

Committee(s)	Dated:
Audit and Risk Management	06.11.2018
Subject: Deep Dive: CR09 Health and Safety	Public
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Summary

Corporate Risk 09 concerns the City of London Corporation's health and safety Management System and its application. Effective Health and Safety management enables innovation, growth and enhances productivity, as well as helping the City Corporation to achieve its strategic objectives.

Protecting the health and safety of employees and others including members of the public who may be affected by the City Corporation's activities is an essential part of successful risk management. Failure to comply can have serious consequences – for both organisations and individuals. Sanctions include fines, imprisonment and disqualification.

It may be appropriate to consider retiring the current CR 09 risk and/or re-scoping one or more focus health and safety risks which are aligned to organisational need such as fire safety compliance.

Recommendation(s)

Members are asked to note the report.

Main Report

1.0 Background

- 1.1 The basis of British health and safety law is the *Health and Safety at Work etc. Act 1974*. The Act sets out the general duties which employers have toward employees and others including members of the public, and employees have to themselves and to each other.
- 1.2 These duties are qualified in the Act by the principle of '*so far as is reasonably practicable*'. In other words, an employer does not have to take measures to avoid or reduce the risk if they are technically impossible or if the time, trouble or cost of the measures would be grossly disproportionate to the risk. The law requires effective management and informed common sense, which employers should be achieving anyway.
- 1.3 Failure to comply with these requirements can have serious consequences – for both organisations and individuals. Sanctions include fines, imprisonment and disqualification.
- 1.4 Under the *Corporate Manslaughter and Corporate Homicide Act 2007*, an offence is committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction and fine.
- 1.5 Employers are required to make suitable (health and safety) arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures. Effective health and safety management enables innovation, growth and enhances productivity, as well as helping the City Corporation achieve its strategic objectives.
- 1.6 The external enforcing authority for health and safety at the City of London of London Corporation is the Health and Safety Executive (HSE). Fire safety is enforced by the Fire and Rescue Service (Fire Brigade) under separate legislation (Regulatory Reform (Fire Safety) Order 2005).
- 1.7 The City Corporation's health and safety management system (using the HSE's *HSG 65* model) apply a *Plan, Do, Check, Act* approach, attempting a balance between the systems and behavioural aspects of management. It also treats health and safety management as an integral part of good general management, as opposed to a stand-alone system. The Health Safety and Wellbeing (People) Team (in corporate HR) are the custodians of the health and safety management system.

2.0 **Current Position: Corporate Risk (CR) 09 - Health and Safety**

2.1 The CR09 risk description is:

Cause - Safety is treated as a low priority by the organisation, lack of training of staff and managers, management complacency, poor supervision and management.

Event - Statutory regulations and internal procedures relating to Health and Safety breached and/or not complied with.

Effect - Possible enforcement action/fine/prosecution by HSE, Employees/visitors/contractors may be harmed/injured, Possible civil insurance claim, costs to the Corporation, adverse publicity/damage to reputation, rectification costs.

2.2 **Current Risk Score - 12:** Impact 4 (*major*) x Likelihood 3 (*possible*) [**October 2018**]

2.3 This Corporate Risk (CR 09) is reviewed on a regular basis at a frequency not exceeding three months. At each review the agreed actions designed to mitigate and manage this risk are reviewed, along with the system of internal controls. An evaluation of the risk score is undertaken based on a judgement of efficacy of the current controls. Consideration is given to any emerging evidence which could challenge the level of control.

3.0 **Risk Actions**

3.1 There is an established annual inspection and audit programme for Property and People health and safety. For example, audit, inspections and compliance checks have focused on water hygiene (legionella), fire safety, asbestos management, workplace transport and lone working/preventing violence. These are currently considered to be the areas of higher risk profile within the City Corporation (Actions: **CR09B** and **CR09C**).

3.2 Following the tragic fire at Grenfell Tower there has been increasing Corporate demand for reassurance on the suitability and sufficiency of the Corporation's fire safety management system, especially fire risk assessment. It has been possible to answer simpler enquiries such as '*are all Department property fire risk assessments in place?*' through reallocation of existing resources but subsequent questions regarding the quality of said fire risk assessments or if all actions from the fire risk assessments been closed out by Departments are more time consuming and complex to answer.

