

# CARDIFF COUNCIL

## HEALTH AND SAFETY CODE OF GUIDANCE

### LEADING HEALTH AND SAFETY AT WORK

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#### Further information

##### 1.0 Introduction

- 1.1 Senior managers, including Head teachers, have a critical role in establishing effective health and safety arrangements, integrating health and safety management into the business and developing a positive safety culture. The moral and financial justification for good health and safety management are well rehearsed. The legal liabilities are detailed below.
- 1.2 Following several serious health and safety incidents, the role of senior management is now closely scrutinised after any major incident. Several high profile cases such as the King’s Cross fire, Ladbroke Grove train crash (also known as the Paddington train crash) and the legionella outbreak in Barrow-in-Furness all examined the leadership of health and safety within organisations. It is worth noting here the six key failures identified by the Health and Safety Executive in their report of the public meetings into the legionella outbreak in Barrow-in-Furness, August 2002:

**Failure 1:** Poor lines of communication and unclear lines of responsibility

**Failure 2:** Failure to act on advice and concerns raised

**Failure 3:** Failure to carry out risk assessments

**Failure 4:** Poor management of contractors and contract documentation

**Failure 5:** Inadequate training and resource

**Failure 6:** Individual failings

The HSE report states that it hopes the lessons and principles of Barrow are general ones from which others will benefit and can apply regardless of the nature of the organisation or their line of work.

## 2.0 Legal Liabilities

### 2.1 Position of the Council as an employer

2.2 The Council as an employer can be prosecuted for breaches of health and safety legislation i.e Health and Safety at Work etc Act 1974 and associated Regulations. Successful prosecution can result in unlimited fines. Any fines are paid by the Council and are not covered by insurance. One incident can result in breaches of several pieces of health and safety legislation resulting in a fine for each breach.

2.3 The Council can be found guilty of an offence under the Corporate Manslaughter and Corporate Homicide Act 2007 if the way in which any of its activities are managed or organised :-

- (a) causes a person's death ; and
- (b) amounts to a gross breach of a relevant duty of care owed by the Council to the deceased.

An organisation is guilty of an offence "only if the way in which its activities are managed or organised by its **senior management** is a substantial element in the breach".

2.4 The maximum penalty for corporate manslaughter is an unlimited fine and the court can make a publicity order requiring the organisation to publish details of its conviction and fine. The fine has to be paid by the Council and is not covered by insurance.

### 2.5 Position of Individuals

#### 2.6 Individual Council employees can be personally prosecuted for breaches of health and safety legislation

- a) If a health and safety offence is committed with the consent or connivance of, or is attributable to neglect on the part of, any director, manager, secretary or other similar officer, then that person (as well as the Council) can be prosecuted.
- b) If the Council is guilty of an offence because of the act or default of another person, that person can also be prosecuted.
- c) All employees have a duties to take reasonable care of themselves and other people who maybe affected by their acts or omissions at work and to co-operate with their employer.

2.7 Those found guilty are personally liable for fines and, in some cases may be imprisoned.

2.8 Individuals can also be found guilty of manslaughter by gross negligence **manslaughter**. Under common law, gross negligence manslaughter is proved when individual officers of a company (directors or business owners) by their own grossly negligent behaviour cause death. **This offence is punishable by a maximum of life imprisonment.**

2.9 In February 2011 the first company, (Cotswold Geotechnical Holdings Ltd), was convicted of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007 and were fined £385,000. The company director was also charged with gross negligence manslaughter but it was ruled that he was too unwell to stand trial.

### 3.0 Institute of Directors/HSE guidance – “Leading health and safety at work”

3.1 In 2007 the Institute of Directors jointly published with HSE the guidance “Leading health and safety at work .Leadership actions for Directors and Board Members”. This guidance set out some key principles for strong leadership in health and safety:

- Strong and active leadership from the top
- Worker involvement
- Assessment and review

3.2 In considering the liability of an organisation under the Corporate Manslaughter and Corporate Homicide Act 2007, a jury could consider application of the guidance by the organisation depending on the circumstances of the particular case.

