, it must do this within 72 hours of becoming aware of the breach, where feasible. It is

therefore imperative that all potential breaches are reported to the Executive Director (Legal and Democratic) as soon as they are known.

- 1.11 Managers have discretion within this policy to determine what is reasonable personal use of Council equipment. This should be considered in the context of the needs of the service, the effect on other employees of their colleagues' actions, and individual employee's personal circumstances. Defining the boundaries of use and misuse of Council equipment may be difficult in some circumstances. It is important that this policy is implemented as consistently as possible and further guidance can be sought from HR to assist employees and managers in this area.
- 1.12 Misuse of Council communications equipment, whether in the course of an employee's work or personal use is misconduct and is likely to result in disciplinary action under the Council's Disciplinary Procedure either for the misuse itself or for any misconduct which is being perpetrated using Council equipment. In serious cases, it may constitute gross misconduct. If proved, the range of sanctions may include, alongside the normal sanctions open to the Council, that the employee is no longer permitted to make personal use of Council communications equipment.
- 1.13 If misuse of Council equipment, or misconduct perpetrated using Council equipment, is sufficiently grave as to constitute gross misconduct, the employee may be dismissed, in line with the Disciplinary Procedure.

## 2. Examples of misconduct

2.1 The following are examples of actions which may lead to disciplinary action:

- (a) Personal use of communications equipment **during work time or outside of hours 12 noon – 2pm**, unless permitted in accordance with this policy;
- (b) Using equipment in a way which disturbs or causes a nuisance to other employees, or otherwise prevents someone from working;
- (c) Using communications equipment to participate in illegal activities;
- (d) Using communications equipment or a Council email address in a way which may have the effect of bringing the Council into disrepute or incurring any unauthorised liability whatsoever for the Council or individual concerned;
- (e) Making any communications which abuse, threaten, or harass another person or are likely to create or contribute to a hostile working culture or environment or are otherwise anti-social. The Council has a Dignity at Work Policy and if you are unsure what bullying / harassment means, please read the policy;
- (f) Employees must not knowingly open a colleague's personal correspondence (including e-mails) without their consent. (Please note that this provision is **not** intended to prejudice the Council's right as employer to monitor communications made on Council communications equipment nor for a manager to access an absent employee's emails to check on outstanding work, if for example they are absent due to unplanned or long-term sickness);
- (g) Sending e-mails in another person's name without their consent and without identifying by name the actual sender of the email;
- (h) Knowingly downloading from the internet or using or distributing (electronically or otherwise) any intellectual property (e.g. material which is copyright) without proper authorisation and, where appropriate, the Council making payment of a licence fee to the owner of the intellectual property rights;
- (i) Making any communications which make any comment, observation or suggestion about another person or company which may be considered to adversely affect or damage their reputation and which may as a consequence expose the Council or the individual to action for slander or libel;
- (j) Sending or otherwise distributing personal data processed by the Council about a living individual to a third party without authority **and** if the employee has authority, without satisfying a condition for lawful processing under the Data Protection Act 1998 or related regulations or without the person's consent;
- (k) Disclosing any confidential information held by the Council to a third party without authority **and**, if the employee has authority, without the consent of the party to whom the information relates or without an overriding public duty to disclose;
- (l) Setting up, without authorisation, any external internet chat room or website using Council equipment. Internal chat rooms may be permitted for business purposes only, but the ICT Section must be

- contacted prior to any action to set up an internal chat room being taken;
- (m) Participating in the transmission of any junk mail, chain letters or pyramid messages;
  - (n) On-line gambling;
  - (o) Any use of the Council's communications equipment to commit a criminal offence;
  - (p) Knowingly accessing (that is, opening, visiting or looking at a website), or downloading from the internet (that is saving, copying or printing material) or sending, transmitting, disseminating or distributing (electronically or otherwise) any material which is hateful, obscene, pornographic, racist, homophobic or otherwise discriminatory, defamatory, which incites hatred or violence against any person or organisation, or which depicts violence or describes techniques for criminal or terrorist acts or otherwise risks exposing the Council to adverse publicity or bringing the Council into disrepute. **(If you accidentally visit a website which is concerned with any of the above matters, inform ICT and Audit immediately.)**
  - (q) Any use of the Council's communications equipment which causes serious harassment to another person.
  - (r) Knowingly accessing data that the Council holds on residents or on individuals without reason. This includes accessing information or records held on friends, neighbours, colleagues or acquaintances.
  - (s) Accessing and/or amending your own data or records held by the Council such as your Council Tax account, unless specifically authorised to do so (e.g. employee self-service for changes to bank details);
  - (t) Failing to take reasonable care to protect the Council from viruses, Trojan Horses, malware etc., for example by using a Council PC to charge a mobile phone.

### **3. Personal use of Council communications equipment**

- 3.1 The Council acknowledges that from time to time most people will need to make arrangements relating to their personal life while they are at work. Personal use by employees of Council communications equipment is permitted by the Council to enable employees to make essential domestic and personal arrangements during working hours. The types of arrangements which employees are likely to have to make during working hours are those related to:
- care of dependents;
  - education/care of children;
  - healthcare arrangements;
  - obtaining goods/services where contact can only be made during office hours;
  - household emergencies;
  - changes of working arrangements; and
  - car repairs/maintenance/services/MOT tests
- 3.2 Any personal use of Council communications equipment by employees is incidental to the main purpose for which the equipment has been provided to a particular employee and is not to be considered an employment right of that or any employee.
- 3.3 Heads of Service may withdraw permission to use Council communications equipment from any employee who misuses it.
- 3.4 Except as otherwise provided in this policy, personal use should take place in the employee's own time, while clocked off, and **only between 12 noon and 2pm**. Where equipment is shared, it may only take place when it is not required by anyone else for a work purpose. Where equipment is shared it is the responsibility of the employee wishing to make personal use to ensure that the equipment is not required by anyone else for a work purpose.
- 3.5 The Council acknowledges that there may be circumstances when a personal communication during work time cannot be avoided. For example, some service providers may close at lunchtime, or the need to make domestic arrangements may arise during the day. It is the responsibility of each employee only to make personal use of Council equipment in work time if it is essential to do so and that time spent is minimised as much as possible.

- 3.6 If an employee needs, owing to specific personal circumstances existing at the time, to make frequent or lengthy personal use of communications equipment they must discuss this with their line manager, who may authorise such personal use if the circumstances justify it.
- 3.7 Employees using Council equipment for personal communications must exercise awareness of other members of staff who may be working around them. Personal business must be conducted in a manner which does not disturb others.
- 3.8 Where an employee receives an incoming personal communication during work time, they will be expected to exercise reasonable discretion over the time spent dealing with the matter at that point, depending on its urgency and the necessity of dealing with it there and then. Time spent on communications of a social nature which are received in work time must be kept to a minimum and employees should encourage friends and relatives etc. not to make social calls when the employee is likely to be working.
- 3.9 This policy applies to personal use by employees of portable Council communications equipment away from the work base. Employees who are issued with portable communications equipment are responsible for the proper care and use of that equipment and are issued with a statement of terms and conditions which reflect the applicable requirements of this policy and other Council requirements with regard to the care and use of the equipment.
- 3.10 Where the Council incurs a cost for the use of communications equipment which can be apportioned to an individual employee, employees will be charged for personal use of Council equipment.

Arrangements for charging are as follows:

- (a) Fixed Telephones – employees are expected to pay for calls in accordance with Council procedures which are notified to employees separately from time to time;
- (b) E-mails – the Council does not charge employees for use of this system;
- (c) Internet use – the Council does not charge employees for use of this system;
- (d) Mobile telephones – employees are expected to pay for calls in accordance with Council procedures which are notified to employees separately from time to time; and
- (e) Faxes and photocopiers – the Council charges for personal use of fax machines and photocopiers (payment arrangements vary and advice should be sought from the employee's line manager).

#### **4. Employees' use and misuse of own communications equipment**

- 4.1 The provisions in this policy apply equally to employees using their own equipment, e.g. a personal mobile phone, in respect of any communications made during working hours which may:
- bring the Council into disrepute;
  - constitute a criminal offence;
  - harass or disturb or cause nuisance to another employee;
  - create or contribute to a hostile working environment;
  - constitute a misuse of the employee's working time; or
  - incur any unauthorised liability for the Council or the employee.
- 4.2 Any such misuse is a disciplinary offence and is likely to result in action being taken against the employee. If the behaviour is sufficiently grave or prolonged to constitute gross misconduct, it may result in dismissal.
- 4.3 The Council has no powers to intercept or monitor employees' communications made using their own equipment without the user's consent but reserves the right to take any steps which are lawful and proportionate to deal with any suspected breaches of this policy by employees using their own communication equipment.
- 4.4 [Appendix 1](#) of this Policy gives guidelines to employees on the use of Social Networking sites.

## **5. Safeguarding Council data on your own equipment**

- 5.1 Whether using Council provided equipment or your own, it is imperative that any Council data held, or program or application allowing you to access Council data, is secure.
- 5.2 Any security features available on a device, i.e. pin code protection etc., should be activated and used on a regular basis.
- 5.3 Specifically, with regard to devices accessing a user's Council email account:
- All users must use strong passwords. (At least 8 characters, including at least one number, one special character [\$ or % etc.] & one capital letter.)
  - Passwords must be protected at all times and must be changed at least every 40 days.
  - It is a user's responsibility to prevent their user id and password being used to gain unauthorised access to Council systems.

## **6. Complaints of bullying or harassment involving communications equipment**

- 6.1 The Dignity at Work Policy is to be found on the Hyntranet or is available from the HR Section, Scaitcliffe House, Ormerod Street.

## **7. Employees who suspect a colleague is in breach of the Policy**

- 7.1 Employees who have concerns about a colleague's actions in relation to this policy should report these to their line manager. Employees who become aware of more serious potential breaches of the policy are encouraged to take action in accordance with the **Whistleblowing Policy**, which gives details about who to talk to about your concerns.
- 7.2 The Whistleblowing policy is to be found on the Hyntranet or is available from the HR Section.
- 7.3 Under no circumstances should employees (this includes managers) carry out their own investigations or surveillance of other employees, unless instructed to do so, as this may prejudice the possibility of the Council taking action and may expose the individual and/or the Council to civil or criminal liability.

## **8. Monitoring compliance**

- 8.1 Compliance with Council policy is a personal responsibility and it is important that employees are clear about what they can and cannot do using the Council's communications equipment and their own equipment at work. It is also important for managers to be confident that the policy is being complied with and that the Council is not exposed to risk of liability or damage to its systems or reputation.
- 8.2 All managers are expected to recognise that employees may need to make personal communications during working hours and sometimes during working time. Managers should exercise reasonable judgement at all times about whether an individual employee's use is misuse.
- 8.3 At the same time, managers must not allow a 'culture' of misuse to develop within their team as this may make it more difficult for the Council to take effective action against any particular employee who is acting in breach of this policy.
- 8.4 The Council may from time to time undertake monitoring of traffic data on its communications equipment in order to:
- ensure that telephone calls are paid for, and
  - enable managers to monitor compliance with this policy

- 8.5 Monitoring for the purpose of producing bills will be carried out routinely so that bills can be produced periodically.
- 8.6 Monitoring of traffic data for the purposes of monitoring compliance with the policy will be carried out by the ICT Section:
- (a) according to a programme of routine review by Internal Audit under the Audit Plan;
  - (b) at the request of a member of the Council's Management Team, the Head of Legal Services, the Monitoring Officer (if not one of the officers previously mentioned) or the Head of Audit & Investigations, where there is reasonable suspicion of possible misuse of the Council's communications equipment; or
  - (c) at the initiation of the ICT Service Manager to safeguard Council ICT systems in line with the ICT Security Standards and Guidance
- 8.7 Monitoring of traffic data may indicate breaches of this policy which require further investigation, for example, access to internet sites in breach of this policy.
- 8.8 The Council will make all reasonable efforts to notify anyone who communicates with the Council using its telecommunications systems that monitoring may take place.

# Appendix 1: Social Media Guidelines

## 1. Introduction

- 1.1 Social media is any interactive online media that allows users to communicate instantly with each other or to share data in a public forum. It includes social and business networking websites such as Facebook, Myspace, Reddit, Twitter and LinkedIn. Social media also covers video and image sharing and blogging websites such as YouTube, Instagram, Snapchat, Google+, Tumblr and Flickr, as well as personal blogs, any posts made on other people's blogs and all online forums and noticeboards. This is a constantly changing area with new websites being launched on a regular basis and therefore this list is not exhaustive. The Communications Policy applies in relation to any social media that employees may use.
- 1.2 Social media presents new and interesting opportunities for people and organisations to reach out to others. It allows anyone with a computer and internet connection to publish opinion and information, and to listen to and engage with those who read it.
- 1.3 However, there are risks attached to the use of social media and these guidelines are intended to help protect the Council and also individual employees.
- 1.4 Any information or comments published on any site (internal or external):
- may stay public for a long time;
  - can be republished on other websites;
  - can be copied, used and amended by others;
  - may be perceived by others as offensive, even if this was not intended;
  - could be changed to misrepresent what has been said; and
  - can attract comments and interest from other people.
- 1.5 Things which are written, shown or received via social networking sites could be made available, intentionally or otherwise, to an audience wider than that originally intended.
- 1.6 It is therefore important that users of social media understand the pitfalls as well as the benefits of the technology. Employees have a right to a personal life, and provided they do not breach reasonable conduct guidelines, the Council will respect this. These guidelines suggest actions which may avoid employee relations problems.
- 1.7 The TUC referred to the UK's Facebook users 'as 3.5 million HR accidents waiting to happen'. There are numerous examples of issues concerning the use of social networking sites by employees, some of which are given below.
- Directory enquiries group 118 118 discovered workers were making comments about callers they had dealt with. The company investigated the workers who were involved and disciplinary proceedings followed.
  - Virgin Atlantic dismissed 13 cabin crew after disciplinary proceedings concerning messages on Facebook referring to passengers as 'chavs' and making jokes about them.
  - An employee was dismissed after less than a month in her job following her comments on a networking site on how boring her job was.
  - A prison officer was dismissed for gross misconduct after befriending former and current inmates on Facebook.

## 2. Authorised use for work purposes

- 2.1 A limited number of employees may be authorised to use social media as part of their work for Hyndburn Borough Council. Although access may therefore be granted to such websites using Council equipment, permission is **not** given for personal use.

- 2.2 Employees must use council facilities appropriately: if you use a council-provided blog site or social networking area, any posts you make will be viewed as made in your official capacity. You should also be aware that by publishing information that you could not have accessed without your position as an officer, you may be seen as acting in your official capacity.
- 2.3 Other than for these authorised employees, social networking sites are blocked from Council computers and such sites should not be accessed using Council equipment. Employers using such sites for work purposes must ensure that their manager is aware of this activity.
- 2.4 Employees should not use their work e-mail address to use social networking sites, e.g. to set up a profile.

### **3. Recruitment and selection**

- 3.1 Social networking sites will not be searched in order to obtain information to inform decisions on recruitment and selection. There is a danger that the use of information obtained in this way could lead to perceptions and challenges of unfairness or discrimination.

### **4. Social Networking and Personal Conduct**

- 4.1 If employees use social media for their own personal use or within their role there is a requirement to stay within the law at all times, and to be aware that fair use, financial disclosure, libel, defamation, copyright and data protection laws apply on-line just as in any other media.
- 4.2 Colleagues and customers of employees may see employees' online information. Whether individuals identify themselves as an employee of the Council or not, it may be advisable to think carefully about how much personal information is made public to ensure that the information posted reflects how an individual wants to be seen both personally and professionally.
- 4.3 Employees should be aware that even if they are not listed as Council employees on one social networking site (e.g. Facebook), they may be on another (e.g. LinkedIn) and this can allow others to make that link.
- 4.4 Employees may also wish to consider whether they are seen to be, or give the impression that they are acting in their official capacity as a Council officer.
- 4.5 Employees should take care not allow their interaction on these websites or blogs to damage working relationships with or between employees, elected members, customers, or contractors, for example by criticising or arguing with them or using abusive or threatening language. This can include reacting to offensive posts made by other people in a way that indicates agreement – for example by “liking” or retweeting a critical post.

#### **4.5 Legal issues**

##### **a) Breach of contract**

There is an implied term of mutual trust and confidence between employer and employee in all employment contracts. Disclosing confidential information or making or participating in a very negative and damaging posting or communication about the employer may entitle the employer to state that this term has been broken and warrant the employee's dismissal in line with the disciplinary procedure.

##### **b) Defamation**

If defamatory material is posted on a social networking site, defamation claims may arise against the employee.

c) **Discrimination**

Difficulties arise if information from networking sites is used to make discriminatory decisions, for example to refuse a job on grounds of race, sexual orientation, religion or age. Employers must not make a decision on such a basis otherwise they are exposed to expensive discrimination claims. Also only a minority of candidates will have profiles on social networking sites and using information from this source can give an unfair advantage or disadvantage to certain candidates possible discriminating against younger people who use the sites more.

Other discrimination claims may arise if employees post discriminatory material about other employees which could amount to bullying or harassment.

d) **Whistleblowing**

Nothing in this policy should be seen to restrict the use of the Council's Whistleblowing Policy. Whistleblowing is the term used when someone who works for the Council raises a reasonable and genuine concern about a possible fraud, crime, danger or other serious risk that could threaten the public, their colleagues or the reputation of the Council.

e) **Health and safety**

In 2007 a UK based employer saw internet video clips of employees performing stunts wearing its uniform. An employer who discovers information like this should follow the disciplinary procedure to investigate the possibility of a breach of health and safety legislation on the part of the employee. If an employer is aware of this and fails to investigate there may be liability for personal injuries in the law of negligence.

## 4.6 Avoiding problems

These Guidelines give suggestions to consider in relation to their personal use of social networking sites. Employees are entitled to a reasonable degree of privacy but also have some responsibility for and influence over the content of information on their personal pages / sites. Factors such as the nature of the person's job (e.g. seniority, political restriction) may influence how an employee wishes to try and manage their online presence and these factors will influence how the Council may respond.

### Things to consider

- Look at the privacy settings for your blog or networking site. For instance, on Facebook, you have the option to only allow "friends" to see your posts. It is more difficult to argue that a profile which is open to everyone is not in the public domain.
- If others post defamatory or obscene statements / pictures etc. on your blog or page, or you "like" or otherwise comment on or share their posts, be aware that this might lead some people to believe that you condone such views.
- Please note that guidance given to Hyndburn's councillors suggest that they should not request or accept a Hyndburn BC employee as a "friend" on a social networking site.
- If you make derogatory remarks about the Council, colleagues or customers, you risk this becoming a work issue.
- Consider whether you want to include details of your employer / workplace in your personal details.

# Agenda Item 4.

REPORT TO:		Management Review Committee	
DATE:		20 March 2018	
PORTFOLIO:		Cllr Gareth Molineux - Resources	
REPORT AUTHOR:		Kirsten Burnett	
TITLE OF REPORT:		Proposed Amendment to the Pensions Discretion Policy Statement	
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable	
KEY DECISION:	No	If yes, date of publication:	

## 1. Purpose of Report

- 1.1 To present a proposed amendment to the Pensions Discretion Policy Statement.

## 2. Recommendations

- 2.1 That the proposed amendment is accepted and added to the published Policy Statement.

## 3. Reasons for Recommendations and Background

- 3.1 In a recent case heard by the Employment Appeals Tribunal (EAT), **University of Sunderland v Drossou**, (UKEAT/0341/16), the EAT held that when assessing the amount of a week's pay under section 221(2) of the Employment Rights Act 1996 for unfair dismissal compensation, a week's pay is the amount of remuneration payable under the contract of employment and can therefore include not only wages/salary but also the employer contribution made in respect of the employee's membership of a pension scheme.
- 3.2 Statutory redundancy pay is calculated in accordance with the week's pay provisions of the ERA, subject to a cap which is currently £489. Accordingly, following the *Drossou* approach would mean that employer pension contributions would have to be factored into statutory redundancy pay. However, in terms of any enhanced redundancy pay, the LGA advises that local authorities have the means to mitigate the effects of this decision by making it clear, if not already so, that such payments do not include any sum in respect of employer pension contributions.
- 3.3 In respect of enhanced redundancy payments the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales)

provide authorities with the power to go beyond the statutory maximum week's pay and base redundancy payments on a figure up to actual week's pay. We, like many authorities, use this discretion to base redundancy payments on an actual week's pay.

- 3.4 An authority can limit payments to the statutory maximum, or base them on actual pay or choose any amount in between, i.e. the policy could state an amount lower than the full actual week's pay. Until the *Drossou* case the notion of a week's pay was restricted to wages/salary and most authorities which applied this discretion simply choose actual week's pay.
- 3.5 Following the *Drossou* judgment, the LGA advises authorities to revisit their discretionary policies in order to assess whether it has any impact. For example, if the policy statement has lifted directly from Regulation 5 and refers to a week's pay calculated in accordance with the ERA but without a limit on the amount, then the effect of the *Drossou* case would be to lift the actual pay by including pension contributions. If authorities do not wish to make such additional payments, the LGA recommends amending the wording and stating more explicitly how any payment would be limited by, for example expressly stating which elements of pay will be included and/or stipulating that payments by way of pension contributions will not be included.
- 3.6 There is only a small change proposed to the Pensions Discretion Policy Statement. This is in the section headed Redundancy and Compensation Payments which would have an additional sentence at the end:

Employer's policy:

The Council will consider awarding a lump sum payment up to a maximum of 104 weeks' pay (inclusive of any statutory redundancy payment to eligible employees whose service is terminated due to:

- redundancy
- efficiency of the Service; or
- other holder of joint appointment leaving

Applications will be determined by the Chief Executive Officer (CEO) or in the absence of the CEO, by the nominated deputy. If a decision is to be made relating to the CEO, this will be determined by the Management Review Committee.

The council has decided to use the discretion to waive the weekly pay ceiling placed on statutory redundancy payments and will calculate redundancy payments based on actual weekly pay. **This will not include any employer's pension contributions.**

**4. Alternative Options considered and Reasons for Rejection**

- 4.1 None

**5. Consultations**

- 5.1 None. This is a Council discretion and the proposed amendment will retain the status quo in terms of employees' entitlements.

**6. Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	The proposed change is designed to ensure that we are not legally obliged to pay higher redundancy payments.
<b>Legal and human rights implications</b>	
<b>Assessment of risk</b>	
<b>Equality and diversity implications</b> <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	None

**7. Local Government (Access to Information) Act 1985:  
List of Background Papers**

- 7.1 None.

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# Agenda Item 5.

<b>REPORT TO:</b>		Management Review Committee	
<b>DATE:</b>		20 March 2018	
<b>PORTFOLIO:</b>		Cllr Gareth Molineux - Resources	
<b>REPORT AUTHOR:</b>		Kirsten Burnett	
<b>TITLE OF REPORT:</b>		Draft Workplace Smoke-Free Policy	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>Options</b>	Not applicable	
<b>KEY DECISION:</b>	<b>No</b>	If yes, date of publication:	

## 1. **Purpose of Report**

- 1.1 To present a draft Workplace Smoke-Free Policy (Appendix 1).

## 2. **Recommendations**

- 2.1 That Management Review Committee considers and agrees the proposed draft Policy.

## 3. **Reasons for Recommendations and Background**

- 3.1 The policy has been amended to better reflect the use of e-cigarettes and to remove out of date information about the locations of stop-smoking clinics etc, as the health provision has changed.

## 4. **Alternative Options considered and Reasons for Rejection**

- 4.1 N/a

## 5. **Consultations**

- 5.1 The first draft was discussed at the Safety Committee on 17 October 2017. Formal consultation with Trade Unions and staff followed and the Trade Unions have no objections.

## 6. **Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	N/a
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<b>Legal and human rights implications</b>	<p>The Workplace Smoke-free Policy complies with the following legal regulations:</p> <p>(i) the Smoke-free (Premises and Enforcement) Regulations 2006; and  (ii) the Smoke-free (Exemptions and Vehicles) Regulations 2007.</p>
<b>Assessment of risk</b>	N/a
<b>Equality and diversity implications</b> <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	N/a

## **Hyndburn Borough Council**

### **Workplace Smoke-free Policy**

#### **1. Policy Statement**

- 1.1 Hyndburn Borough Council is committed to promoting health and preventing disease for all its employees. There is overwhelming evidence that smoking and the inhalation of second-hand smoke is detrimental to health and that as an employer, we have a responsibility to provide a healthy working environment. References to smoking within this Policy also apply to vaping.

#### **2. Aim**

- 2.1 This policy contributes to ensuring and improving the health and safety of its employees by making all Council offices/occupied buildings and vehicles smoke-free, and by minimising the risk to employees who work in other people's homes / accommodation.

#### **3. Legal References**

- 3.1 The Workplace Smoke-free Policy complies with the following legal regulations:

- (i) the Smoke-free (Premises and Enforcement) Regulations 2006;
- (ii) the Smoke-free (Exemptions and Vehicles) Regulations 2007.

#### **4. Scope**

- 4.1 The Workplace Smoke-free Policy applies to any person entering Hyndburn Borough Council premises for any reason. This includes officers, elected members, visitors and contractors working in council offices/occupied buildings and vehicles, plant and equipment.
- 4.2 This policy applies to anything that can be smoked (or "vaped"), including cigarettes, electronic cigarettes, cigars, herbal cigarettes, pipes (including water pipes such as shisha and hookah pipes) and substances which are classed as illegal, e.g. marijuana.
- 4.3 Drugs are also covered in the Council's Drugs and Alcohol Policy.
- 4.4 The Regulations state that the Workplace Smoke-free Policy must apply to the following:
- Enclosed or substantially enclosed buildings; and
  - Council vehicles, plant and equipment.
- 4.5 In addition, smoking is prohibited at the following sites:
- close to Council building entrances, unless in a designated smoking area;
  - Council service yards (other than at designated areas at Willows Lane Depot and CVMU);
  - Council car parks - inclusive inside vehicles on Council car parks;
  - Staff-owned cars when travelling with another employee.
- #### **6. Employees who smoke**
- 6.1 Whilst the Council is committed to discouraging staff from smoking, the following rules should be adhered to for employees who choose to smoke:
- Smoking is not permitted in any of the places listed above;
  - Employees who smoke must do so in their own time i.e. while clocked out;

- In line with the Flexible Working policy, breaks may be taken at any time during the day as long as this does not affect the normal business of the service area (staff should clarify this with their line manager).

## **7. Stop Smoking Service Support for Staff**

7.1 Public health services offer stop smoking cessation support. Information is available via GPs and Pharmacists, or call your local Stop Smoking Service on **0800 328 6297** (free from landlines and mobile phones) or visit the [NHS Quit Squad website](#).

7.2 Wherever possible, managers should allow staff to take time off to attend smoking cessation appointments, as long as this does not adversely affect the service. Please refer to the Flexible Working policy for further guidance.

## **8. Employees visiting private dwellings on Council business**

8.1 Council employees may be required to work in other people's homes / accommodation from time to time and, as such, may be exposed to the harmful effects of second-hand smoke.

8.2 The following guidelines will help managers and employees manage this situation, and therefore reduce the risk to health:

- It is expected that a smoke-free environment will be provided whilst a Council employee is working in a customer's home/accommodation. Therefore smoking by the customer, or by others in the home / accommodation, must not take place during this time.
- Council employees will inform the customer of this requirement at their first contact or at time of assessment.
- If, for legitimate reasons, a smoke-free environment cannot be provided, a risk assessment must be carried out. The risk assessment must ascertain any potential risk to the member of staff, and if necessary, alternative strategies should also be explored, dependent on the given situation. Each risk assessment needs to be carried out on a 'case by case' basis and consideration needs to be given to reducing the amount of second-hand smoke employees are exposed to. This risk assessment must be documented.
- If no acceptable compromise can be implemented then consideration must be given to withdrawing employees from the situation.
- As an employee, you have the right to leave any private dwelling at any time due to second-hand smoke exposure.

## **9. No Smoking Signage**

9.1 No smoking signs are displayed on all entrances in accordance with the Smoke-free (signs) Regulations 2007

9.2 No smoking signs are displayed on all work vehicles in accordance with the Smoke-free (signs) Regulations 2007

9.3 The Facilities team is responsible for ensuring all legal signage is displayed adequately. For Council vehicles, CVMU is responsible for this.

**10. Sale of Tobacco/Illicit Tobacco**

- 10.1 The sale of tobacco is forbidden on all Council property, and may be reported to Trading Standards. This will be treated as a disciplinary offence, and more serious cases could amount to gross misconduct leading to dismissal.

**11. Breaches of Policy**

- 11.1 Any person found to be smoking on Council premises will be asked to leave the building / grounds / premises / vehicle immediately. An incident form should be completed if smoking in any Council building / vehicle is found.
- 11.2 If an employee does not comply with this policy they will be:
- reminded of the policy;
  - called to discuss the issue with their line manager; and
  - may be subject to formal disciplinary processes.
- 11.3 All managers are responsible for enforcing the Workplace Smoke-free Policy. As an employee, you should report all breaches of this policy to your line manager.

Date of implementation: xx

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<b>REPORT TO:</b>		Management Review Committee	
<b>DATE:</b>		20 March 2018	
<b>PORTFOLIO:</b>		Cllr Gareth Molineux - Resources	
<b>REPORT AUTHOR:</b>		Kirsten Burnett	
<b>TITLE OF REPORT:</b>		Draft Drugs and Alcohol Policy	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>Options</b>	Not applicable	
<b>KEY DECISION:</b>	<b>No</b>	If yes, date of publication:	

## 1. Purpose of Report

- 1.1 To present a draft Drugs and Alcohol Policy (Appendix 1).

## 2. Recommendations

- 2.1 That Management Review Committee considers and agrees the proposed draft Policy.

## 3. Reasons for Recommendations and Background

- 3.1 The Council introduced its current Drug and Alcohol Policy in April 2014. This introduced testing for “just cause” when there was some evidence that an employee may be “under the influence”.
- 3.2 The testing involves a Home Office approved breathalyser for alcohol, with cut-off points at 35 micrograms per 100ml of breath (equivalent to the England, Wales and NI drink-drive limit) for most staff, and a lower limit of 20 micrograms for safety-critical staff. A sweat / saliva drugwipe is used for screening drugs. This is the test used by the Police. In the event of a positive screening, we use an external laboratory service who collect and test a urine sample.
- 3.3 The current policy was implemented with the agreement of our recognised Trade Unions and followed briefings to all staff which included the support available both inside and outside the Council.
- 3.4 We have used the tests on a number of occasions and there have been a number of positive tests, or tests which fall below the workplace cut-offs but which have led to staff disclosing they have a dependency. Where possible we have supported staff but there have also been a small number of dismissals due to gross misconduct. We have also asked potential agency staff to be tested before we accept them for work, which

has led to several either withdrawing or screening positive for drugs. These cases, coupled with local intelligence from Inspire, have raised our awareness of how much of a problem alcohol and drugs are. In particular, it appears that the use of cannabis and cocaine is widespread, inexpensive, and considered “normal”.

3.5 As employers, we do not wish to make any moral judgment about heavy drinking or illegal drug use. Our concern is with how such use may potentially affect the workplace. We have a responsibility:

- to ensure that staff are fit to attend work, especially when undertaking safety critical roles;
- to protect staff and members of the public; and
- under the Health and Safety at Work Act 1974, the Council has a duty to ensure a safe place of work and safe systems of work for its staff and has duties to assess the risks to their health and safety under the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242).

3.6 It is for these reasons that we propose clarifying aspects of our Policy and also extending the testing arrangements to include random testing for safety critical roles. There are legal implications, including the right to privacy, and these are considered in the accompanying Privacy Impact Assessment (Appendix 2).

