

DATA LABEL: PUBLIC



**PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL**  
**POLICY ON THE MISUSE OF ALCOHOL, DRUGS AND OTHER SUBSTANCES**  
**REPORT BY HEAD OF CORPORATE SERVICES**

**A. PURPOSE OF REPORT**

To update the Panel on the current position with regard to the proposed implementation of random testing and proposals on the development of an education, training and awareness programme as part of the council's Policy on the Misuse of Alcohol, Drugs and Other Substances.

**B. RECOMMENDATION**

It is recommended that the Panel;

1. Notes the extension of the moratorium on random testing until 30 November 2020;
2. Notes the revisions to the definition of safety critical posts; and
3. Considers the proposals for the development of a virtual education and awareness programme to support managers in meeting their responsibilities under the policy during this challenging time.

**C. SUMMARY OF IMPLICATIONS**

**I Council Values**

Focusing on our customers' needs  
Being honest, open and accountable  
Providing equality of opportunities  
Developing employees  
Making best use of our resources  
Working in partnership

**II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)** The council has a statutory obligation to ensure the health, safety and welfare of all its employees whilst at work, and any other person who may be affected by its acts or omissions.

**III Implications for Scheme of Delegations to Officers** None

<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	Alcohol and drug testing will have financial resource implications.
<b>VII</b>	<b>Other consultations</b>	Consultation has taken place with the council's recognised Trade Unions.

## **D. TERMS OF REPORT**

### **D.1 Background**

The Council Executive on 23 April 2019 approved a revised council Policy on the Misuse of Alcohol, Drugs and Other Substances to be implemented with effect from 1 September 2019.

Along with promoting a zero tolerance approach to the misuse of alcohol, drugs and other substances in the workplace, the revised Policy introduced random and with cause alcohol and drug testing.

The policy made provision for random testing to be carried out amongst staff groups occupying posts designated as safety critical. Safety critical posts were defined as those involving:

- The use of heavy machinery;
- An occupational requirement to drive Heavy Goods Vehicles (HGVs) or Passenger Carrying Vehicles (PCVs); or
- The transportation of council clients.

With cause testing, on the other hand, applies to all employees and can be undertaken at any time where a manager has reasonable cause to suspect that an employee is under the influence of alcohol or drugs at work.

### **D.2 Avoidance of Dispute**

Prior to implementation of the revised policy on 1 September 2019, UNISON initiated an avoidance of disputes process stating that they considered it unacceptable to treat select groups of staff differently; and that the health, safety and welfare of all employees and the risk to the public could be adequately eliminated by the proper management of employees and by a correct and robust use of with cause testing.

It is UNISONs position that they will *'accept the use of with cause alcohol, drug and other substance testing for ALL staff OR we will accept the use of both with cause and random testing for ALL staff but we will enter dispute should the use of random testing for selected groups of employees commence'*.

Similar representations have been made by other recognised trade unions including GMB and UNITE who have balloted members on industrial action specifically with reference to random testing of select groups. The EIS position is that they are

opposed to random testing and have instructed members to withdraw from arrangements to voluntarily transport pupils if they are subjected to random testing.

As a result of the above, it was agreed at the Avoidance of Disputes Committee on 28 August 2019 that the council would enter into discussions with UNISON on aspects of the policy relating to random testing. It was further agreed that random testing would be suspended pending further dialogue with all recognised trade unions. All other aspects of the policy, including with cause testing, were implemented with effect from 1 September 2019.

A further meeting of the Avoidance of Disputes Committee was held on 29 October 2019 where further dialogue between officers and trade unions was encouraged. It was also agreed at this meeting that a report would be presented to the Partnership and Resources Policy Development and Scrutiny Panel updating on the outcome of these discussions.

### **D.3 Impact of the COVID-19 Pandemic**

The PDSP meeting of 3 April 2020 did not go ahead as a result of the COVID-19 Pandemic and resulting lockdown, and the decision was taken, in consultation with the recognised Trade Unions, that the moratorium on random testing would be extended until 31 August 2020. During this period the ballot for strike action expired and GMB committed to not pursue industrial action during this time of crisis.

As the council works toward recovery and remobilisation following the lockdown and continuing threat to public health from COVID-19 a three-month extension to the moratorium on random testing will be applied. This is considered appropriate as it:

- allows further time for recovery, remobilisation and establishment of new normal ways of working before proposing the implementation of random testing which has proven to be a contentious issue; and
- reduces the risk of virus transmission by avoiding testing in large numbers where the method of testing involves a breathalyser and mouth swab. While Syn-lab, the drug and alcohol test provider, has advised that testing can take place with appropriate PPE and other appropriate control measures it is considered prudent to limit testing at this time to 'with-cause' situations and further limit any risk to employees and those administering tests.