3.3 The guidance has been incorporated into the Chief Executive, Chief Operating Officer, Corporate Chief Officer, Chief Officer and Head of Service responsibilities set out in Cardiff Council’s Corporate Health and Safety Policy ( March 2011). **The principles also apply to other senior managers and in particular Operational Managers and Head teachers.**

3.4 This Code of Guidance focuses on some of the key responsibilities of senior managers set out in the Cardiff Council Health and Safety Policy. It aims to interpret these responsibilities and provide some practical actions to enable senior managers to demonstrate that they are meeting their responsibilities and following the guidance in “Leading health and safety at work “. **This Code of Guidance should be read and implemented in conjunction with the Health and Safety Policy and “Leading health and safety at work”.**

### 4.0 Showing Leadership

4.1 The Chief Executive, Corporate Chief Operating Officer, Corporate Chief Officers, Chief Officers and Heads of Service have overall responsibility for implementation of the Council Health and Safety Policy and must show, and be able to demonstrate, leadership in the management of health and safety. Operational Managers and Head teachers are senior managers and are also expected to demonstrate leadership in health and safety. Visibly leading in health and safety sets the whole tone of how it is viewed by employees within the Council. A positive attitude to health and safety can be demonstrated through;

- Understanding the health and safety hazards, risks, systems, procedures and issues within their Directorate/Service Area
- Ensuring health and safety is discussed at management meetings and that bad news is heard as well as good news
- Ensuring health and safety is integral to management and not just “bolted on” i.e. discussing health and safety implications of an issue as part of the issue
- Ensuring other senior managers realise and understand their responsibilities in promoting a positive health and safety culture and effectively managing health and safety

- Personally being involved in the development of the Service Area Health and Safety Policy, Service Area Health and Safety Action Plan, etc
- Ensuring that accidents and serious incidents are thoroughly investigated and that lessons learned are implemented quickly, and across the Service Area where applicable
- Ensuring recommendations within health and safety inspection reports are considered and addressed, and where applicable, are mirrored across the Directorate/Service Area
- Behaving in accordance with safety procedures e.g. wearing personal protective equipment when appropriate
- Regularly communicating the importance of health and safety when issues arise or when new procedures are introduced or new guidance given
- Giving vocal support to health and safety issues whenever possible and to all audiences
- Considering health and safety when making senior appointments
- Chairing or attending Health and Safety Committees and Officer Health and Safety Working Groups
- Accompanying managers and Health and Safety Advisers on safety inspections
- Personally attending or introducing health and safety training
- Encouraging employee attendance on health and safety training
- Ensuring employees attend health and safety training when it is mandatory for their work e.g. asbestos awareness
- Supporting disciplinary procedures where there has been a deliberate or reckless disregard for safety measures
- Attending meetings with the HSE which concern their Directorate/Service Area
- Inviting Health and Safety Advisers to meetings and involving them in decisions when appropriate

## 5.0 Policy Implementation

- 5.1 The corporate Health and Safety Policy cannot cover all the activities within the Council and therefore the overall policy needs to be supported by a Directorate/Service Area /individual school specific document that identifies more specific roles and responsibilities and addresses the hazards, risks and arrangements in the specific areas.
- 5.2 Health and safety management arrangements need to comply with the requirements of Regulation 5 of the Management of Health and Safety at Work Regulations 1999 in respect of planning, organisation, control, monitoring and review. These can be summarised as:

**Planning** - adopting a systematic approach to the completion of risk assessments, appropriate risk control measures to minimise and where possible eliminate risks

**Organisation** - defining effective lines of communication and securing competence through adequate information, instruction and training

**Control** - establishing defined roles and responsibilities of managers and employees; ensuring everyone with responsibilities understands them and have the time and resources to discharge them; and setting standards and providing adequate and appropriate supervision

**Monitoring** - arrangements to include routine inspection to ensure that preventative and protective measures are in place and are effective; that policies and procedures are implemented and effective; and the underlying cause of accidents/incidents are investigated to ensure remedial action is taken

**Review** - periodic review of the whole health and safety management system to ensure it remains effective and where priorities have been set for remedial action following monitoring, these are taken in good time and completed

- 5.3 Depending on the issue concerned there must be adequate inclusion of specific arrangements in the Policy e.g. in respect of operational monitoring procedures, lone working and the management of contractors. Reference must be made to local operational documentation. It should be demonstrable that the organisation and arrangements detailed in the Policy are being implemented. There should be an audit trail of documentation to prove that the organisation and arrangements are effective and are being implemented.
- 5.4 The Policy should be up to date, signed and dated, communicated to all staff, understood and acted upon. It has a practical effect on how things are done. It should be kept under review to reflect any changes and its implementation should be monitored by senior management.

