

**FINANCE AND CORPORATE SERVICES HEALTH
AND SAFETY CONSULTATIVE GROUP
PORTFOLIO
DECISION RECORD
18 July 2012**

The meeting commenced at 3.30 pm in the Civic Centre, Hartlepool

Present:

Councillor: Paul Thompson (Finance and Corporate Services Portfolio Holder)

Officers: Stuart Langston, Health, Safety and wellbeing Manager
Derek Wardle, Arboricultural Officer
Vicky Bosley, Democratic Services Officer

1. Fee for Intervention (*Health, Safety and Wellbeing Manager*)

Type of decision

Non Key Decision.

Purpose of report

To provide the Portfolio Holder's with an update on government's plans to introduce a "Fee for Intervention" scheme.

Issue(s) for consideration by Portfolio Holder

The Health, Safety and Wellbeing Manager reported that at the Performance Portfolio (Health and Safety Consultative Group) on the 18th January 2012 a report was submitted to the then Portfolio Holder on some significant proposals regarding changes to the health and safety enforcement regime. One of the most important proposals was the introduction of Fee for Intervention (FFI) which was a system by which the Health and Safety Executive (HSE) (who were the main enforcing body for health and safety legislation) would recover the costs of any investigation or contact with an employer if a material breach of a statutory requirement was found during a visit. At the time of the report it was envisaged that the FFI system would be implemented from April 2012. It was confirmed that the implementation date had been delayed due to insufficient time to allowed for parliamentary

approval. As part of the Government's deregulation agenda new health and safety legislation, once it had gone through appropriate parliamentary scrutiny, could only be implemented (in normal circumstances) twice a year in April and October. The HSE were committed to the implementation of the FFI system and whilst it was subject to parliamentary approval the HSE had published detailed guidance on the application of the FFI scheme which had only recently been made available to the public via the HSE's website. The main proposals were:

- That HSE Inspectors can recover their costs for an intervention;
- This would apply to all "duty holders";
- It would only apply to "material breaches" of legislation;
- It would apply if an inspector had to issue a document in writing
- It would be charged at £124 per hour (minimum) but could be more;
- Appeals are to the HSE with limited independent input.

The Health, Safety and Wellbeing Manager confirmed that under the scheme the HSE would only recover the costs of its intervention when there was a "material breach" of health and safety law. A material breach was when, in the opinion of the HSE inspector, there was or had been a contravention of health and safety law that required notice in writing to be issued, of that opinion. The current fee was £124/hour and the fee was payable for the costs that HSE reasonably incurred during regulatory work in relation to a material breach. This included all work that was needed to identify the breach and to ensure that it was remedied. It also included any investigation or enforcement action, up to the point where HSE's intervention had been concluded or a prosecution was started. Additional background information was detailed within the report. It was reported that at this stage it was not possible to predict what the introduction of the system may cost the Council in financial terms. However, the HSE indicated that the costs for material breaches resulting in a letter would be approximately £750 and improvement notices would be £1500. In the case of an investigation, following a serious accident, the costs could be tens to hundreds of thousands of pounds.

The Portfolio Holder questioned if the FFI system had been in place would the Council have been charged in the past. The Health, Safety and Wellbeing Manager confirmed that the Council had received improvement notices because it could not confirm the condition of some underground pipes that formed part of an Liquefied Petroleum Gas (LPG) installation. Under this system the council would have been charged about £1500. The Portfolio Holder also questioned if claims could be made against Insurance companies, the Health, Safety and Wellbeing Manager confirmed that this would not be covered by insurance.. The Portfolio Holder raised concerns regarding the cost implications that were associated with a genuine accident and questioned if the Council could recover costs for its enforcement work, the Health, Safety and Wellbeing Manager confirmed that only the HSE could recover costs.

Decision

That the Portfolio Holder noted the contents of the report.

2. Proposed Introduction of a Lone Working Protocol *(Health, Safety and Wellbeing Manager)*

Type of decision

Non Key Decision.

Purpose of report

To advise the Portfolio Holder's of proposals to adopt a lone working protocol.