3.3 The Corporate Health, Safety and Wellbeing Committee has been monitoring the situation and in March 2018 recognised the need for an additional resource that could target auditing, compliance and offer additional support to Departments who are responsible for implementing key sections of the Corporate fire safety management plan. Request for Additional Funding of a Fire Safety Compliance Officer Post is being made to Resource Allocation Sub-Committee (13 December 2018). The post would sit in the Property Health and Safety Team (City Surveyors).

- 3.4 Training and development for Senior Management in larger organisations is one of the most important parts of any safety programme. The senior leadership team must be ‘on-board’ in order to give the safety initiative weight – and to understand how good safety practice contributes directly to service delivery, profitability or both. Senior managers need to understand their own role and accountabilities in ‘making safety happen’ (particularly in light of the Corporate Manslaughter legislation). Without the support and ‘buy-in’ of the Senior Management team, any health and safety programme will inevitably falter – and fail to deliver the benefits expected.
- 3.5 A programme of interactive senior leadership health and safety briefings is being implemented for Chief Officers and their reports (**CR09G**). To date these have been completed for The Barbican, Guildhall School, Boys School, Freeman’s School, Markets and Consumer Protection, City Surveyors, Built Environment, Open Spaces and Children and Community Services. A further briefing has been scheduled for Mansion House and Central Criminal Court in November 2018.
- 3.6 The top (and persistent) reason for reported sickness absence at the City Corporation is *anxiety/stress/depression/other psychiatric illnesses*. Grounded in a growing body of the evidence including awareness of best practice, the “CityWell” (employee wellbeing) programme has been re-focused, following a report to the Establishment Committee in February 2018 on mental health as the top priority, supported by a wider health promotion / wellness programme. Advanced consultation is underway on the development of a workplace wellbeing mental health action plan (**CR09H**).
- 4.0 **System of Internal Controls (IC)**
- 4.1 The following section highlights some of the key internal controls and systems in place to ensure the health and safety management system remains effective and relevant.
- 4.2 **Health Safety and Wellbeing Committee**
- 4.3 The City Corporation has an effective Chief officer-led Health, Safety and Wellbeing Committee which is chaired by the Town Clerk and Chief Executive. This sets the tone from the top and facilitates buy-in. Its function is to advise and make recommendations to the City Corporation's Chief Officers on matters relating to the overall management of health, safety and wellbeing as established under the Health, safety and Wellbeing Policy.
- 4.4 **New Mental Health and Wellbeing Policy**
- 4.5 As noted previously (3.5), mental ill-health issues are the top reason for recorded absence at the City Corporation. Mental ill-health and stress are associated with many of the leading causes of disease and disability in our society. Promoting and protecting the mental wellbeing of the workforce is important for individuals’ physical health, social wellbeing and productivity.

