

<b>17 July 2012</b>		<b>ITEM 5</b>
<b>General Services Committee</b>		
<b>SMOKE FREE POLICY – EXEMPTION PROPOSAL</b>		
<b>Report of:</b> Chris White, HR Strategy & Policy Manager		
<b>Wards and communities affected:</b> N/A	<b>Key Decision:</b> N/A	
<b>Accountable Head of Service:</b> Jackie Hinchliffe, Head of Human Resources, Organisational Development and Customer Strategy		
<b>Accountable Director:</b> Graham Farrant, Chief Executive		
This report is <b>public</b> .		
<b>Purpose of Report:</b> to present General Services Committee with a proposal to exempt select groups of staff from specific parts of the smoke free policy in response to concerns raised by the service about impact on residents and service delivery.		

## **EXECUTIVE SUMMARY**

In January 2012 the General Services Committee (GSC) approved a new smoke free policy, preventing staff from smoking in or around all council-owned premises.

Since the announcement of this decision it has emerged that there could be genuine operational and potentially legal difficulties with enforcing parts of the policy in small pockets of the council's employment.

The General Services Committee is asked to reconsider the relevant part of the policy with regard to these staff (see below).

### **1. RECOMMENDATIONS:**

- 1.1 That General Services Committee considers the proposal as a unique exemption case and makes a decision based on the options given below.**

### **2. INTRODUCTION AND BACKGROUND:**

- 2.1 The Smoke Free Policy, agreed by General Services Committee in January 2012, states:**

*Smoking will not be permitted in any Council-operated buildings and associated outdoor areas such as depots, yards and car parks.*

- 2.2 The areas of concern with regard to the application of this part of the policy, are the **night shift staff** within the following services:
- Collins House (residential care)
  - Kynoch Court (independent living)
  - Piggs Corner (independent living)
- 2.3 At Collins House, the shifts comprise four staff, including a duty manager. This is the minimum number of staff required to meet the statutory care ratio for numbers of staff to residents.
- 2.4 At Kynoch Court & Piggs Corner, the shifts on each site consist of one member of staff with access to a phone system on which they can be contacted by any of the residents on the complex. During allotted break times the staff on the two sites can cover each other by diverting their phones to each other, but they remain on the premises in case of emergency.
- 2.5 At the moment staff breaks in these areas are taken on site to ensure the statutory minimum levels of cover are still maintained and also, to an extent, to ensure their own safety as their break time would normally fall in the early hours of the morning.

### **3. ISSUES AND/OR OPTIONS:**

- 3.1 In any 6-hour shift, employees are entitled by law to a minimum 20 minute break. For employees that smoke, at the moment this means taking a cigarette break on the premises (in the allocated garden areas where the member of staff is still accessible if needed).
- 3.2 There is nothing stipulated in these employees' contracts of employment to say that they must take their breaks on site, however it could be argued that this has become custom and practice because it has always been the case. It could also be argued that their entitlements to breaks are slightly different as one of the potentially exempt professions under the Working Time Regulations (WTR).

*'Activities which involve the need for continuity of service or production, as may be the case in relation to, for example: hospitals or similar establishments; residential institutions...'*

- 3.3 Should smokers decide they wish to exercise their right to their break away from the site because we will no longer allow them to smoke in the grounds, the council would be relying on the custom and practice and potential exemption from WTR arguments, to resist this.

(In theory, this scenario could equally happen with non-smokers who want to take breaks away from site although the chances of this happening are of course much more unlikely.)

3.4 The council can consider the following options in the light of this:

**1) Insist on the enforcement of the policy in these areas and that staff cannot leave site for their breaks**

This would run the risk of claims of breaching Working Time Regulations (WTR) with regard to breaks, although the council may have a defensible argument in (a) custom and practice of breaks always being taken on site; (b) that the professions involved may be considered exempt under WTR.

**2) Allow an exemption to rules around smoking on premises for these staff (NB: they would still only be allowed to smoke during their one contractual break, the same as other staff)**

This could be applied to existing staff but as part of the recruitment process, the new smoke free requirements and break arrangements would be made clear to prospective applicants from the outset so that new employees would not have the same dispensation, and gradually the exemption would be phased out.

There would also be a clear expectation that smoking staff are mindful of residents and neighbours and do not cause any disturbance to them by smoking on the premises. Any such disturbance reported by residents or neighbours, caused by smoke or the smell of smoke, would result in the exemption being reconsidered.

**4. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT**

4.1 Smoking rates in Thurrock are high and the policy was created to help improve those rates by setting a positive example. The exemption is for one element of the policy and only applies to small sections of the council's employment which, being night staff, are not as visible to the public or other colleagues. It would therefore not significantly deter from the original objective in relation to the community.

**5. IMPLICATIONS**

5.1 **Financial**

Implications verified by: **Mike Jones**  
 Telephone and email: **01375 652 451**  
**mxjones@thurrock.gov.uk**

There are no direct financial implications arising from this report.

## 5.2 Legal

Implications verified by: **Chris Pickering**  
Telephone and email: **01375 652333**  
**cpickering@thurrock.gov.uk**

The proposed amendment to allow employees to smoke on Council premises in very limited circumstances could be seen as a reasonable exception for the Council to make. These employees are prevented from taking such breaks normally due to the nature of their jobs and the need to have constant cover at their places of work. The other argument is that we should be trying to encourage our employees to stop smoking and show a good example to the residents of these centres, but we have to provide rest breaks and it is up to employees what they do on these breaks. By allowing the exception the Council would not be breaching the Council's obligations under the Health Act 2006.

## 5.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**  
Telephone and email: **01375 652472**  
**SDeAlyn@thurrock.gov.uk**

The Council operates an equal opportunities policy. This means that in operating a policy or procedure the Council intends to ensure equal outcomes for all employees. The introduction of an exemption without exemption being allowed or written into the policy may create various inequalities with regards to employee groups at other lines and locations owned and operated by the Council. To create an equality framework 'exemption' or a mechanism for applying for an exemption should be written into the policy. This would safeguard the Council and allow any other staff group that merits consideration to apply for an exemption and thereby avoiding the claim that a single staff group has been treated more favourably.

## **APPENDICES TO THIS REPORT:**

None

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