

POLICY, FINANCE AND ADMINISTRATION COMMITTEE

7 DECEMBER 2011

REPORT OF HEAD OF COMMUNICATIONS

DRIVING POLICY FOR MEMBERS

1.0 PURPOSE OF REPORT

1.1 To request the Committee to approve a Driving Policy for Members.

2.0 RECOMMENDATIONS

2.1 **The Driving Policy be approved.**

2.2 **Any changes required to the policy due to changes in legislation, best practice or other circumstances be delegated to the Head of Communications in consultation with the Chair of the Committee.**

3.0 KEY ISSUES

3.1 In August 2010, the Development Committee Member trialled the use of Members' private vehicles for site visits as an alternative to the hiring of a bus or taxi. As a result of the trial, a number of questions were raised by a Councillor as to the propriety of this activity.

3.2 The legal position of Members using their own vehicles is given under the Legal Section of this report and this advice has previously been considered by the Constitution Review Task Group, Overview, Scrutiny and Audit Committee and resulted in approval by the Council on 20 July 2011 that a Driving Policy be produced for Members.

3.3 Although there is a Driving Policy at Work for staff, the same format is not considered appropriate for Members therefore a new policy has been drafted for Members and is attached at Appendix A to this report.

3.4 The purpose of this driving policy is to enable the Council to meet its obligation to protect its Members so far as is reasonably practicable from road risks.

3.5 The Health and Safety Officer and the Solicitor to the Council have been consulted on the content of the policy.

4.0 POLICY AND CORPORATE IMPLICATIONS

4.1 Health and safety is a key council policy that underwrites all the work that the Council is engaged in.

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

5.1 Any financial and staffing implications will be met from existing resources.

6.0 LEGAL IMPLICATIONS/POWERS

6.1 On seeking advice from Zurich Municipal (ZM), the Council's insurers, it is advised the Council owes a duty of care to its Members whilst they are undertaking their Member role on behalf of the authority. This includes the use of private motor vehicles. This duty of care is owed through tort as opposed to statute and a prosecution would be found under common law as opposed to the Health and Safety at Work Act 1974.

6.2 Although Members are not considered to be employees, the duty of care still exists to any Member undertaking activities on behalf of the Council. Should this duty be breached then the authority could be exposed to claims via their legal liability. ZM have confirmed that they will indemnify any employee and any Member.

6.3 In relation to accidents that occur on private land (eg. during a site visit), ZM have advised that liability would depend on the exact circumstances of the incident however "MBC has both Public and Employers Liability policies in place and the Council's legal liabilities are covered".

6.4 In relation to the Corporate Manslaughter Legislation, the Council's insurers, ZM have confirmed that the Corporate Manslaughter Act 2007 (CMA 2007) is applicable in this scenario. The CMA 2007 gives that organisations can be corporately responsible where they have been grossly negligent in exercising their duty of care. Currently the Council has no controls in place to make sure that Members using their own private vehicle are adequately managed eg. checks on driving licences, business use for insurance (management of the grey fleet etc), and as such ZM have confirmed that should a fatality occur then there is a possibility that a Corporate Manslaughter prosecution could be brought against the Council. However, if the Council can prove that they have taken reasonable steps in managing the grey fleet, then such a prosecution will be unlikely.

6.5 Attached at Appendix B is a document produced by ZM 'Managing the Grey Fleet' which details the controls recommended for organisations concerning the use of private vehicles. In short the authority needs controls re the driver, their licence and insurance, the journey, the vehicle and safety in the event of a breakdown. Currently, the Council has no controls in place for Members, it only has controls for employees. It is clear these controls need to be extended. Also attached for information at Appendix C is a document produced by the Department of Transport 'Driving at Work'.

7.0 COMMUNITY SAFETY

7.1 There are none as part of this report.

8.0 EQUALITIES

8.1 An equality impact assessment has been completed and is available with the papers.

9.0 RISKS

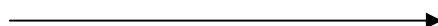
9.1 The aim of the policy is to reduce the risk for Members whilst driving for Council-related purposes.

Probability



A Very High				
B High				
C Significant				
D Low				
E Very Low			1	
F Almost Impossible				
	IV Neg- ligible	III Marg- inal	II Critical	I Catast- rophic

Impact



Risk No.	Description
1	Non-adherence to the policy

10.0 CLIMATE CHANGE

10.1 This policy enables car sharing to attend site visits/meetings by Members and there are green benefits to this form of travel.

11.0 CONSULTATION

11.1 There has been consultation on the introduction of the policy before approval at Council on 20 July 2011 with the Constitution Review Task Group and the OSA Committee.

12.0 WARDS AFFECTED

12.1 All indirectly.

Contact Officer: Angela Tebbutt/Sarah Evans

Date: November 2011

Appendices :
 A – Driving Policy for Members
 B – ZM Managing the Grey Fleet
 C – Driving at Work

Background Papers:
 HSE Web Site
 Zurich Guidance
 Council minutes of 20 July 2011

Reference :

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