

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

20 December 2010

REPORT OF CORPORATE MANAGEMENT TEAM

CABINET DECISION

Management and Finance – Lead Cabinet Member – Councillor Terry Laing

Review of the Substance Misuse Policy

1. Summary

On 5th March 2009, Cabinet considered a report on drug testing for taxi drivers. In approving the report, Cabinet resolved that "Officers investigate the introduction of random drugs testing for all who drive vehicles or operate heavy machinery on behalf of the Council". On 5th November 2009 Cabinet gave approval to a new Substance Misuse Policy designed to offer guidance and support to employees in this sensitive area of work. Members agreed to defer a decision on one element of the policy relating to substance misuse testing of employees until the scheme currently being developed for taxi drivers could be assessed. This report summarises the experience following the implementation of the random drug testing of taxi drivers and considers the advantages and disadvantages of introducing a similar policy in respect of employees

2. Recommendations

That Cabinet agree that the Substance Misuse Policy be amended to incorporate a provision for the substance misuse testing of employees, with their consent, where it is felt that there is just cause for doing so.

3. Reasons for the Recommendation

On 5th March 2009, Cabinet considered a report on drug testing for taxi drivers. In approving the report, Cabinet resolved that "Officers investigate the introduction of random drugs testing for all who drive vehicles or operate heavy machinery on behalf of the Council". Currently testing is not widespread in local government and evidence for its introduction is not therefore readily available. In addition at that time the development of testing protocols, training and discussions with the taxi drivers were incomplete and as the introduction of testing would need to be agreed with the Trade Unions and incorporated into a specific policy showing clearly the benefits to be gained and the financial implications associated with this approach it was agreed that a decision on this issue would be deferred until the operation of the scheme for taxi drivers had been in operation for 6 months. This would enable a clearer assessment of the benefits of the application of the scheme to employees to be fully understood.

Drugs detection testing of taxi drivers began in December 2009 and to date 86 drivers have been screened. This report considers the advantages and disadvantages of introducing a similar scheme to certain employees.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

AGENDA ITEM

REPORT TO CABINET

16th December 2010

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Review of the Substance Misuse Policy

1. SUMMARY

On 5th March 2009, Cabinet considered a report on drug testing for taxi drivers. In approving the report, Cabinet resolved that "Officers investigate the introduction of random drugs testing for all who drive vehicles or operate heavy machinery on behalf of the Council". On 5th November 2009 Cabinet gave approval to a new Substance Misuse Policy designed to offer guidance and support to employees in this sensitive area of work. Members agreed to defer a decision on one element of the policy relating to substance misuse testing of employees until the scheme currently being developed for taxi drivers could be assessed. This report summarises the experience following the implementation of the random drug testing of taxi drivers and considers the advantages and disadvantages of introducing a similar policy in respect of employees

2. RECOMMENDATIONS

That Cabinet agree that the Substance Misuse Policy be amended to incorporate a provision for the substance misuse testing of employees, with their consent, where it is felt that there is just cause for doing so.

DETAIL

1. On 5th March 2009, Cabinet considered a report on drug testing for taxi drivers. In approving the report, Cabinet resolved that "Officers investigate the introduction of random drugs testing for all who drive vehicles or operate heavy machinery on behalf of the Council". Currently testing is not widespread in local government and evidence for its introduction is not therefore readily available. In addition at that time the development of testing protocols, training and discussions with the taxi drivers were incomplete and as the introduction of testing would need to be agreed with the Trade Unions and incorporated into a specific policy showing clearly the benefits to be gained and the financial implications associated with this approach, it was agreed that a decision on this issue would be deferred until the operation of the scheme for taxi drivers had been in operation for 6 months. This would enable a clearer assessment of the benefits of the application of the scheme to employees to be fully understood.
2. The issue of drivers carrying and/or taking drugs had been the subject of a number of disciplinary hearings at the Licensing Committee. Officers believed that the introduction of random drug testing would increase public safety, improve the reputation of the reputable licensees and assist the authority in fulfilling its duties under section 17 of the Crime and Disorder Act 1998.
3. The policy for testing taxi drivers was implemented in December 2009. There are currently 783 people who have a taxi driver licence who could be tested by the Council and to date,

