

**Committee Name and Date of Committee Meeting**

Audit Committee - 11 March 2025

**Report Title**

Hand-Arm Vibration Update

**Is this a Key Decision and has it been included on the Forward Plan?**

No

**Strategic Director Approving Submission of the Report**

Andrew Bramidge, Strategic Director of Regeneration and Environment

Judith Badger, Strategic Director of Finance and Customer Services

**Report Author(s)**

Sam Barstow, Assistant Director, Community Safety and Street Scene

01709 254057 or [sam.barstow@rotherham.gov.uk](mailto:sam.barstow@rotherham.gov.uk)

Phillip Horsfield, Assistant Director, Legal, Registration and Electoral Services/

Monitoring Officer

01709 823833 or [phillip.horsfield@rotherham.gov.uk](mailto:phillip.horsfield@rotherham.gov.uk)

**Ward(s) Affected**

Borough-Wide

**Report Summary**

The Report provides an update in relation to the Council's improvements to systems in place to ensure the safety of employees in relation to Hand-Arm Vibration and reports to the Committee on the outcome of the investigation by the HSE and subsequent action taken through the Courts.

**Recommendations**

That Audit Committee note the contents of the Report including the legal issues contained within it.

**List of Appendices Included**

None

**Background Papers**

None

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

None

**Council Approval Required**

No

**Exempt from the Press and Public**

No

## Hand-Arm Vibration Update

### 1. Background

- 1.1 On the 25<sup>th</sup> April 2019 the Council was contacted by the Health and Safety Executive requesting further information following the submission, by the Council, of a RIDDOR report (Reporting of Injuries, Diseases and Dangerous Occurrences) regarding one of the Council's employees (referred to as the index case) in the Highways delivery team.
- 1.2 The report was made following the individual receiving an occupational health report which clearly identified the existence of Hand Arm Vibration (HAVs) illness and specified the need to report the individual in 2019. At that time the Council was able to identify that the individual had previously been diagnosed with HAVs related presentations however could not locate documentation to confirm that a previous report, as required under RIDDOR, had been made and therefore, in the interests of transparency and supporting the management of Health and Safety, the case was reported in 2019 to the Health and Safety Executive (HSE). This triggered the commencement of the investigation in 2019.
- 1.3 On the 8<sup>th</sup> March 2022 the HSE confirmed that the investigation had concluded and the file had been passed to their Legal Services for a decision regarding further action. The Council had fully co-operated throughout the investigation.
- 1.4 A decision was provided on the 4<sup>th</sup> April 2023, when the HSE confirmed their intention to prosecute the Council for offences arising from failures under the general duty of s2(1) Health and Safety at Work Act and applicable RIDDOR legislation.
- 1.5 The legislation requiring the reporting of such cases was in place in 2005. The HSE pointed out that as this was the case the duty to report had been in place throughout. The Council accepted this and does hold some records of similar cases being reported via RIDDOR around the same time however the RIDDOR report in relation to the case identified could not be located, hence the RIDDOR being made in 2019 as a safeguard. The Council made representations to the HSE to explain that the fact documentation could not be located did not mean that a report was not made, therefore it was for the HSE to prove their case that a report was not made.
- 1.6 The Council faced one charge of breach of the general duty to employees as follows:

*That you, on and before 10th March 2022, being an employer within the meaning of the Health & Safety at Work etc. Act 1974 (the Act) you did fail to discharge your duty to ensure, so far as reasonably practicable, the health and safety of your employees, including but not limited to Marcus Armstrong, by failing to manage the risks associated with the use of vibrating tools to which said employees were exposed, contrary to section 2(1) of the Act whereby you are guilty of an offence contrary to section 33(1)(a) of the Act.*

- 1.7 Both the Council and the HSE were then required to wait for Court availability to hear the matter which resulted in further delay. The matter was heard by the Court and concluded on the 17<sup>th</sup> December 2024.

