

## Audit Committee Meeting

Date of Meeting	Friday 13 October 2017
Paper Title	Employer Duties
Agenda Item	8
Paper Number	NRC2-D
Responsible Officer	Jim Godfrey, Interim Finance and Resources Director
Status	Disclosable
Action	For noting

### 1. Report Purpose

- 1.1. This paper provides a summary of the duties of an employer and follows the request for such at a previous meeting of this committee.

### 2. Recommendations

- 2.1. The Committee is invited to:

- **note** the duties of an employer contained within this report; and
- **request** that the GCRB executive provides an update of actions taken, and planned, to comply with these duties and reports this to a future meeting of the committee.

### 3. Report

- 3.1. As an employer, GCRB has specific responsibilities to its employees as defined by legislation and common law. The sections below describe many of the key duties and responsibilities of the Board<sup>1</sup>.

#### 3.2. Health and Safety<sup>2</sup>

- 3.2.1. Under the law, employers are responsible for health and safety management. The following provides a broad outline of how the law applies to employers.

- 3.2.2. It is an employer's duty to protect the health, safety and welfare of their employees and other people who might be affected by their business. Employers must do whatever is reasonably practicable to achieve this.

<sup>1</sup> The duties of an employer complements the Review of Powers, Duties and Accountabilities considered by the Audit Committee at its meeting on 3 October 2017

<sup>2</sup> Extracted from Health and Safety Executive, Employer's Responsibilities  
<http://www.hse.gov.uk/workers/employers.htm>

- 3.2.3. This means making sure that workers, and others, are protected from anything that may cause harm, effectively controlling any risks to injury or health that could arise in the workplace.
- 3.2.4. Employers have duties under health and safety law to assess risks in the workplace. Risk assessments should be carried out that address all risks that might cause harm in your workplace.
- 3.2.5. Employers must give workers information about the risks in the workplace and how they are protected, also instruct and train them on how to deal with the risks.
- 3.2.6. Employers must consult employees on health and safety issues. Consultation must be either direct or through a safety representative that is either elected by the workforce or appointed by a trade union.

### 3.3. Duty of Care<sup>3</sup>

- 3.3.1. Employers have a duty of care to their employees, which means that they should take all steps which are reasonably possible to ensure their health, safety and wellbeing. Demonstrating concern for the physical and mental health of employees shouldn't just be seen as a legal duty. It can be a key factor in building trust and reinforcing your commitment to your employees, and can help improve staff retention, boost productivity and pave the way for greater employee engagement.
- 3.3.2. Legally, employers must abide by relevant health & safety and employment law, as well as the common law duty of care. They also have a moral and ethical duty not to cause, or fail to prevent, physical or psychological injury, and must fulfil their responsibilities with regard to personal injury and negligence claims.
- 3.3.3. Requirements under an employer's duty of care are wide-ranging and may manifest themselves in many different ways, such as:
  - Clearly defining jobs and undertaking risk assessments;
  - Ensuring a safe work environment;
  - Providing adequate training and feedback on performance;
  - