

<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 feel 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**

<b>Financial implications (including any future financial commitments for the Council)</b>	There is a cost to the testing equipment and lab urine analysis. This year to date we have sent £7196 in total.
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<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> A <u><a href="#">Customer First Analysis</a></u> should be completed in relation to policy decisions and should be attached as an appendix to the report.	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**