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To: Corporate Policy and Overview Scrutiny Committee 20 March 2012

Subject: Update on health and safety management in KCC and commentary on national influences

Classification: unrestricted

SUMMARY: To update Members on key activity for managing health and safety risks and comment on national developments that are influencing practice and enforcement issues.

FOR INFORMATION

1. **Introduction**

- i) There have been a number of organisational and national developments influencing the way health and safety services operate in KCC and these are summarised in this report. The centralisation of the health and safety team from April 2011 opened up great opportunities for increasing the level of impact possible across KCC services and progress is covered in s.2 of this report. Presentation of the annual report on key events and performance at Performance Assurance Team, 19 September 2011 stimulated interest in the forthcoming cost recovery intentions for enforcement action which will potentially affect KCC and businesses across Kent. Stimulated by discussion at CMM, 14 October 2011 and in separate meetings to follow up on detail, Members continue to engage in exchanges with the government minister responsible for the introduction of the latter scheme and s.4 covers the detail of what we currently know about the 'Fee for Intervention' scheme.

Other developments colouring the way health and safety practitioners operate and help the organisation to respond to legislation and standards proportionally are also referred to in the summary of national influences in s.4.

ii) KCC context

That said, throughout the last decade the objective of the health and safety team has been to assist managers to employ a balanced approach to the health and safety aspects associated with their services whether directly or through contracted or partnership arrangements. So the current campaign for 'keeping health and safety in perspective' is already well respected in KCC whilst being mindful of the myriad, legitimate considerations we must pay attention to. This was illustrated through KCC's hosting of the first collective county local authority signing up to the Health and Safety Executive (HSE) Sensible Risk Management campaign in 2008. That principle is enshrined in our practice so that services and arrangements take health and safety factors into account sufficiently to enhance the quality and reliability of what we deliver to the public and within the organisation.

2. **Centralisation of the Health and Safety Unit**

The decision to transform the health and safety function from its corporate and directorate settings into a centralised unit has already enabled more efficient spread of workload and flexible deployment of team members to better meet the needs of the council. Our focus throughout the first year has been to build on established cross-boundary working, merging former teams and creating a skills matrix to inform

selections for project work based on existing expertise or need for growth and experience. Through shadowing and exposure to unfamiliar settings advisers are expanding their talents whilst retaining expertise and contribution to familiar services. The new action plan for 2012-15 features prioritised projects, policies and activities and will be approved, formally, through Health and Safety Group on behalf of CMT. Items will be tackled through selected combinations of team members and collaborative service contacts with the bonus of securing on-going professional development which will be critical to sustaining the competence levels needed to deliver well with limited resources and legally required of KCC. The streamlining and quality of specialised processes such as audit systems and incident processing, statutory reporting and management has also been improved through closer collective working made possible by the new arrangement.

3. **Key Activities and Current Priorities**

Throughout the last year the Health and Safety Team continued to deliver, monitor and support strategic and operational aspects of health and safety management across the council. Practical input on issues including asbestos policy and arrangements, stress management, Gateways, relocations and organisational change, service priorities, delivery of management briefings and retention of partnership working with the HSE enabled good progress with action plan themes supporting the reputation and efficiency of KCC. Supporting teams through change management and business engineering has been a routine investment alongside focus on the immediate needs of stabilising and aligning our own team with the direction of the organisation and integration into the HR division.

Most significantly, the team began rolling out the risk profiling programme through a series of projects being undertaken in divisions/services right across the council. Managers are supported by Health and Safety Advisers and Technical Assistants to build up a template of ranked risks inherent in or arising, potentially, from their activities. The exercise draws out clear management and team responsibilities and accountabilities and the practical actions they can take to secure sensible compliance and manage their risks with confidence. Tested by audit, managers end up with a clear framework for on-going ownership and testing of their service risks with easy means for moderating the plan where changes dictate.

We are also working with colleagues involved in training provision to look at continuity and options available to satisfy the broad range of statutorily required specific training requirements e.g. asbestos awareness and management which were the subject of Improvement Notices issued by the HSE in 2010. This year's theme for European Week for Safety and Health is about 'Working together for risk prevention' so gives good scope for engaging with Members, managers, employees, trades unions and supply chain contacts. There are obvious links to the revised council policy statement soon to be signed off by collective CMT including the Leader and the Cabinet Member for Business Strategy, Performance and Health Reform.

The newly formed Health and Safety Group made up of senior managers from all directorates and chaired by the Corporate Director of Human Resources will monitor and direct health and safety activity, keeping management teams linked-in and responsive to health and safety priorities. Joint consultation arrangements are developing in line with a review by HR Employment Policy team looking at revised arrangements in the re-configured organisation. The central, Joint Health and Safety Committee will continue to benefit policy and procedures through strong engagement and relationships with trade union colleagues.

4. **National Influences and changes affecting the Health and Safety Executive**

- i) Over the last 18 months there have been a number of government co-ordinated reviews of health and safety in the UK (see appendix for timeline of significant events). The focus has been on simplification, challenging bureaucracy and reducing perceived

burden on business. The KCC Health & Safety Unit has been proactively monitoring the national picture and has provided regular updates to senior management and Members to enable the authority to continue to adapt its approach where necessary to protect the safety of its staff and those affected by its work, whilst also assisting Kent business to thrive in changing and challenging times.

- ii) Good health and safety is vital to good business. Sensible and proportionate implementation of health and safety regulation can support economic growth by maintaining a healthy and productive workforce, both within KCC and in the communities it supports.

We will continue to extend our professional resources to support the local community by assisting businesses to deal with health and safety issues through specific projects such as the successful HSE/SE Region Stakeholder forum's national pilot of Estates Excellence.

- iii) Simplification & reduction of burden on business
The national developments present an opportunity to ensure we continue to work in an efficient way that benefits KCC and its customers; however we need to be ever mindful of misinterpretation of the emerging messages that may lead to a lowering of standards. For example, the thrust for simplification and reduction of legislative burden must not be wrongly translated as a need for less focus on health and safety requirements. The primary outcome of the Lofstedt Review was that the existing regulatory requirements are broadly right and, where interpreted appropriately play a role in preventing injury and ill health in the workplace.

- iv) Fee for Intervention (FFI)
One of the most tangible and advanced outcomes of the national reviews is the HSE's cost recovery scheme. Following the consultation which closed in October 2011, the HSE Board agreed to recommend details of the Health and Safety (Fees) Regulations 2012 to the Minister for Employment. Formal notification of the detailed guidance on the scheme and the exact date of commencement have been slow to emerge. Based on discussions with the local Principal Inspector for Health and Safety, and by attendance at a recent seminar which included Professor Lofstedt and Judith Hackett (Chair of HSE); the key points as we currently know them are:

- A "Material breach" is "when, in the opinion of the HSE inspector, there has been a contravention of health and safety law that requires written notification (e-mail, instant visit report, letter, notice or prosecution) of the contravention to the dutyholder".
- Costs will be recovered from the start of the intervention where the material breach was identified, up to the point where HSE's intervention in supporting businesses in putting matters right has concluded. If a prosecution follows, charging would end when the HSE initiate criminal proceedings (by the laying of an Information in the Magistrate's Court).
- The average hourly rate will be £124, charged at 6 minute intervals. Actual costs for non-HSE specialist support (e.g. Health & Safety Laboratory) would also be charged. Invoicing will be every 2 months, with 30 days given to pay.
- A disputes process will be put in place that has independent input in the form of a disputes panel consisting of senior HSE staff sitting alongside an external business representative.

5. **Conclusions: commentary on topical issues**

- Health and safety standards are integral to successful business and organisational performance and through the growth of the risk profiling programme across KCC we

aim to see further improvements in self management and potential reduction in incident rates. This fits well with the council's business concepts and Bold Steps and is in line with the accreditation criteria in Kent Manager.

- KCC's approach and attitude to observing high standards of health and safety management in direct service provision or in partnership arrangements has, in the past, been influential in offsetting the need for enforcement action where our swift attention has resolved HSE concerns. It will be interesting to see how far this patient approach will apply in the context of Fee for Intervention whereby inspectors are obliged to seek recovery for time spent on material breaches. The mantra seems to be that if businesses comply with the law, they incur no cost. If they rectify breaches quickly, their costs will be lower as a result. So, focus on compliance and supporting managers to manage well will remain our intention along with attention to timely conformance should material breaches come to light.
- The Unit remains committed to supporting small businesses, in keeping with 'Backing Kent Business', by publicising details of the cost recovery scheme, making guidance available on the Kent website and connecting up through the local Estates Excellence community which we helped develop in partnership with other public services and the HSE. The Estates Excellence project involved visits to SMEs to conduct benchmarking visits to establish level of awareness and application of measures to manage/control sector risks and offer free training and occupational health services. The visits to selected Kent industrial estates had such outstanding results that Geoffrey Podger, Chief Executive of HSE, wrote to KCC last September with thanks for our contribution to the design and delivery of this now national programme. He also expressed appreciation for the Head of Health and Safety's continued dedication to the SE Stakeholders Forum comprising some of the largest employers in the region in support of local organisations and mutual networking/exchange.
- KCC advisers have worked as exemplars and mentors for other local authority peers including conducting a review of Swale Borough Council's health and safety arrangements and having strong influence through the Local Authority Health and Safety Group attended by all Kent authorities. Our partnership working with HSE will continue to be a worthwhile investment featuring joint working on seminars, investigations, and delivering local business training through IOSH S.E. branch.
- Changes in approaches to service provision such as shift to commissioning models or moving to alternative community provision will need careful consideration in respect of discharging, retaining or possibly sharing of duties under health and safety law. In the interests of community standards the health and safety team is preparing to increase their offer of services through EduKent as the number of academy schools grows across the county.
- The need for senior managers to be clear that the way they manage and organise health and safety constructively safeguards employees and others' lives has been heightened by the corporate manslaughter legislation and the first case outcome last year. The Members handbook includes reference to the Institution of Occupational Safety and Health (IOSH) publication 'Think about Health and Safety' which sets out responsibilities and awareness raising points which could be supported by direct briefings in-house. The revised policy statement on health, safety and welfare at work will set out the discrete and shared responsibilities between councillors and officers in the context of the new governance arrangements and create a new guiding framework of our organisation and arrangements for managing and monitoring health and safety standards in KCC.