- 4.6 Addressing workplace mental wellbeing can help strengthen the positive, protective factors of employment, reduce risk factors for mental ill-health and improve general health. It can also help promote the employment of people who have experienced mental health problems and support them once they are at work.
- 4.7 In May 2018 the Establishment Committee agreed the (new) Corporate Mental health and Wellbeing Policy. As an employer we aim to create and promote a culture where employees can talk openly about their job and mental health problems and to report difficulties without fear of discrimination. The new mental health and wellbeing policy supports this aim.
- 4.8 New Corporate Safe Work at Height Policy**
- 4.9 Latest statistics from the HSE reveal that, although falls from height are reducing, they are still one of the most common causes of injuries to employees and over the last five years have accounted for 28% of fatalities in the workplace. As such over this period unsafe working at height has been the main reason for workplace deaths in the UK.
- 4.10 Working at height is a risky business. Risks need to be properly assessed and work carefully planned, even at relatively low heights. The new revised Corporate Safe Working at Height Policy aims to protect the health of staff and others through good planning and risk assessment. It details what the Corporation is going to do in practice to achieve the aims set out in its statement of health and safety policy. It also provides consistency of practice, which is practical and can be assimilated with operational demands. The new safe working at height policy was agreed by Summit Group in September 2018.
- 4.11 Control of Contractors Policy**
- 4.12 Anyone engaging contractors has health and safety responsibilities, both for the contractors and anyone else that could be affected by their activities. Contractors themselves also have legal health and safety responsibilities. Use of contractors' forms part of an organisation's undertaking; health and safety responsibilities cannot be contracted out to third parties.
- 4.13 Without a robust Corporate Policy arrangement on managing contractors there is a risk of responsibilities not being met and breaches of health and safety duties, that together result in threats to service delivery, damage to property, and individuals being harmed.
- 4.14 The Corporate Control of Contractors Policy aims to protect the health of staff and others. It details what the Corporation is going to do in practice to achieve the aims set out in its statement of health and safety policy. It also provides consistency of practice, reflects Policy and Resources Committee's decision and meet operational demands. A revised Control of Contractors Policy was agreed by Summit Group in September 2018.

4.15 **Most significant health and safety risks**

4.16 The Pentana (Risk Management Information System) is used to manage significant health and safety risks. Pentana enables departments to highlight their safety risks as a 'Top X' risk, emphasising any activities with considerable implications that are un-mitigated, or where there is a lack of clarity. Risk that have been administered effectively through Pentana include Traffic Management at New Spitalfields Market and Unloading Operations at Smithfield Market.

4.17 **Key Performance Indicators**

4.18 The City Corporation has established Key Performance Indicators (KPIs) for health and safety including accident/incident reporting and investigation. The health and safety professionals have supported departments with their more challenging and/or significant health and safety investigations. This has helped to ensure that lessons are learned and are fed back into the development of the health and safety management system.

4.19 **Health and Safety (Property)**

The Property Health and Safety Team consists of four posts a Health and Safety Manager, Fire Safety Advisor, Health and Safety Advisor (specialising in Asbestos and Water Safety) and Guildhall Health and Safety Advisor (covering Guildhall complex and specialising in event safety). The team has been instrumental in creating and negotiating new corporate policies and compliance standards that aim to deliver key safety and health objectives of the Corporate Plan. They have been successful in informing and upskilling groups of managers and staff. Over the last 12-months there has been a heavy focus by the team on contractors, building safety compliance, and fire.

4.21 **Health Safety and Wellbeing (People)**

4.22 The Health Safety and Wellbeing team are based in Human Resources and consist of a manager and health safety and wellbeing advisor. The Health Safety and Wellbeing Strategy (People) (2018 – 2023) was revised and refreshed to align with the new Corporate Plan.

4.23 Everything we do supports the delivery of the Corporate Plan's **three strategic objectives** and we contribute through the Human Resources Business Plan to the **twelve corporate outcomes**, especially:

- **People are safe and feel safe** (Outcome 1);
- **People enjoy good health and wellbeing** (Outcome 2)

4.24 The approach is informed by our corporate outcomes. These have been themed as CitySafe and CityWell respectively and form the principal strands of our contribution to the HR Business Plan and Transformation Programme. They have six overarching sub-themes:

- **Managing risk well:** Simplifying risk management, enabling innovation and facilitating radical ways of working

- **Keeping pace with change:** Anticipating change and tackling new and emerging health and safety challenges
- **Tackling work-related ill-health:** Developing the wellbeing of our workforce, reducing the stigma around mental ill-health, and providing a safe and healthy working environment
- **Acting together:** Developing active and visible leadership in line with our Corporate Values and promoting broader health and safety ownership
- **Sharing our successes:** Growing and nurturing our staff through excellent learning and development opportunities, and celebrating our successes
- **Working well together:** Engaging with others holistically to add value, share resources, embed good practices, and develop behaviours

5.0 Corporate and strategic implications

5.1 An established legal principle (case precedent) is that health and safety enforcement action can proceed on the basis of risk i.e. a loss does not have to occur for a successful prosecution (R-v-Board Trustees of the Science Museum: 1993).