3.7 The proposed draft includes the following key changes and areas of added clarity:

- a) Attending work under the influence of drugs and/or alcohol will be considered to be a disciplinary offence and potentially gross misconduct. A positive test for drug and alcohol will be the main determinant of whether someone is under the influence.
- b) Criteria to define safety critical posts (S3.2)
- c) Employees must not report for work with drugs in their system and must remain drug-free during working hours, meaning that there should be no measurable trace of illegal drugs to UK workplace guideline levels. (S7.2)
- d) If, prior to any positive test or clear evidence of attending work under the influence (and the timing is key), an employee reports that they have a problem, the Council's focus will be on helping the employee to access the appropriate support. This could include making adjustments at work to avoid safety-critical duties for a period until the problem is resolved or agreeing to more frequent or periodic testing. Support could also include access to the Employee Assistance Programme, counselling if there has been a traumatic event which sparked the problems, and a range of flexible working options, such as flexible hours of work to attend appointments or extended breaks from work to allow periods of rehabilitation. (S9.3)
- e) Random testing (S10.3 (iii))

Employees in safety critical roles (see S3) may be required to take an alcohol and / or drugs test as part of a system of random testing. On the grounds of protecting health and safety, the Council reserves the right to carry out alcohol and drug screening tests,

without prior notice, on employees in the workplace whose activities and job duties have a significant impact on the health and safety of themselves and others. A request for an employee in a safety critical role to undergo alcohol and drug testing does not indicate that he / she is under any suspicion of wrongdoing.

Random testing will follow these key principles:

- Groups will be selected between 6 and 12 times each year. This will only be increased in exceptional circumstances, such as a very high number of positive results.
- The Council will maintain a list of posts which are subject to random testing and will inform the postholders that they are on this list.
- Postholders may ask their Director to reconsider their inclusion on this list, giving reasons of why they feel their post should not be subject to random testing. Decisions will be based primarily on safety considerations.
- The size of the group selected for random testing on each occasion will be between 5 and 10% of the whole eligible group.
- Each postholder will be allocated a random number on each occasion and the order of numbers will determine whether an individual is selected for testing.
- There will be no set pattern to the time intervals between group random testing occasions.
- This system will be reviewed after a year of operation and at agreed intervals thereafter and the Trade Unions will be invited to submit feedback.

- f) Testing will form part of the pre-employment checks for potential employees being recruited to all safety critical roles and it is likely that further testing will take place during the probationary period. (S10.3 (v))
- g) Employees who unreasonably refuse to take tests will be subject to disciplinary action. For safety critical roles, a refusal will be treated as a positive result. For other roles, it may be inferred that the employee believed that the test, if carried out, would give a positive result. (S10.5)
- h) Company vehicles may be searched for alcohol and / or drugs. Desk and lockers may also be searched, if there is reasonable cause for doing so and the employee or their representative will be invited to witness desk or locker searches. These are the property of the Council and employees have no absolute right to privacy regarding these areas. (S10.6)
- i) The current policy states that if the initial breath test registers alcohol below the cut-off level, the testing process will be complete. This would not take account of anyone who had drunk alcohol just before the test, when their level was still rising. Following advice from DTec, who supply and service our test equipment and lab services, we propose in future that any alcohol test showing above zero will be followed up after 20 minutes by a second confirmation test. (Appendix 1, S2.)

- 3.8 All staff have been invited to comment on the draft policy and there has been extensive consultation with the recognised Trade Unions. Only Unison had comments and these

led to a number of (relatively minor) changes. Unison, supported by advice from their Regional Officer, has confirmed that it is not prepared to agree to the changes. Unison request that Management Review Committee considers the following points before reaching a decision on whether to implement the revised draft:

#### **Unison comments**

Unison do not agree the changes to the drug and alcohol policy.

Whilst we do agree there needs to be a policy in place we felt the new policy is excessively harsh and impinges on people's private lives.

Point 7.2. It states "Employees must not report for work with drugs in their system and must remain drug-free during working hours, meaning that there should be no measurable trace of illegal drugs". We think the wording should remain as it is in Section 5 of the current policy "Employees must not report for work in an unfit state due to the consumption of drugs and must remain in a fit state during working hours". This places the focus on impairment rather than on traces of drugs.

We also still think that Point 9.3 is excessively harsh and it should not matter if an employee seeks help after a breach because the Council retains a duty of care to the employee. Furthermore, any addiction could be due to a disability.

In Appendix 1 – Drug and Alcohol Testing Process under 2. Alcohol Testing, why has it been changed so any level of alcohol prompts a second test? It should be the defined level as previously stated (i.e. 35 / 20 micrograms per 100ml of breath).

We would also do not agree random testing is appropriate and would prefer the 'with just cause' to stay.

- 3.9 Implementation of the revised Policy would follow a programme of staff briefings to ensure that they understand the changes and are given every opportunity to access support if applicable.

#### **4. Alternative Options considered and Reasons for Rejection**

- 4.1 We could retain the existing arrangements but we believe changes are required as detailed within this report and the Privacy Impact Assessment.

#### **5. Consultations**

- 5.1 See S3.8.

#### **6. Implications**

**Financial implications (including any future financial commitments for the Council)**

There is a cost to the testing equipment and lab urine analysis. This year to date we have sent £7196 in total.

<b>Legal and human rights implications</b>	Detailed in the Privacy Impact Assessment (Appendix 2)
<b>Assessment of risk</b>	N/a
<b>Equality and diversity implications</b> <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	A CFA is attached.

## **1. Purpose**

- What are you trying to achieve with the policy / service / function?
  - To outline the Council's expectations that staff will attend work free from levels of alcohol or drugs above workplace cut offs and the potentially serious consequences of not doing so.
  - To ensure that staff taking prescription drugs are clear about their responsibilities in relation to health and safety at work.
  - To protect the health and safety of staff and members of the public.
  - To signpost staff to the range of support available around drug and alcohol use, should they wish to access this.
  - To provide a framework for safe, legally compliant workplace drug and alcohol testing.
- Who defines and manages it?

The policy is defined and managed by HR, in consultation with managers, trade unions and staff. The day to day management falls to line managers.

- Who do you intend to benefit from it and how?
  - Staff and residents / public through the protection of health and safety.
- How will you get your customers involved in the analysis and how will you tell people about it?
  - Consultation with managers, trade unions and staff.
  - Briefings and regular communications.

## **2. Evidence**

- How will you know if the policy delivers its intended outcome / benefits?
  - Evidence from individual cases that staff are aware of the support available.
  - Low numbers of positive tests and subsequent disciplinary cases.
  - Absence of accidents / incidents linked to drug or alcohol use.
- What existing data do you have on the people that use the service and the wider population?

We have data from tests which have been conducted. There are not included here as the low numbers mean staff could be identified.

- Are you breaking down data by equality groups where relevant (such as by gender, age, disability, ethnicity, sexual orientation, marital status, religion and belief, pregnancy and maternity)?

This is done for disciplinary cases of all kinds.

- Are you using partners, stakeholders, and councillors to get information and feedback?

Councillors are involved in agreeing policy changes via Management Review Committee. We work with specialist drug / alcohol organisations to help formulate our policies and put information and support in place.

### **3. Impact**

- Are some people benefiting more – or less - than others? If so, why might this be?

The proposals are for changes to the testing rules which will significantly increase testing in safety critical roles, on a random basis. Approximately 85% of the posts identified for random testing are occupied by male staff. This is not therefore representative of the wider Council workforce but is a reflection of the inclusion and make-up of the Waste Services Team in particular, as well as Parks and Pest Control, which are heavily male-dominated.

### **4. Actions**

- If the evidence suggests that the policy / service / function benefits a particular group – or disadvantages another - is there a justifiable reason for this and if so, what is it?

The proposed policy is intended to promote and safeguard the health and safety of employees and others. Attending work in safety critical roles with alcohol or drugs in the system is unsafe.

- What measures can you put in place to reduce disadvantages?

The policy implementation would include briefings for all staff and would be followed up with regular communications to ensure that the expectations of the Council are clear and that staff have access to specialist support for dealing with any dependency issues.

- Do you need to consult further?

Yes. There has been consultation with Trade Unions and staff at all levels. The final policy will be taken to the Council's Management Review Committee.

- When will this assessment need to be repeated?

When the policy is due to be reviewed or there are legal changes or other significant developments relating to the policy.

**Kirsten Burnett**  
**Head of HR**  
**Updated February 2018**

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# **Draft Drug & Alcohol Policy**

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## **1. Introduction**

- 1.1 Alcohol Concern estimates that up to one third of serious accidents are drink-related. In safety-sensitive jobs, drinking even small quantities of alcohol will increase the risk of an accident.
- 1.2 Nationally, it is estimated that between 3 per cent and 5 per cent of all absences –between 8 and 14 million working days - are lost each year due to alcohol.
- 1.3 In many cases, people who drink problematically or use drugs will consider this to be recreational, social or just a habit, but may still need support to stop such use. Anyone can develop a problem with drugs or alcohol, regardless of educational and social background, financial status, seniority within an organisation etc. There is help available and the policy outlines a range of support available via local agencies such as Inspire or international groups like Alcoholics or Narcotics Anonymous. Many people find recovery with such support.
- 1.4 The key factor for the Council is that impairment through drugs, alcohol, substance use or legal highs can have serious (even fatal) consequences for the user, other employees or members of the public. The focus of our drug and alcohol policy is the safety of all potentially affected people. There are also posts involving dealing with customers or finances where the consequences of impairment through the misuse of drugs or alcohol could have serious consequences for the Council.
- 1.5 Attending work with drugs and / or alcohol in the system above the workplace cut off levels will be considered to be a disciplinary offence and potentially gross misconduct.
- 1.6 The day to day management of this policy is the responsibility of Line Managers.

## **2. Aims**

- 2.1 Every individual has a responsibility for their own health, but it can become apparent in the work environment that an employee is developing health problems. The workplace is, therefore, a legitimate point at which to offer help to those with drug and / or alcohol misuse issues.
- 2.2 This policy aims to:
  - ensure the health, safety and wellbeing of employees and the public;
  - outline the support available to employees with drug and / or alcohol problems;
  - prevent drug and alcohol problems at work through awareness-raising and other means;
  - promote general health and wellbeing and reduce levels of absence as a result of drug and alcohol misuse;
  - set clear rules about the use of drugs and alcohol in the workplace;
  - support managers to tackle perceived problems at an early stage;
  - comply with best practice and legislation, particularly the Health and Safety at Work Act 1974; and
  - protect the reputation of the Council.
- 2.3 The Council will take steps to ensure that this policy is not used in a discriminatory manner contrary to the Equality Act 2010, and to ensure that employees' dignity is respected at all times.