The next few years are seen as important for establishing and maintaining the right standards for the new organisation. Sustaining the engagement and collaboration of colleagues, contracted parties and partners will put KCC in a good position for keeping

up with the demands presented by legislation at a time of diminishing resources and adaptations in the way we deliver.

Helen Bale, Head of Health and Safety

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Date	National Theme	Summary & Relevance to KCC
October 2010	"Common Sense Common Safety"	Lord Young of Graffham was asked by the Prime Minister to review the "compensation culture" and the current health & safety regime. The recommendations covered a wide range of issues including legislation, enforcement, the role of insurers and compensation claims procedures.
March 2011	"Good Health and Safety, Good for Everyone"	The Minister for Employment (the Rt Hon Chris Grayling MP) took forward some of Lord Young's recommendations, notably launching the Occupational Safety and Health Consultants Register (OSCHR), and also set out major changes to the enforcement regime, refocusing inspection activity on higher risk areas and away from lower risk businesses who manage their responsibilities effectively. The Minister also announced an independent review of health and safety regulation, to identify opportunities to simplify health and safety rules.
April 2011	Red Tape Challenge	Launched by the Prime Minister to look for opportunities to reduce the stock of regulations on the statute book. The scheme fed into the review by Professor Löfstedt who took account of the comments posted relating to health and safety regulations made on the Red Tape Challenge website.
July 2011	Consultation on the HSE proposals for extending cost recovery (Now referred to as Fee For Intervention)	<p>The government and the Health and Safety Executive Board placed a duty on the HSE to recover costs where duty holders are found to be in material breach of the law. KCC Health & Safety Unit co-ordinated a response which was submitted before the October deadline. Main issues raised were that any fees imposed on KCC as a dutyholder would indirectly come from the taxpayer (the aims of the scheme were designed to reduce the burden on the taxpayer); and the threat to small businesses from potentially high fees being levied without going through a judicial process.</p> <p>In response to formal consultation it was decided not to include local authority enforced businesses in the scheme which effectively reduced the scale of potentially affected SMEs. Member Kevin Lynes wrote to the Minister of Employment urging consideration of a sliding scale to respect small business financial pressures. The scheme is scheduled to go 'live' in April 2012 and coincides with significant reduction in the inspectorate's inspection plans due to re-determination of priorities and cuts to core budget. KCC as a duty holder will remain subject to cost recovery by the HSE.</p>
September 2011	Lofstedt Review	An independent review of health and safety legislation, commissioned by the Minister for Employment. The aim of the review was to consider the opportunities for reducing the burden of health and safety legislation on UK businesses whilst maintaining the progress made in improving health and safety outcomes.
April 2012	Changes to Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 95 RIDDOR & Proposed introduction of Fee For Intervention	<p>Following the recommendation from the Lord Young Review, the period before an injury or accident needs to be reported to HSE will extend from 3 days to seven. The changes will be reflected in updated KCC internal guidance on SafetyNet, and staff will be informed via K-mail articles and staff groups.</p> <p>The start of the Fee For Intervention scheme is scheduled for April 2012 although we await confirmation. Once 'live' KCC may be re-charged at an averaged rate of £124 for every hour of HSE time taken for rectification of a breach to complete. KCC Health and Safety Unit is continuing to explore ways to update and support SMEs in the county that may also be affected.</p>

Background Documents:

- ♦ Lord Young's "Common Sense, Common Safety" (hyper-linked in the appendix)
- ♦ Lofstedt Review (hyper-linked in appendix)
- ♦ Rt. Hon. Chris Grayling "Good Health and Safety, Good for Everyone" (hyper-linked in appendix)
- ♦ Red Tape Challenge (hyper-linked in appendix)
- ♦ Fee for Intervention – Consultation on the HSE proposals for extending cost recovery (hyper-linked in appendix)
- ♦ Letter from Geoffrey Podger, Chief Executive of the HSE thanking KCC Health and Safety Team for their contribution to the Estates Excellence Programme
- ♦ European Week for Safety and Health at Work 2012 – 'Working together for risk prevention'
- ♦ IOSH 'Think about health and safety - what elected members of local authorities need to know'