5.2 The Sentencing Council published its guidelines for health and safety offences including Corporate Manslaughter in 2016. This marks a significant change by trying to ensure that those found guilty of health and safety offences are heavily penalised by the courts. It has resulted in a marked increase in the level of fines (which cannot be insured against).

5.3 Fines are based on an organisations turnover rather than profit, even for a 'medium' sized organisation fines typically range from hundreds of thousands to several million pounds for those found most culpable of offences. During the first two years this has certainly been the case, with multiple fines exceeding £1,000,000.

5.4 The number of Directors prosecuted for health and safety offences has increase significantly in recent years. Data confirm that the Health and Safety Executive (HSE) is displaying an increased zeal to prosecute the most senior individuals within organisations.

6.0 Horizon scanning / keeping pace with change

6.1 There is no current indication that there will be significant changes to the UK's health and safety legislative framework after leaving the EU. To note that, however, European Union driven legislation (Directives) has already been translated into United Kingdom law primarily as Regulations (subordinate legislation) under the Health and Safety at Work etc. Act 1974

6.2 Mental health training and development / tackling work related ill-health

6.3 Mandatory mental health awareness training for managers was agreed at the Establishment Committee in February 2018 and good progress is being made in this regard.

6.4 Mental Health First Aid (MHFA) training is analogous to physical first aid. Whilst not a legal requirement, one is more likely to meet someone suffering

distress / suicidal thoughts than someone experiencing physical ill-health or injury requiring intervention. The City Corporation took the decision to train in-house Mental Health First Aid Instructors and roll-out an internal programme of accredited MHFA training across the corporation, along with mandatory mental health awareness training for managers.

- 6.5 A petition of over 200,000 signatures was handed to Downing Street on 8 October 2018 calling for a change in the law (First Aid at Work Regulations) to ensure mental health first aid is on par with physical first aid and made a legal requirement. Regardless of whether the law changes in the near future, to date, over 50 City Corporation employees have been trained as MH First Aiders and there is growing evidence of the benefits of this approach.

7.0 Options / current risk climate

- 7.1 The Health and Safety Corporate Risk (CR09) is currently written as a "business and usual" / general risk associated with the safety management system. This may be unhelpful from the perspective of the current risk climate and organisational appetite for risk. It may be appropriate consider one or more focused health and safety risk(s). For example, around corporate fire safety compliance.
- 7.2 Effective Health and Safety management enables innovation, growth and enhances productivity, as well as helping the City Corporation to achieve its strategic objectives. However, there are very few risks which when realised can have such potentially negative effects (as described above)
- 7.3 Audit and Risk Management Committee "Deep Dive" (May 2017) recommended that 'consideration should be given to re-evaluating and potentially lowering the risk score (reduced chance of an event not the impact) before the end 2017'. However, in June 2017 the events of the Grenfell tower block fire put health and safety / fire safety very visibly under public / political focus.
- 7.4 The Corporate Health and safety teams (Property and People) have been supporting a number of departments with fire and health and safety issues including the Central Criminal Court, Barbican, Guildhall School and Housing (DCCS).
- 7.5 Since the last Health and Safety (CR09) Deep Dive (May 2017) there has been no health and safety enforcement action by the HSE. Several non-statutory deficiency notices were issued by the Fire and Rescue service. A joint (fire) enforcement notice on the Barbican Centre and tenant was issued, and this was complied with. There were no prosecutions by the Fire and Rescue Service.

8.0 Conclusion

- 8.1 There is no current indication that there will be significant changes to the UK's health and safety legislative framework after leaving the EU.

- 8.2 There are a number of mechanisms the City of London Corporation utilises to mitigate and manage its health and safety risks. The small team of competent persons continue to develop the safety framework and focus towards assuring the organisation as current resources allow.
- 8.3 It may be appropriate to consider retiring the current risk (CR09) and/or re-scoping one or more focused health and safety risks, which are aligned to organisational need such as fire safety compliance.

Appendices

- Appendix 1 – Risk and Progress Summary for CR09: Health and Safety

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