### **3. Scope**

- 3.1 This policy applies to all Council employees and also consultants, agency staff and other third parties working for, or on behalf of the Council. Where the term “employee” is used, this also refers to other groups covered by the policy.
- 3.2 There are certain posts for which it is especially crucial for the safety of individuals, colleagues or members of the public, that drug or alcohol misuse does not affect performance or the reputation of the Council. These positions would have duties which involve or supervise the following, as examples. Roles with higher safety risks will normally (although not necessarily exclusively) be reflected in a job evaluation rating of 3 or 4 under the “work context” factor:
- operation of plant or machinery;
  - significant amounts of driving (either Council vehicles or own vehicle);
  - working on or beside the public highway;
  - handling of chemicals or dangerous substances;
  - a high risk of conflict;
  - working at height, or on construction sites, or in confined spaces; and
  - safe operation or security of premises.

### **4. Responsibilities**

#### **4.1 Employees are responsible for:**

- taking all reasonable steps to take care of their own health and safety and that of colleagues and service users;
- taking personal responsibility for their own drug and alcohol use so that they do not attend work with drugs or alcohol in their system above the workplace cut off levels;
- reporting for work, and remaining throughout the working day, in a fit and safe condition to undertake their duties, ensuring that their performance at work and their judgment are never impaired by drugs and / or alcohol;
- reporting concerns about a colleague being unfit for work due to drugs and / or alcohol to the appropriate line manager;
- reporting any impropriety or breach of procedure, as outlined in the Code of Conduct. This could include drug dealing;
- taking responsibility for themselves in seeking help or advice for an alcohol or drug issue and co-operating with support and assistance provided; and
- informing their line manager or supervisor if they are taking prescribed or over-the-counter medication which may affect their health and safety whilst at work.

#### **4.2 Line Managers will:**

- ensure the effective implementation of this policy and associated procedures;
- ensure the health, safety and welfare of employees in line with legislative requirements;
- be aware of the signs of drug and alcohol misuse enabling prompt intervention via appropriate procedures where a problem is suspected; and
- take appropriate steps to ensure that staff reporting for duty who are or appear to be under the influence of alcohol or other substances are prevented from commencing work and for initiating testing arrangements as appropriate.

#### 4.3 Human Resources will:

- provide advice and guidance on the effective implementation / application of this policy and associated procedure;
- signpost, in conjunction with line managers, employees to specialist agencies for assistance where appropriate;
- refer employees to Occupational Health where appropriate;
- advise on disciplinary procedures in appropriate cases;
- maintain records of all action taken under this policy and associated procedures to demonstrate compliance with legislative requirements;
- provide information to managers and employees on alcohol and drug awareness via the hyntranet, notice boards, health and wellbeing activities, and training where necessary ; and
- review and make recommendations for change to this policy and associated procedure as necessary.

### 5. Drug and Alcohol Misuse

- 5.1 The term “drug and alcohol misuse” applies to the use of illegal drugs or solvents, or problematic use of prescribed drugs or alcohol. It also applies to “legal highs”: substances which produce the same or similar effects, to drugs such as cocaine and ecstasy, but are not controlled under the Misuse of Drugs Act. It also applies to any substances covered by the Psychoactive Substances Act 2016 and any further relevant legislation or amendments to listed legislation.
- 5.2 Alcohol and drugs affect an individual’s performance, efficiency and behaviour and compromise safety. Long-term effects can include liver disease, kidney disease, acute and chronic pancreatitis, diabetes, cardiovascular disease, several types of cancer, depression and anxiety, high blood pressure and increased risk of a stroke.
- 5.3 At work, drug and alcohol misuse, including hangovers, can result in reduced levels of attendance, mistakes, sub-standard work performance, impaired judgment and decision making and increased health and safety risks, not only for the individual concerned but also for others.
- 5.4 Employees who drink irresponsibly or commit offences related to the misuse of drugs and alcohol may put the Council’s reputation at risk and also prompt legal claims against the Council.

### 6. Alcohol

- 6.1 Employees must report for work in a fit state and unaffected by alcohol and maintain this state during working hours, noting the following:
- alcohol stays in the bloodstream for *approximately one hour per unit*. This means that heavy drinking in the evening might affect performance the next day.
  - It is illegal to drink and drive. The minimum penalty is a one year driving ban. In the UK, the alcohol limit for drivers is 80 milligrams of alcohol per 100 millilitres of blood, 35 micrograms per 100 millilitres of breath or 107 milligrams per 100 millilitres of urine - see [www.drinkaware.co.uk](http://www.drinkaware.co.uk) for more information. You must not consume alcohol in Council vehicles. This is strictly not allowed.

- For employees in a safety critical role (see S3), the accepted alcohol limit is **20 micrograms per 100 millilitres of breath**. This Council limit is lower than the UK drink-drive limit and is similar to the limit which applies in many European countries.
  - Employees must not consume alcohol while “clocked on”. However, the Council recognises there may be **exceptional** occasions such as Christmas or a Council function when alcohol is offered on Council premises with the approval of a Director and moderate drinking would be permitted. Non-alcoholic drinks must always be available on such occasions. It is the employee’s responsibility to ensure that they do not exceed the relevant limit for their job as outlined above.
- 6.2 The action level – i.e. where a test is considered positive - for alcohol consumption will be where any employee is found to be over the current legal drink/drive limit (80mg per 100ml of blood or 0.08% blood alcohol concentration (BAC), **35 micrograms of alcohol** per 100ml of breath or 107mg of alcohol per 100ml of urine). In the event that these limits are amended by legislation, the revised limits will apply. For employees in safety critical roles (see S3), the action level will be **20 micrograms** per 100 millilitres of breath.
- 6.3 There may be occasions where a lower limit is agreed in advance with an employee e.g. where an employee has admitted to alcohol dependency and as part of on-going support and / or treatment has agreed to abstain from alcohol completely.

## 7. Drugs

- 7.1 It is a criminal offence under the Misuse of Drugs Act 1971 and other relevant legislation, for any person knowingly to permit the production, supply, possession or use of controlled drugs. The use, possession, consumption, buying or selling of illegal drugs while at work or on Council premises/vehicles is strictly prohibited, will be considered to be gross misconduct and will be reported to the police for investigation.
- 7.2 Employees must not report for work with drugs in their system and must remain drug-free during working hours, meaning that there should be no measurable trace of illegal drugs to UK workplace guideline levels. There is also strong evidence that such use affects the user’s ability to function safely in the workplace.
- 7.3. For the purposes of this policy, ‘drugs’ covers illicit (illegal) drugs, Novel Psychoactive Substances (NPS), also known as ‘legal highs’, over-the-counter drugs, and prescribed medication;
- 7.4 It is of course often necessary or advisable to use prescribed and over-the-counter drugs. However, these too can have adverse effects on work performance and safety. It is an employee’s responsibility to check for any adverse effects with a medical practitioner when required to take a new medication. This is particularly important for anyone who works in a safety critical role (see S3). If an employee negligently fails to make these checks and inform their manager of any potential adverse effects, there could be serious consequences.
- 7.5 In circumstances where prescribed medication adversely affects work performance, managers should allocate different duties wherever possible. Where this is not possible employees should consult with their GP about certified sickness or to discuss possible alternative medication. If people are taking prescribed medication for a long-term health condition or a disability, reasonable adjustments should always be considered.

## 8. Recognising the Symptoms

- 8.1 Because of the potential stigma attached to drug and alcohol misuse, individuals often deny, even to themselves, that they have an alcohol or drugs habit or problem, and conceal it until their dependence is so far advanced they can no longer hide it. The earlier treatment begins the better, so early identification is important. This might be an individual self-referring or a colleague encouraging them to seek support or treatment either internally through the Human Resources / Occupational Health or externally through a support organisation.
- 8.2 Employees should never attempt to cover up for a colleague who they believe is attending work with alcohol or drugs in their system. It does not help the individual concerned and it could potentially cause harm to other employees or the public.
- 8.3 Signs of substance abuse are not always obvious and there is a need to ensure that they are not confused with other symptoms or conditions. Signs of drug and alcohol misuse that managers may look for include:
- sudden mood changes, including irritability, lethargy, excitability, aggression;
  - a tendency to become confused with possible hallucinations;
  - abnormal fluctuations in concentration and energy;
  - decline in work performance and productivity;
  - excessive tiredness;
  - frequent lateness and poor time-keeping;
  - increase in short term absences (particularly Mondays and Fridays);
  - obvious smell of drink during working hours or over a period of time;
  - a deterioration in relationships with colleagues, management, customers or personal relationships at home;
  - excessive and regular lunch time drinking;
  - signs of intoxication, e.g. slurred speech, unsteady, bleary eyes, flushed face, hand tremors;
  - poor personal hygiene; and
  - accident prone.

**These indicators do not prove conclusively that an employee has a drug and alcohol misuse habit or problem; they may be a result of other illnesses or conditions.**

- 8.4 Recognising the symptoms at an early stage is an important factor in assisting the employee to overcome the habit or problem.

## 9. Support

- 9.1 Alcohol and drug dependency are health problems which can respond to treatment given the will, co-operation and motivation of the employee and the appropriate level of support from specialist agencies. Appendix 4 lists a number of sources of support and employees are strongly encouraged to seek support if they need it. The Council will facilitate this support where possible.
- 9.2 Where an employee is found to be displaying the signs of drug or alcohol misuse, this should be discussed privately with the employee by their line manager or an alternative person where appropriate.
- 9.3 If, prior to any positive test or clear evidence of attending work under the influence (and the timing is key), an employee reports that they have a problem, the Council's focus will be on helping the employee to access the appropriate support. This could include making

adjustments at work to avoid safety-critical duties for a period until the problem is resolved or agreeing to more frequent or periodic testing. Support could also include access to the Employee Assistance Programme, counselling if there has been a traumatic event which sparked the problems, and a range of flexible working options, such as flexible hours of work to attend appointments or extended breaks from work to allow periods of rehabilitation.