## **6.0 Organising for Health and Safety**

- 6.1 To secure a positive health and safety culture, organisations should manage 4C's – Control, Co-operation, Communication and Competence. In order to do this the following should be addressed:

### **6.2 Control**

- Roles and responsibilities should be clearly defined in the Health and Safety Policy
- Managers should be clear about their health and safety responsibilities
- Job descriptions should contain relevant reference to health and safety
- Adequate time, money and people should be allocated to health and safety
- Suitable and sufficient risk assessments should be carried out ,control measures implemented and monitored by competent people
- There should be sufficient, relevant written procedures where appropriate
- Suitable systems should be in place e.g. in respect of plant and equipment, contractors
- A senior officer in the Service Area/Directorate should be the Health and Safety Contact Officer

### **6.3 Co-operation**

- Consultation with employees and safety representatives
- Regular Health and Safety Committee including agenda items in 2.15 of Health and Safety Policy
- Joint manager/safety representative health and safety tours/inspections
- Learning lessons across the Directorate/Service Area from inspection reports/accidents/incidents/etc
- Involving relevant employees in risk assessment process
- Involving all managers in setting objectives in annual Health and Safety Action Plan
- Officer Health and Safety Working Groups

### **6.4 Communication – written and verbal**

- Everyone is conversant with the Health and Safety Policy
- Everyone is aware of their roles and responsibilities

- Keeping managers and employees up to date with relevant information on Council policies, Service Area Annual Health and Safety Action Plans ,risk assessments, advice, procedures, inspections, accident investigations
- Management meetings include health and safety
- Team briefings include health and safety
- Provision of Health and Safety Noticeboards in workplaces
- Information is provided and kept updated on Health and Safety Noticeboards
- Health and Safety Committee Meeting minutes are circulated to employees and included on Health and Safety Noticeboards
- Inclusion of health and safety in induction training for Council employees and agency workers
- Effective communication with contractors, partners and other organisations as appropriate e.g. in shared workplaces
- Hazard reporting systems
- Informal walkabouts by senior managers
- Toolbox talks ( Documented)

## 6.5 Competence

- Competent health and safety advice from Health and Safety Advisers, Corporate Services
- Competency of all employees - attendance on relevant courses/briefings/talks.
- Guidance to who should attend what training is detailed on the Health and Safety Intranet Site - Health and Safety Training Providers. This guidance is generic and specific training needs should be considered for all employees.
- As a minimum requirement senior managers must attend IOSH Safety for Executives
- Consider health and safety requirements at recruitment
- Consider health and safety in Personal Performance and Development Reviews
- Identify training needs
- Provision of refresher training
- Competence of contractors
- Keeping of training records

## 7.0 Planning and Implementing

### 7.1 Key issues

- Risk assessment process
- Annual Service Area Health and Safety Action Plan incorporating corporate objectives and service specific objectives
- Service specific objectives in the Health and Safety Action Plan to be SMART wherever possible, and to be determined by risk assessments , inspections/audits, accidents, incidents, training needs analysis, outcomes of monitoring, gap or SWOT analysis and issues raised by Health and Safety Advisers, the HSE, managers, employees, trade union safety representatives, etc.
- Service specific objectives to consider risks, operational activities and management processes.
- Managers across the Service Area and the relevant Health and Safety Adviser to be consulted in the development of the Service Area Health and Safety Action Plan to ensure inclusion of appropriate objectives and targets
- Sufficient time should be allowed by senior managers to properly consider the objectives to be included in the Health and Safety Action Plan

- Reasons for including, or not including objectives, in Health and Safety Action Plan should be documented so there is evidence of considered planning
- Health and Safety Action Plan to be included in Service Plan
- Progress in implementing Health and Safety Action Plan to be monitored at senior management meeting
- Meet specified training standards (refer to Health and Safety Intranet site for generic information)
- Elected members to be made aware of health and safety implications of any proposals or decisions
- Adequate resources in particular employees and finance to be made available to manage health and safety

## 8.0 Measuring Performance

### 8.1 Key issues

- Performance Indicators in Corporate Performance Reports
- Raising of IACTS in relation to Health and Safety Inspections entered on the audit database by Health and Safety Advisers
- Raising IACTS in relation to Fire Risk Assessments entered on the audit database by Strategic Estates
- Monitoring at Business Improvement Meeting ( or equivalent management meeting) of –
  - Service Area Health and Safety Action Plans
  - Monthly Service Area accident statistics report provided by Health and Safety Adviser
  - Health and Safety Inspection Reports provided by Health and safety Advisers
  - Health and safety inspection reports produced by managers
  - Implementation of Health and Safety Policy
  - Any other health and safety issues as appropriate e.g. HSE letters/action, other information from Health and Safety Advisers
- Monitoring of specific issues e.g. risk assessments and control measures contractors, manual handling, building and premises management, homeworkers, compliance with procedures, plant and equipment inspection, behaviour, learning across area
- Health surveillance as appropriate
- Accident/incident investigations
- Health and Safety Advisers performance is measured against the objectives set for the Health and Safety Team in the Corporate Services Service Plan

All monitoring, management and operational, must be documented providing a clear audit trail. It must be meaningful, explicit and demonstrate implementation of procedures and compliance with relevant legislation.