- 86 tests have been carried out; 10 people failed when initially tested, however when a second test was carried out at the laboratory only 2 tested positive.
4. There are of course a number of positive arguments for testing. There are potential benefits to improving safety, efficiency, the Council's reputation and employee welfare. The arguments are strongest with respect to safety-critical occupations, where drug-induced intoxication can increase the risk of an accident. There are approximately 500 Council employees employed in roles with safety elements such as gardeners and refuse workers, but another 2000 who at some time may be required to undertake driving duties within their working week
 5. However the majority of testing for drug and alcohol misuse is carried out by safety-critical organisations. Drug testing employees is very limited in local government and the Council does not have evidence of significant problems caused by employees who drink or take drugs. In the last few years, there have been only two occasions of employees who have been referred to STEPS or Occupational Health following a disciplinary investigation / welfare meeting. Both drugs cases were office-type based and non-driving roles. Currently Hartlepool, Darlington, Gateshead, North Tyneside, South Tyneside and Middlesbrough Council do not carry out drug testing. Redcar and Cleveland Council are the only council in the area that currently drug test employees where they feel there is a specific problem.
 6. There are also a number of legal implications to consider when introducing screening for employees:
 - Agreement to the principle of screening must be incorporated into each employee's contract of employment and would require a specific and detailed policy.
 - Every job and component part of a job would need to be evaluated as to the likely impact of the effects of being under the influence of drugs at work and whether random drug testing would need to be considered for that role.
 - The Council would need to obtain the written consent of the individual for each test and could not force a test on an unwilling employee.
 - With regard to privacy and data considerations the fourth part of the Employment Practices Data Protection Code states "Very few employers will be justified in testing to detect illegal use rather than on safety grounds; adding: "even in safety critical businesses such as public transport or heavy industry, workers in different jobs will pose different safety risks. Therefore collecting information through the random testing of all workers will rarely be justified".
 - Care would need to be taken to ensure the process was entirely random or the Council could be at risk of litigation. For example the Council could be accused of discrimination or if employees are not given the necessary privacy (even for a mouth sample), this could be deemed as unreasonable and a breach of their human rights.
 7. As well as the complex legal position, there are however a number of disadvantages to the introduction of drug testing. For instance, bearing in mind the low level of positive results from testing taxi drivers, testing employees may produce few positives and the financial cost and implications on employee morale in the current climate may outweigh any benefits.
 8. Although drug testing has become more reliable over recent years, testing does not always accurately indicate that a person has taken an illegal drug. In some cases a person can give a positive result when they have had legal prescription drugs or over the counter medication such as painkillers or cough syrup. In addition, the test cannot state when the employee has taken the drug or whether they are under the influence of the drug and does not measure the effects of drugs and alcohol in the form of intoxication or impairment. This means the tests cannot distinguish whether the employee is a one off user or someone with serious dependency problems. Therefore the test cannot give the majority of the information that is needed, which is whether someone is, or was, under the influence of drugs while at work. It will, at best, be able to tell that the person is likely to have consumed a particular drug in the recent past.
 9. There are differences in the relationship the Council has in terms of its role in granting taxi licenses and its role as an employer. Taxi drivers are self employed and consequently the licensing department do not have close contact with the drivers. It is therefore very difficult

to monitor when drivers could be under the influence of drugs in the course of their work. This is not however the case for employees who have regular contact with managers. Consequently it is easier to identify if people are under the influence of drugs whilst at work through changes in behaviour and work performance. Research indicates that good management is the most effective method for achieving higher productivity, enhanced safety, low absentee rates, low staff turnover and a reliable and responsible workforce. This has certainly been the approach in managing sickness absence with considerable success.

10. It is therefore recommended that drug and alcohol testing continues to be offered to employees where there is just cause, for instance where concerns have been raised by a manager or as part of ongoing health and welfare interventions. This proposal has been discussed with the Human Resources Strategic Management Group and with the Trade Unions and they are supportive of this approach.

FINANCIAL IMPLICATIONS

10. There is no budget provision to undertake drug testing of employees. Costs include the cost of purchasing equipment, the on going cost of tests (currently £65 per test) and vaccination costs for those employees administering the test.

LEGAL IMPLICATIONS

11. Failure to follow a fair process can potentially result in the employee being able to claim unfair dismissal or discrimination in the workplace. Any potential testing will be in accordance with the relevant legislation including, Health and Safety at Work Act 1974, Equality Act 2010, Human Rights Act 1998, Misuse of Drugs Act 1971, Drugs Act 2005, Road Traffic Act 1988 and the Data Protection Act 1998.

RISK ASSESSMENT

12. This policy is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

EQUALITIES IMPACT ASSESSMENT

13. The Substance Misuse Policy has been subject to an Equality Impact Assessment and has been judged to have a positive impact. This report does not need a further Equalities Impact Assessment.

CONSULTATION INCLUDING WARD/COUNCILLORS

14. This policy has been discussed with the Trade Unions who are in favour of the recommended approach. This is not a ward specific matter.

Name of Contact Officer: Julia Spittle
Post Title: Head of Human Resources
Telephone No. 01642 527016
Email Address: Julia.spittle@stockton.gov.uk

Background Papers: None

Ward(s) and Ward Councillors: None