- 9.4 To enable the Council to assist an employee with a dependency problem he / she will be expected to give permission for the Council to have access to relevant medical information from their GP, and any other appropriate medical information.
- 9.5 If an employee asks for support **after** testing positive for drugs or alcohol, this may be taken into account in how a manager deals with a particular case, in that it is likely to be a mitigating factor in deciding what action to take – including disciplinary action - and it will mean that support is offered alongside any other action. However, it will **not** be a way for an employee to avoid the consequences of their actions and employees should not expect that disciplinary action will be suspended.
- 9.6 In cases where it is believed that the employee has a drug and or alcohol dependency problem, the Council reserves the right to temporarily redeploy the employee to alternative duties if they are available, whilst the employee is undergoing treatment. This is especially important in roles where health and safety are critical. In such cases, pay will only be protected for a period of 4 weeks at which time the rate of pay for the new role will apply, in line with the Pay Protection Policy.
- 9.7 Following effective treatment, and providing the person remains in employment, the Council will endeavor to return the affected employee to the same role as previously if it has been necessary to temporarily redeploy the employee. If this is no longer possible, and medical advice indicates that permanent redeployment is appropriate, the employee will be redeployed to a suitable alternative post (subject to availability) in line with the Council redeployment procedure. If no alternative is available, then dismissal will be considered. Pay protection is unlikely to apply. An addiction to, or dependency on, alcohol, nicotine, or any other substance is excluded from the definition of a disability under the provisions of the Equality Act 2010. Pay protection will only apply if the employee is considered to have a disability, taking into account any advice from the Council's Occupational Health Advisor.
- 9.8 Where any employee denies the existence of a drug and / or alcohol issue, refuses referral or treatment, does not fully engage with a recovery programme, or is not diagnosed as having an alcohol or drug dependency, appropriate action in response to the problem (e.g. conduct, performance, attendance) will be taken in line with the relevant Council policy.
- 9.9 If an employee, after completing a course of treatment for drug and / or alcohol dependency, suffers a relapse, the Council is under no obligation to make provision for any further treatment and the employee may face action under the disciplinary or another procedure. Each case will be dealt with on its own merits.
- 9.10 The Council will take any relevant disability-related issues into account when deciding on any action.

## 10. Drugs and / or alcohol testing

- 10.1 The Health & Safety at Work Act 1974 places a duty on employers to provide a safe and healthy working environment and to ensure the health, safety and welfare at work of their employees as well as visitors, members of the public, contractors and clients on Council premises or within the Borough.
- 10.2 The Road Traffic Act 1988 makes it an offence in law to drive whilst impaired through drugs and / or alcohol. Since 2 March 2015, there is an offence (Section 5A of the Act) which refers to driving, attempting to drive or being in charge of a vehicle with a specified controlled drug in the body, in excess of a specified limit. Roadside drug screening is carried out by the Police to enable prosecution for this offence if above the specified limit.
- 10.3 In order to comply with this duty of care, the Council may require employees to be tested in the following circumstances:

### (i) “Just cause”

Where there is a suspicion or a belief that an employee (or a number from a particular group of employees) is under the influence of drugs and / or alcohol. Any judgment must be based on evidence such as, but not limited to:

- abnormal speech;
- smell of alcohol on the breath;
- behaviour that may be due to the effects of drugs / alcohol;
- an allegation, including whistleblowing, made by another person where there is no evidence that this has been made maliciously. Any evidence of malicious allegations will be investigated under the Council's Disciplinary procedure.

### (ii) Accident / incident

A manager may also undertake a drug and / or alcohol test on an employee who has had any involvement in a workplace accident or any incident which has caused or which may have caused a danger to health and safety. Any employee who tests positive for drugs and / or alcohol following an incident or accident may be reported to the Police.

### (iii) Random testing

Employees in safety critical roles (see S3) may be required to take an alcohol and / or drugs test as part of a system of random testing. On the grounds of protecting health and safety, the Council reserves the right to carry out alcohol and drug screening tests, without prior notice, on employees in the workplace whose activities and job duties have a significant impact on the health and safety of themselves and others. A request for an employee in a safety critical role to undergo alcohol and drug testing does not indicate that he / she is under any suspicion of wrongdoing.

Random testing will follow these key principles:

- a. Groups will be selected between 6 and 12 times each year. This will only be increased in exceptional circumstances, such as a very high number of positive results.
- b. The Council will maintain a list of posts which are subject to random testing and will inform the postholders that they are on this list.

- c. Postholders may ask their Director to reconsider their inclusion on this list, giving reasons of why they feel their post should not be subject to random testing. Decisions will be based primarily on safety considerations.
- d. The size of the group selected for random testing on each occasion will be between 5 and 10% of the whole eligible group.
- e. Each postholder will be allocated a random number on each occasion and the order of numbers will determine whether an individual is selected for testing.
- f. There will be no set pattern to the time intervals between group random testing occasions.
- g. This system will be reviewed after a year of operation and at agreed intervals thereafter and the Trade Unions will be invited to submit feedback.

**(iv) Support / rehabilitation**

As part of the support and rehabilitation process employees may be required to undergo periodic screening or testing.

**(v) Pre-employment / probation**

Testing will form part of the pre-employment checks for potential employees being recruited to all safety critical roles and it is likely that further testing will take place during their probationary period.

- 10.4 A breathalyser will be used to test for alcohol. For drugs, a saliva and / or sweat swab will be taken. If this shows an initial positive result, it will be followed up by a laboratory test on a urine sample. The Council reserves the right to test for any type of substance that might harm performance at work.
- 10.5 Employees who unreasonably refuse to take tests will be subject to disciplinary action. For safety critical roles, a refusal will be treated as a positive result. For other roles, it may be inferred that the employee believed that the test, if carried out, would give a positive result.
- 10.6 Company vehicles may be searched for alcohol and / or drugs. Desk and lockers may also be searched, if there is reasonable cause for doing so and the employee or their representative will be invited to witness desk or locker searches. These are the property of the Council and employees have no absolute right to privacy regarding these areas.
- 10.7 Testing will be carried out by staff trained in testing procedures and in line with the guidance attached in Appendix 1.

**11. Confidentiality**

- 11.1 All meetings held with the employee must be held in private. Managers must keep accurate records of meetings. The records of any employee who has suffered with a drug and alcohol misuse problem will remain confidential.
- 11.2 Requests for help will be treated in the strictest of confidence and any information gathered as a result will be held in accordance with the Data Protection Act 1998 and any subsequent data protection legislation. Information regarding individual cases will not be divulged to third parties unless either permission is given in writing by the employee to do so or where the safety of the employee or others may be compromised by not doing so or if disclosure is required by law.

## **12. Conduct outside of work**

- 12.1 It is not the Council's intention to dictate how much an employee drinks outside of working hours. However, it is important that employees consider the amount of time it takes for alcohol to exit their system. How long it takes for drugs to clear from the system is dependent on a number of factors such as body fat and whether a user is occasional, regular or long term. It is the employee's responsibility to ensure that when they report for work, they have no drugs in their system above the workplace cut off level, and any alcohol is below the limit allowed by this Policy.
- 12.2 Employees should note that if they are drinking or using drugs outside of working hours while wearing their uniform, ID badge or anything that would identify them as a Hyndburn Borough Council employee, then this may, depending on the circumstances (for example if they brought the Council into disrepute), become a disciplinary matter.

## **13. External Contractors**

- 13.2 If any external contractor is considered by the Council to be under the influence of drugs or alcohol and behaving in a way that puts the health and safety of themselves or others at risk, they will be asked to leave the premises/site and the contractor / agency will be informed of the situation.

## **14. Legal Background**

- 14.1 Equality Act 2010 - The Act defines a disabled person as someone who has "a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day to day activities". Under the Disability Discrimination (Meaning of Disability) Regulations 1996 SI 1996/1455, addiction to or dependency on alcohol or any other substance is specifically excluded from the scope of the Act unless the addiction is the result of a medically prescribed drug or other medical treatment. Nonetheless, people with impairments as a result of the addiction, e.g. liver damage as a result of excessive drinking, are covered under the Equality Act.
- 14.2 Employers have a general duty under the Health and Safety at Work etc. Act 1974 (HSW Act) to ensure, as far as is reasonably practicable, the health, safety and welfare at work of employees. Employers also have a duty under the Management of Health and Safety at Work Regulations 1999, to assess the risks to the health and safety of employees. If an employer knowingly allows an employee under the influence of drug misuse to continue working and his or her behaviour places the employee or others at risk, the employer could be prosecuted.
- 14.3 The Transport and Works Act 1992 makes it a criminal offence for certain workers to be unfit through drugs and / or drink while working on railways, tramways and other guided transport systems. The operators of the transport system would also be guilty of an offence unless they had shown all due diligence in trying to prevent such an offence being committed.
- 14.4 The Road Traffic Act 1988 states that any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be guilty of an offence. An offence is also committed if a person unfit through drink or drugs is in charge of a motor vehicle in the same circumstances.
- 14.5 Misuse of Drugs Act 1971 - This is the principal legislation in the UK for controlling the misuse of drugs. Nearly all drugs capable of misuse and / or dependence liability are covered by it. The Act makes the production, supply and possession of these controlled

drugs unlawful except in certain specified circumstances (for example, when they have been prescribed by a doctor). If you knowingly permit the production or supply of any controlled drugs, the smoking of cannabis or certain other activities to take place on your premises you could be committing an offence.

- 14.6 The Psychoactive Substances Act 2016 (PSA2016) – This Act makes it a criminal offence to produce, supply, and offer to supply, possess with intent to supply and import or export, psychoactive substances.
- 14.7 The Council will operate this Policy in line with the Data Protection Act and subsequent regulations.
- 14.8 This policy and its terms will be reviewed on a regular basis and modified as required by any changes in legislation

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## **Appendix 1: Drug and Alcohol Testing Process**

The employee will be asked to complete and sign the testing consent form and will be allowed to be accompanied through the testing process by a trade union representative or a workplace colleague. If the chosen trade union representative or colleague is unavailable, this will not be allowed to delay the process. An available alternative will be sought.

### **1. Drug Testing**

A competent and trained workplace drug and alcohol tester will perform a drug screen by taking a sweat wipe followed by a saliva wipe, using an approved test.

If the result is negative, this will be recorded. In the event of a positive, a specialist collector will be called out to take a secondary urine confirmation sample under legally defensible gold standard "chain of custody" guidelines. The sample is analysed by a UKAS accredited laboratory. Following the analysis, the results will be sent to the Head of Human Resources usually within 5 working days.

The relevant manager will be informed and a meeting will be arranged with the employee to tell them of the results.

### **2. Alcohol Testing**

A competent and trained drug and alcohol tester will perform an alcohol screen using a Home Office approved breathalyser which will show an immediate result. If this shows any alcohol level, a confirmation sample will be taken after twenty minutes. A positive result above the level allowed (35 / 20 micrograms of alcohol per 100ml of breath depending on the role) from the second breath sample will require action under the policy.

### **3. Action following a positive result**

A positive drugs and / or alcohol screening result may result in an employee being redeployed to alternative duties or suspended from work pending a disciplinary investigation.

If a positive result is recorded and the employee has been driving or has been involved in an accident while driving, the police may be notified.