**NB** Monitoring of risk assessments should be managed by someone who has the competence to judge the quality of compliance e.g. not just has a risk assessment been done, but is it suitable and sufficient, has it reached justifiable conclusions and has the risk been eliminated or reduced as low as possible.

## 9.0 Auditing and reviewing

9.1 Health and Safety Advisers provide reports on the effectiveness of Service Area health and safety management.

9.2 An Annual Cardiff Council Health and Safety Report is produced.

9.3 In addition to corporate auditing and reviewing of health and safety management, Service Areas also have a role in auditing and monitoring their safety arrangements. Some of this auditing is included in the on going measurement of performance but it also includes:

- a) Review of any issues identified corporately.
- b) Production of an Annual Service Area Health and Safety Report which includes:
  - Achievement of objectives in Annual Health and Safety Action Plan and explanation of any non achievement
  - Implementation of reports placed on audit database by Health and Safety Advisers and explanation of any outstanding actions
  - Any enforcement actions or interventions
  - Health and safety training of employees
  - Accident/Violent Incident statistics
  - Issues considered at Health and Safety Committees or at other meetings with trade unions
  - Any other relevant health and safety issues
- c) Annual, and if necessary more frequent review/amendment of Service Area Health and Safety Policy to ensure it accurately details the organisation and arrangements for managing health and safety
- d) Annual review by senior managers of quality/accuracy of information reported to them i.e. at senior management meetings or otherwise. This will involve undertaking sample/random checks
- e) Annual review of effectiveness of health and safety management systems as part of the planning process for the Health and Safety Action Plan
- f) Review of health and safety management in respect of contractors
- g) Immediate reviews in the light of any major shortcomings or events – both those occurring within the Service Area or elsewhere in the Council or on the advice of the Operational Manager- Health and Safety
- h) Reporting any weaknesses or shortcomings which cannot be remedied within the Service Area/Directorate to relevant Chief Operating Officer ,Corporate Chief Officer or Chief Executive

## 10.0 Questions ALL Senior Managers should be able to answer

10.1 The above guidance should enable senior managers to have a thorough understanding of what they should be doing and know in respect of health and safety within their Directorate/Service Area. This is important to ensure effective health and safety management and reduce risks and consequences as far as is reasonably practicable. All senior managers should be able the type of questions detailed below. These questions could be asked by the HSE at any visit or could be asked after an incident by the HSE or in a court of law.

- What are your key health and safety responsibilities?
- How do you demonstrate leadership?
- What health and safety training have you received and when?
- How do you demonstrate senior management commitment to health and safety?
- How do you ensure senior management review of health and safety?
- Who provides your competent health and safety advice and do you utilize it?
- How are you ensuring all employees and senior management are sufficiently trained and competent in their health and safety responsibilities?
- How confident are you that employees, particularly safety representatives, are consulted properly on health and safety matters, and their concerns are reaching the appropriate level?
- What involvement do you have in the Health and Safety Committee?
- What are the main risks in your area?
- What systems are in place to ensure risks are assessed and that sensible control measures are in place and are maintained and monitored?
- How well do you know what is happening on the ground?
- Do you know what audits have been undertaken and subsequent actions
- What information does senior management regularly receive and consider about health and safety?
- Where changes have implications for health and safety, how are these brought to the attention of senior management?
- How do you identify health and safety objectives?
- How do you monitor health and safety?
- How do you consider health and safety in partnership arrangements?
- How do you consider health and safety when awarding contracts?
- What are your areas health and safety strengths and weaknesses?
- What resources do you have for managing health and safety and are those resources adequate?

Senior managers would be expected to be able to provide evidence to support the answers given.

### **Further information**

Health and Safety Advisers, Corporate Services

Cardiff Council Health and Safety Policy (March 2011)

Institute of Directors/Health and Safety Executive - Leading Health and Safety at Work. Leadership actions for Directors and Board Members

HSE Report of the public meetings into the legionella outbreak in Barrow-in-Furness, August 2002