## **2. Key Issues**

- 2.1 The key issue for the Council was to ensure the safety of its employees and as a consequence of this the Council engaged vigorously with the Health and Safety Executive seeking advice and guidance to support a comprehensive review of the approach taken to this issue and ensure that the Council did not just fix the issue but became an exemplar of good practice. This has happened and the Council has been sharing this experience with others in the sector to help them improve their approach.
- 2.2 Whilst a range of actions were undertaken, a smaller number of significant changes were made to improve the overall systems and processes. One of those changes has been to ensure that occupational health screening reports are shared with the Health and Safety Team (HST) for central oversight. Whilst the Council already had an occupational screening programme, that went beyond the legal minimum and screened any employee utilising vibrating equipment, the reports were shared directly with line managers only. This relied on managers to understand when it was necessary to share information with the HST and risked inconsistencies in response, without appropriate specialist support and oversight from the HST.
- 2.3 Further to strengthening the occupational health processes, significant work has been undertaken to review the corporate guidance documents, refresh these and roll out further training across the organisation. Of note within the refresh was the introduction of personalised risk assessments for employees with any level of diagnosis or showing any potential symptoms for HAVs related illness. Alongside this change, the Council has adjusted the approach to risk assessing work in relation to HAVs. The approach previously relied on a system of employee's monitoring vibration exposure to ensure thresholds were not exceeded, with any over-exposure therefore addressed after the fact. This was underpinned by generic risk assessments for vibrating tools. Following the changes made, all works are now thoroughly assessed in advance to identify the likely levels of exposure, with resources planned accordingly, backed up by routine and robust monitoring.
- 2.4 The work to change the Councils approach to HAVs has been overseen by a working group led by the HST and supported by all relevant departments. An action plan was fully concluded in June 2024 with a total of 55 actions completed. A performance dashboard is in place to capture data from across services and monitor any emerging trends or risks for further action. To provide further internal assurance, two audits have been undertaken in relation to HAVs. The first concluded in December 2023 and provided 'reasonable assurance'. Four recommendations were made within this report in relation to:

- Providing mandatory training and central oversight
- Ensuring that new vibration exposure assessments were used consistently by all teams
- Ensuring all individuals are trained on the above exposure assessments
- Ensure all services routinely send exposure monitoring records to the HST

2.5 A further Audit, which concluded in June 2024 provided substantial assurance and confirmed the recommendations above had been fully and consistently implemented.

2.6 In relation to the prosecution, the Council accepted from the outset that there had been failings in its management of the risks associated with the use of vibrating tools and on the 17<sup>th</sup> December 2024 entered a guilty plea before the Court. The Council was fined £60,000 and ordered to pay costs in the sum of £5,775.70.

2.7 The Court acknowledged and credited the Council for its early guilty plea. The Judge specifically commented that he had studied the evidence as to what had now been implemented and this was to the Council's credit. It was also noted that there was clear evidence of steps having been taken voluntarily and a high level of co-operation beyond what would be expected.

2.8 The Court also acknowledged the Council's good health and safety record, lack of previous convictions and that the Council now has effective health and safety procedures in place

2.9 Whilst the action plan has been concluded, the upkeep of the performance monitoring and overall oversight will be key in ensuring that changes continue to be effectively embedded and provide assurance that the correct processes are in place to ensure the safety of employees.

### **3. Options considered and recommended proposal**

3.1 This report is presented to provide an update to the Committee and to discharge the requirement under Section 5 of the Local Government and Housing Act 1989 to Report such matters to Councillors. As such there are no options for the Committee to consider

### **4. Consultation on proposal**

4.1 The Report provides an update rather than a proposal and as such there has been no consultation.

## **5. Timetable and Accountability for Implementing this Decision**

5.1 Management of the Service continues to ensure that the good practices commented on by the Court are fully embedded and performance monitored to ensure that the improvements put in place are robust.

5.2 As stated in paragraph 3.1 the Monitoring Officer is responsible for Reporting to the Committee.

## **6. Financial and Procurement Advice and Implications**

6.1 The fine and legal costs that the Council has been instructed to pay fall within the contingency amounts that the Council set aside at the point the financial risk was identified. There are no procurement implications as a result of this report.

## **7. Legal Advice and Implications**

7.1 The Legal implications are set out in the Report.

7.2 As referred to in paragraph 3.1 and 5.2 the Report discharges the obligation under Section 5 of the Local Government and Housing Act 1989 to Report to Councillors on such matters.

## **8. Human Resources Advice and Implications**

8.1 The HR implications are contained in the Report.

## **9. Implications for Children and Young People and Vulnerable Adults**

9.1 As the Report notes an outcome there are no implications for Children and Young People and Vulnerable Adults.

## **10. Equalities and Human Rights Advice and Implications**

10.1 The Report is for noting and therefore there are no Equality and Human Rights considerations.

## **11. Implications for CO<sub>2</sub> Emissions and Climate Change**

11.1 The Report is for noting and therefore there are no Climate Change considerations.

## **12. Implications for Partners**

12.1 There are no implications for partners arising from the Report however the Council is sharing the best practice with others.

### **13. Risks and Mitigation**

- 13.1 The Risks and Mitigation in relation to this issue are contained in the separate Audit Reports into the issue.

#### **Accountable Officer(s)**

Sam Barstow, Assistant Director, Community Safety and Street Scene  
01709 254057 or [sam.barstow@rotherham.gov.uk](mailto:sam.barstow@rotherham.gov.uk)

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Monitoring Officer*

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