CONFIDENTIAL

## Drug & Alcohol Screening Consent Form

- This is a confidential process
- Please read and sign where indicated

**If consent is refused**

***Employee signature:***

***Witness signature:***

***Reasons for refusal:***

I hereby consent to the following screening test(s) and any possible subsequent confirmation test(s) for the detection of alcohol or drugs and / or their metabolites from a sample(s) of breath, sweat, saliva. I am fully aware of the Council's policy if a positive result is detected. I accept the interpretation of my test results will be completed by the Screener and recorded below.

Complete list of medication, Doctor, Chemist or over the counter, in the last week:

1.	
2.	
3.	
4.	

Employee name		Signature	
Form of ID			
Examined by		Signature	
Date (dd/mm/yyyy)		Time	AM/PM

**PLEASE TURN OVER**

## Drug Screen:

Screening device: **DrugWipe Dual**

Batch Number: ..... Expiry Date .....

Two Control Lines appear **Yes No** Circle correct answer, cross out incorrect answer

Any other Result Lines appear? Tick as appropriate

NONE		Ca		Co		Op		Am	
------	--	----	--	----	--	----	--	----	--

## Alcohol Screen:

Time: hr : min

Result in numbers:

Result in words:

## Alcohol Confirmation – if any alcohol present in initial screening:

Time: hr : min

Minimum **20 minutes** after initial alcohol screen

Result in numbers:

Result in words:

## Signatures to acknowledge the results:

Employee Name		Signed	
Screener Name		Signed	
Witness Name		Signed	
Witness Name		Signed	

*NB. This information must be kept in the strictest of confidence and in line with the Data Protection Act 1998*

## Appendix 2: Questions and Answers

### **Q. How do I know if I have a problem with alcohol or drugs?**

- A. If you are using illegal drugs, or abusing solvents or prescription drugs, then you risk breaching this policy and facing potentially serious employment consequences, quite apart from the risks to your health. We would urge you to seek support.

Alcohol is legal but can also be harmful. Each individual has to establish the seriousness of their problem by assessing how it affects their own life and / or behaviour. It may be useful if you ask yourself the following questions:

- How much do you drink each week? The benchmarks from the Health and Safety Executive are as follows
- Men -** If you drink between 3 and 4 units\* per day or fewer there are no significant risks to your health BUT.....  
If you consistently drink 4 or more units a day, there is an increasing risk to your health.
- Women –** If you drink between 2 and 3 units\* a day or fewer, there are no significant risks to your health BUT.....  
If you consistently drink 3 or more units a day there is an increasing risk to your health.

\*1 unit = ½ pint of beer/ a single measure of spirit/ a small glass of wine

- Do you drink alone or with others?
- Do you drink every day, or binge after a bad day at work/home?
- If you binge at night are you fit to drive in the morning? (It takes a healthy liver approximately 1 hour to break down and remove 1 unit of alcohol.)
- Can you, when you want to, stop drinking?
- Have you ever decided to stop drinking for a week or so but only managed a couple of days?
- When you start drinking, can you control the amount you drink?
- Do you regularly intend just having one or two drinks, but “get the taste” and carry on?
- Are your relationships or work suffering because of your drinking?
- Do you ever lie about the amount you drink or wish people would mind their own business about your drinking?

In addition to these questions, look at the section “Recognising the symptoms” and decide if any of these apply to you.

You can also complete a drinking self-assessment questionnaire on [www.drinkaware.co.uk](http://www.drinkaware.co.uk)

### **Q. If I think a colleague has an alcohol or drug habit or problem and I advise my manager, would this be kept confidential?**

- A. If you believe that a colleague has a drug or alcohol habit or problem you have a duty of care to inform your manager. You may ask your manager to maintain your anonymity.

**Q. If I tell my manager that I have a problem will this mean that I will lose my job?**

A. The policy should assure employees that when they seek help they will be supported to get it. However, this will also depend on timing. Reporting a problem following a positive test will mean that your policy breach is also being dealt with as a serious disciplinary matter. If you do not take the necessary steps to address the issue and your work performance, conduct or attendance declines, you may place yourself and others, or the reputation of the Council at risk. If you attend work with drugs and / or alcohol in your system, then you may ultimately face dismissal. If you are being investigated under the Disciplinary Procedure, for example, and you tell us that you have a problem and would like support, then we will be able to take this into account when deciding what action to take. It is better to be honest and get help than continue to cause harm to yourself and those around you.

**Q. Will I lose my job if I arrive at work under the influence but I do not have a drug and alcohol misuse problem, e.g. overindulgence the previous night?**

A. Employees who arrive at work with alcohol above the limit allowed, or with any level of illegal drugs in their system may be subject to the Council's disciplinary procedure. This will be considered as gross misconduct and may result in dismissal.

### Appendix 3: Commonly Used Drugs in the UK

Name	How Taken	Effects
Cannabis (marijuana, grass, pot, weed, dope, ganja, hash, blow, 420)	Compressed into resin or loose dried plant. Usually smoked with tobacco in the form of a reefer or a joint. Also smoked in small pipes. Occasionally eaten	Causes a relaxed, talkative state with a heightened sense of sound and colour. Risk of dependence. May cause respiratory problems, including lung cancer.
Cocaine (Coke, crack, nose candy, charlie, snow)	Sniffed, injected, smoked	Causes a sense of wellbeing and alertness. Can cause psychosis and paranoid delusions. Risk of dependency following initial elation
Amphetamines (speed, uppers, whizz, blues, berries, sulph)	Sniffed (in powder form), injected, swallowed as capsules or as tablets	Causes a feeling of alertness and energy. Can also increase confidence. Increases the pulse rate and distorts hearing and vision. Can also cause anxiety or panic and paranoid delusions. Increased risk of dependence
Alcohol	Swallowed as a beverage	Excessive use can cause double vision, impaired speech, loss of sight and hearing, aggression, depression, respiratory depression, loss of consciousness, liver disorders, circulatory problems.
Heroin ( smack, junk, horse, scag, H, gear)	Heroin is, smoked or heated on tin foil and inhaled ('chasing the dragon')	Causes a sense of warmth and wellbeing. Also causes drowsiness. Other effects are physical and psychological dependence and impotence. High overdose risk as a result of a loss of tolerance due to abstinence
Barbiturates (barbs, downers)	Can be swallowed as tablets or capsules. Injected as an anaesthetic	Causes a calm and relaxed state. May cause clumsiness and a loss of co-ordination. High risk of dependency and possibility of overdose, especially if mixed with alcohol
Tranquilizers benzodiazepines such as diazepam (Valium), chloridiazepoxide (Librium), lorazepam (Atvian), oxazepam (Serenid), temazepam (Normisson)	Swallowed as pills, tablets or capsules. Can be injected	Prescribed for the relief of anxiety and for the treatment of insomnia. High doses may cause drowsiness. Risk of dependency and overdose if mixed with alcohol
Ecstasy (E, XTC, doves, disco, biscuits, scooby doos)	Swallowed as tablets	Causes alertness and energy and a sense of wellbeing to others. Causes flashbacks, mild intoxication, anxiety, panic, insomnia, visual and auditory hallucinations and paranoid psychosis. Adverse effects include overheating and dehydration if dancing which can also damage lungs
LSD (Lysergic acid diethylamide) Acid, trips tabs, dots,	Small squares of paper or tablets taken orally	Causes hallucinations called 'trips'. This may cause anxiety and panic. Can cause a recurrence of feelings experienced previously

blotters		(flashbacks). Deaths have occurred from perceptual distortions causing reckless behaviour. 'Trips' can last for 8 – 12 hours
Magic Mushrooms	Can be eaten fresh or dried and swallowed or brewed like tea	Similar effects as LSD
Poppers (alkyl nitrates, including amyl nitrate, can be known as thrust, TNT or Ram)	Sniffed	Causes a brief and intense head rush caused by a sudden surge of blood to the brain. Effects can be nausea and headaches, loss of co-ordination, fainting. Can cause sores around the mouth and nose. Dangerous for those who suffer from glaucoma, anaemia, breathing or heart problems
Solvents (including lighter fuels, aerosols, glues, cleaning fluids)	Inhaled or sniffed, usually from a plastic bag	Causes extreme intoxication with perceptual disorientation. Can cause a risk of heart or brain damage. May cause nausea, blackouts, increased risk of accidents
Anabolic steroids (many trade names)	Injected or swallowed as tablets	Increases muscle mass and strength, improves physical performance, reduces recovery time required following physical exercise. Side effects include: Acne, liver and kidney disorders, raised blood pressure, increased risk of heart attack and stroke, irritability, aggression, mood swings. Injecting equipment brings risk of HIV or Hepatitis infection.

## Appendix 4: Useful Contacts

Address & contact details	Service details	Referral method
Employee Assistance Programme		
<p>Workplace Options</p> <p>Freephone - 0800 243 458  E-mail - <a href="mailto:assistance@workplaceoptions.com">assistance@workplaceoptions.com</a>  Website - <a href="http://www.workplaceoptions.com">http://www.workplaceoptions.com</a>  Outside the UK - +44 (0)20 8987 6550  SMS (For call back) - +44 (0)7909 341 229  Minicom - +44 (0)20 8987 6574</p>	<p>Self-referral or via line manager / HR  The EAP is confidential and free for you to use. It is available 24 hours a day, 7 days a week, 365 days a year and is accessible by phone, e-mail and online.</p> <p>The EAP can provide –</p> <ul style="list-style-type: none"> <li>• Practical information</li> <li>• Fact sheets and packs</li> <li>• Resource information on support services in your local area</li> <li>• short-term face-to-face or telephone counselling to help you get back on track</li> <li>• extensive website resources including articles, interactive tools and regular online seminars</li> </ul> <p>The EAP is designed to help you with a wide range of work, family and personal issues. Topics include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Work-life balance</li> <li>• Elder care information</li> <li>• Life events</li> <li>• Childcare information</li> <li>• Health and well-being</li> <li>• Anxiety and depression</li> <li>• Family issues</li> <li>• Disability and illness</li> <li>• Careers</li> <li>• Education</li> <li>• Consumer rights</li> <li>• Stress</li> <li>• Relationships</li> <li>• Immigration</li> <li>• Debt</li> <li>• Bullying and harassment</li> <li>• Bereavement and loss</li> <li>• Workplace pressure</li> </ul>	
Inspire Accrington - East Lancs Integrated Substance Misuse Service		
<p>Tel: 01254 282900  33 Eagle Street  Accrington  Lancashire  BB5 1LN</p>	<p>Fully integrated substance misuse service offering rapid and open access to assessment and treatment for people experiencing problems with drugs and / or alcohol, promoting recovery from addiction and dependence. Also offers family and</p>	<p>To access support, advice or treatment please drop in. An assessment will be carried out, treatment options discussed and a recovery plan</p>