Issue(s) for consideration by Portfolio Holder

The Health, Safety and Wellbeing Manager reported that under provisions of the Health and Safety at Work Act 1974 all employers must have an effective health and safety policy. One element of the policy was to ensure there were appropriate arrangements for implementing the policy. The Council regularly review health and safety arrangements and one area identified for improvement related to lone working. The Council took the health and safety of its employees very seriously and as such were fully aware that from time to time staff could be exposed to risks. For a number of years the Council have had a Violence and Aggression to Staff Policy and operated an Employee Protection Register which worked well. However it was now an appropriate time to ensure that arrangements for dealing with violence and aggression linked together with other risks associated with lone working to provide a more comprehensive approach. The Health, Safety and Wellbeing Manager reported that lone working could be a complex issue for an organisation as diverse as the Council and for this reason it was very difficult to cover every situation. However it was essential that a framework for how lone working would be approached across the organisation was in place. This would ensure there were robust procedures (allowing for local adaptation) for managers and staff to follow, which would allow the Council to demonstrate that it was meeting statutory and moral obligations regards protection of staff. The Lone Working Protocol was attached to the main report, in Appendix 1 was developed, in consultation with Trade Union representatives, in order for good business practice to be incorporated to ensure it provided a practical approach which could be adapted to real life situations.

The Portfolio Holder appreciated that steps were required to protect staff and required to be formalised.

Decision

That the Portfolio Holder noted the contents of the report and ratified the adoption of the Lone Working Protocol.

3. Review of Approved Codes of Practice *(Health, Safety and Wellbeing Manager)*

Type of decision

Non Key Decision.

Purpose of report

To provide the Portfolio Holder with an update on Government's plans to revise, consolidate or withdraw a significant number of health and safety Approved Codes of Practice.

Issue(s) for consideration by Portfolio Holder

The Health, Safety and Wellbeing Manager reported that at the Performance Portfolio (Health and Safety Consultative Group) on the 3rd August 2011 the Chief Customer and Workforce Services officer outlined some of the concerns of Government that health and safety had become too complicated and bureaucratic and as result disproportionate decisions were being made as regards protecting people. The Government also indicated that as a result of these concerns that they intended to fully review the system. In a subsequent update report to Performance Portfolio (Health and Safety Consultative Group) on 18th January 2012 some of the proposals following this review were outlined. One of the proposals related to reviewing or removing health and safety Approved Codes of Practice (ACoP). It was confirmed that the HSE had been given a timetable to review the current 52 ACoP's and confirmed they had now reviewed 32 of the 52 and had published a consultation document as regards their proposals with the additional 20 to be reviewed at a later date. The Health, Safety and Wellbeing Manager gave a comprehensive explanation of the legal context. Whilst the primary regulations would still be in place, it could be seen as weakening the strength of the practical information on compliance, where the proposals involved the revoking of ACoP's and replacement of guidance.

The Health, Safety and Wellbeing Manager reported that the main proposals related to fifteen ACoP's, some of which could potentially have a significant impact on the activities the Council undertake. Some of the key suggestions were detailed in the form of a table contained in section four of the report. There were also proposals to limit the length of the ACoP to 32 pages, other than in exceptional circumstances. It was envisaged that the ACoP's being

consolidated would have a significant amount of material removed and again issued as guidance. The consultation on the issues had only recently been started and had a closing date of September 2012. The Government indicated the majority of changes would be implemented by the end of 2013. It was proposed that the Health, Safety and Wellbeing Manager co-ordinated a thorough response on behalf of the Council in consultation with the Portfolio Holder to the proposals.

The Arboricultural Officer highlighted that each ACoP was complicated in its own right and could pose significant risks. The Health, Safety and Wellbeing Manager advised he was proposing to write to the HSE regarding his reservations and confirmed he would copy in the Portfolio Holder.

Decision

That the Portfolio Holder noted the report and the proposal for the Health, Safety and Wellbeing Manager to respond to the HSE consultation.

The meeting concluded at 3.45 pm

P J DEVLIN

CHIEF SOLICITOR

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