### **D.4 Education, Training and Awareness**

At the PDSP meeting on 7 February 2020, the Panel agreed that a programme of education, training and awareness should be developed to support managers to meet their responsibilities under the policy. The proposed programme will cover:

- the risk assessment process
- observational issues and spotting the signs of misuse
- having difficult conversations and the use of direct questioning
- the risks and effects of drug and alcohol in the workplace
- the impact of misuse on the health and safety of employees, customers and the public

Discussions with the recognised Trade Unions on the proposed programme of education, training and awareness have been encouraging with all concerned recognising the value of such a programme.

Prior to lockdown, Human Resources were in the process of seeking quotes from specialist providers to deliver a programme as detailed above, however this process has stalled as the providers were unable to continue with these discussions as a result of the COVID-19 pandemic. It is also recognised that delivery of this programme face to face is unlikely to be possible in the current circumstances and for some time to come.

Therefore, in the context of the council's current and extended enforced homeworking arrangements and likely new ways of working, officers are progressing an education, training and awareness programme that can be delivered virtually using appropriate digital and online applications.

Officers are exploring the use of the council's existing online learning and development platform, My Learning, as a tool to deliver a programme of Education, training and awareness for managers. In addition, applications such as Webex and Microsoft Teams have been used effectively in recent months to deliver online training where there is a need for more interactive discussion and learning.

It is considered that a combination of both online training modules and interactive online learning could provide the support needed by managers to meet their responsibilities under the Policy on the Misuse of Alcohol, Drugs and Other Substances which will include the ability to recognise and identify the signs of alcohol or drug misuse and the ability to challenge behaviours and have difficult conversations.

Options for the delivery of a virtual education, training and awareness programme, to include external content on the effects of alcohol and drugs provided by subject experts, are therefore being developed in place of the originally proposed face to face training. This virtual education, training and awareness programme will further enhance the Misuse of Alcohol, Drugs and Other Substances online training module developed as part of the roll-out of the policy.

## **D.5 Safety Critical Posts**

At the PDSP meeting on 7 February 2020, the Panel agreed that a review of the 'safety critical' definition contained within the Policy on the Misuse of Alcohol, Drugs and Other Substances would be conducted.

That review was carried out prior to lockdown and a revised list of safety critical posts was developed to ensure that the safety critical group captures those posts where the greatest risk to health and safety exists. The revised definition includes only posts:

- with an occupational requirement to drive Heavy Goods Vehicles (HGVs) or Passenger Carrying Vehicles (PCVs); or
- involving the use of heavy machinery.

The removal of posts involving the transportation of council clients from the safety critical group is in recognition of the fact that such transportation is often carried out on an infrequent basis therefore providing some mitigation of risk. In addition, staff transporting council clients will remain subject to with cause testing as appropriate.

In addition to removing any posts previously listed due to transportation of council clients, services were asked to further review posts involving the use of heavy machinery to ensure that only those posts with the greatest risk to health and safety were included. Posts remaining in the safety critical group include those involving,

but not limited to, the use of hydraulic lifting equipment, diggers, dumpers, chainsaws and excavators.

Discussions with the recognised Trade Unions on changes to the definition of 'safety critical' took place prior to lockdown and their position relating to the introduction of random testing of employees' remains as set out in Section D.2 of this report.

#### **D.6 With Cause Testing**

Arrangements for with cause testing will remain as stated in the policy as agreed by Council Executive. Since the implementation of testing, with cause tests have been conducted on three occasions.

### **E. CONCLUSION**

In the current unprecedented circumstances, it is proposed that during the extended moratorium on random testing the focus will be on the development of a tailored and robust virtual education, training and awareness programme to be supported by external content from subject experts.

Provision of a further programme of education, training and awareness will ensure the appropriate use of both random and with cause testing and will support the council in delivering a workplace free from the risks associated with alcohol and drug misuse.

A further examination of the safety critical definition and list of safety critical posts has concluded that the definition could be reviewed and revised to focus on posts that have an occupational requirement to drive Heavy Goods Vehicles and Passenger Carrying Vehicles or involving the use of heavy machinery; excluding posts where driving duties are limited to the transportation of clients on an irregular/infrequent and/or voluntary basis. Such a review and refinement would result in a more limited application of random testing.

### **F. BACKGROUND REFERENCES**

- Policy on the Misuse of Alcohol Drugs and Other Substances (Approved 23 April 2019)

Appendices/Attachments: None

Contact Person: Sophie McKinney, Senior HR Adviser – 01506 284132  
Sophie.mckinney@westlothian.gov.uk

**Julie Whitelaw**  
**Head of Corporate Services**  
**18 September 2020**