	carer support services including 1-1 support, free phone helpline.	initiated.
<u>Alcoholics Anonymous UK</u>		
<p>Call our National Helpline 0845 769 7555 <a href="mailto:help@alcoholics-anonymous.org.uk">help@alcoholics-anonymous.org.uk</a> Calls charged at local rate on BT lines. Other networks may vary.</p>	<p>Alcoholics Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism.</p> <p>The only requirement for membership is a desire to stop drinking. There are no dues or fees for AA membership.</p>	<p>AA meetings take place in towns throughout the country on most days (including evening meetings). Details online or via helpline.</p>
<u>Narcotics Anonymous</u>		
<p><b>Helpline:</b> 10.00am - midnight <b>0300 999 1212</b></p>	<p>N.A. is a non-profit fellowship or society of men and women for whom drugs had become a major problem. There is only ONE requirement for membership, the desire to stop using.</p>	<p>NA meetings take place in towns throughout the country on most days (including evening meetings). Details online or via helpline.</p>
<u><a href="http://redroserecovery.org.uk">redroserecovery.org.uk</a></u>		
<p>East Lancashire Office</p> <p>St James Old School House, Cannon Street, Accrington, BB5 2ER</p> <p>01254 352580</p>	<p>Red Rose Recovery is a service user led charity, working with people from the recovery community. This includes people in recovery from addiction to alcohol and substance misuse, their families and others affected.</p>	
<u>Needle Exchange &amp; Harm Reduction service - Blackburn</u>		
<p>Tel: 01254 263525 Jarman Centre, 53 James Street, Blackburn, BB1 6BE</p>	<p>This is a comprehensive HIV prevention, sexual health and drugs health promotion service. It is a harm minimisation service, targeting health professionals and members of the public. They offer structured counselling.</p>	Self
<u>THOMAS</u>		
<p>Tel: 01254 677321 St Anne's Church, France Street Blackburn, BB2 1LX</p>	<p>THOMAS provides mentoring, a drug and alcohol support group and rehab services for prisoners, ex-prisoners, ethnic minorities, and socially excluded people in the community. Services offered: structured counselling, structured day programme, residential rehabilitation and aftercare.</p>	Self

<u>Lifeline East Lancashire</u>		
Tel: 01254 677493 68-70 Darwen Street, Blackburn, BB2 2BL	Lifeline East Lancashire provides specialist drug and alcohol support and recovery services to young people under the age of 25 who reside within the borough of Blackburn with Darwen. The service also delivers open access support to young people, parents, carers and professionals in the borough.	Self, professional, family, carer, please call to discuss.
<u>Inspire Clitheroe - East Lancs Integrated Substance Misuse Service</u>		
Tel: 01200 413630 44a York Street, Clitheroe, BB7 2DL	Fully integrated substance misuse service offering rapid and open access to assessment and treatment for people experiencing problems with drugs and / or alcohol, promoting recovery from addiction and dependence. Also offers family and carer support services including 1-1 support, free phone helpline.	To access support, advice or treatment please drop in. An assessment will be carried out, treatment options discussed and a recovery plan initiated.
<u>Blackburn with Darwen Substance Misuse Service (Drug and Alcohol Service)</u>		
Tel: 01254 226062 Regent House, Regent Street, Blackburn, BB1 6BH	Provides confidential support, counselling and advice to drug and alcohol users, their friends and relatives. Refers on to rehabilitation, in-patient detoxification and other drug services.	Self
<u>Discover - Preston</u>		
Tel: 01772 825492 7 Lune Street, Preston, PR1 2NN	Adult substance misuse (drugs and alcohol) and criminal justice services.	Self-referral or via other agency.
<u>Addaction Preston Young Persons Service</u>		
Tel: 01772 255307 Urban Exchange Mount Street Preston Lancashire. PR1 8BS	Services for young people up to the age of 18 with concerns about drug and alcohol use including: Prescribing, Medical help, Professional help, Harm Minimisation advice, Advice and Information, Complementary Therapy, Group work.	Self or via a range of youth programme agencies and organisations.



## Appendix 5: Sample Alcohol / Drugs Programme Action Plan

**Confidential**

Name.....

Date Programme commenced.....

Action	Timescale	Comments
Set monitoring meetings during recovery programme	Weekly/ Fortnightly/ Monthly	
Set follow up medical appointments (note of appointments scheduled)		
Monitor and report on general attendance at work (sickness absence, lateness)		
Monitor work performance (identify areas of concern, set standards and outline whether these have been achieved)		
Any Other Issues e.g. review of agreed support mechanisms		

**Note:** Not all these areas will be appropriate and this form may need to be designed according to the circumstances of each case. If in doubt contact an advisor from Human Resources

Signed (Manager): \_\_\_\_\_ Date: \_\_\_\_\_

Signed (Employee): \_\_\_\_\_ Date: \_\_\_\_\_

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## PRIVACY IMPACT ASSESSMENT - Drug and Alcohol Policy

### Purpose

#### What personal information do you intend to collect or use and why?

The proposed Drugs and Alcohol policy proposes moving to a system of random testing for Council employees occupying posts considered "safety critical". Other staff may be asked to undergo testing "with cause".

The data which will be recorded will be the results of any initial screening tests, and in the case of an initial positive screening for drugs, a urine sample will be collected by an external laboratory. This will include storing records of the employee's name, date of birth, NI number and gender.

The reasons for undertaking testing are as follows:

- to ensure that staff are fit to attend work, especially when undertaking safety critical roles;
- to protect staff and members of the public;
- under the Health and Safety at Work Act 1974, the Council has a duty to ensure a safe place of work and safe systems of work for its staff and has duties to assess the risks to their health and safety under the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242); and
- random tests are aimed at deterring drug or alcohol misuse in safety critical roles due to the unpredictable intervals at which they can be carried out.

### Processing

#### What do you propose to do with the personal information?

e.g how will you collect the information, where will you keep it, how will you use it, who might you share it with, how and when will you delete it?

An electronic record will be made of the testing, the outcome of the screening and any lab results. This can only be accessed by HR, or by the relevant line manager.

### Justification

#### Why is what you propose a necessary and proportionate thing to do?

e.g is the impact on privacy proportionate to the aims of the project?

We have had a number of instances of drug and alcohol tests which have shown positive results. These were mainly carried out following whistleblowing allegations, which proved to be at least partially justified. There is evidence from local drug and alcohol support organisations that some drugs, such as cannabis and cocaine, are being used on a widespread basis in the area. Many of our jobs are safety critical because they use machinery or hazardous substances, drive vehicles, operate beside the public highway, or because they involve regular conflict and / or lone working.

We believe that testing for health and safety reasons is justified as the risk to health and safety outweighs the adverse impact that the testing could have on the individual in terms of data protection, interference with human rights and damage to the relationship of trust and confidence.

Testing "with cause" is testing where there is a reasonable suspicion that the employee's performance or conduct is impaired by drugs or alcohol, giving rise to a safety risk. In these circumstances, the Council will attempt to investigate the situation before carrying out a test, including asking the employee for an explanation of his or her behaviour. However, we will also bear in mind that the need to investigate must

be balanced against the fact that time is of the essence in determining accurate results.

In safety-critical areas, we believe that we are justified in testing employees following the occurrence of a workplace accident that caused or could have caused a danger to health and safety, regardless of whether or not the employees' behaviour suggests drug or alcohol use.

## Consultation

### Have you consulted the people who may be affected by what you propose?

Please give details of the consultation – who did you consult, how did you consult them, what did they say and has this led you to change your proposal in any way?

If you do not intend to consult, please explain why.

The initial draft policy was sent out to all staff in November 2017. Staff whose posts were identified for the random testing pool have also been asked to feed back any comments about their inclusion. Only one team have commented on the risks attached to their role and this is being considered via the job evaluation process.

The Trade Unions have been consulted. GMB and Unite returned no comments. Unison suggested some changes, some of which have been incorporate into the draft policy. However, the local branch has been advised by the Regional office not to agree to the changes. We understand their position but believe the changes are required. Management Review Committee will be advised of Unison's position before making a decision.

## Privacy Risks

### What are the privacy and other risks ?

Drug and alcohol testing are protected by Article 8 of the European Convention on Human Rights - the right to privacy. Any infringement of that right must be:

- in accordance with the law
- in pursuance of a relevant legitimate aim, and
- necessary in a democratic society

This test of 'proportionality' involves balancing the potential infringement of the individual's rights against the specific objectives of the employer.

Under the Act, the term 'processing' includes 'obtaining, recording, holding, using or disclosing' data. Data which reveals information about criminal conduct or health, as drug and alcohol testing is likely to do, can only be processed in accordance with the principles contained in the Act. We will therefore ensure that we are fair to the employee, specific as to why we are keeping the information, and that this is relevant, accurate, not kept longer than necessary, kept secure and processed and transferred in accordance with the Act.

The results of drugs tests may disclose that an employee is taking prescribed drugs and is disabled for the purpose of the Equality Act 2010.

We will use the most non-invasive testing methods for drugs and alcohol that we can. Our proposed methods are sweat / saliva wipe for the initial drugs screening and a breathalyser for alcohol. These are the same as the Police use so we can be confident in their reliability. Employees may need to give urine samples in the event of a positive drugs screen but privacy will be respected as far as possible while maintaining the necessary chain of custody procedures.

**How will you reduce the risks?**

<b>Mitigation measure(s) (use a continuation sheet if you need to)</b>	<b>Risk reduced or eliminated?</b>
Where tests are carried out, they will be done in a way that assures the dignity and confidentiality of the employee is kept intact. Tests will be carried out in a private location. Employees may request to have a witness present.	Reduced
We will use the least intrusive methods possible to conduct tests.	Reduced
We will limit testing to those substances and the extent of exposure that will have a significant bearing on safety, by using the legally defensible workplace cut off levels for drugs tested by the Police when looking at fitness for driving.	Reduced
The criteria used for selecting staff for testing are justified, properly documented, adhered to and communicated.	Reduced
Random testing will be confined to employees whose activities have a significant impact on health and safety, i.e. where their private activities could significantly impact on their safe job performance.	Reduced
We will make sure that employees are fully aware that drug or alcohol testing is taking place, and of the possible consequences of being tested by having a clear policy and communicating this.	Reduced
We will ensure that consent is properly explained and obtained before any testing goes ahead.	Reduced
If a positive test result is received, we will consider whether or not the drug or alcohol issue impacted on the employee's work, other staff or health and safety before reaching any decision on disciplinary action.	Reduced
We will give due consideration to whether or not any assistance can be given to an employee with an addiction problem.	Reduced
We will ensure that drug and alcohol testing is conducted by trained testers.	Reduced
Only those who need the information to manage the employee should have access to it.	Reduced

**Completed by Kirsten Burnett, Head of HR  
9 March 2018**

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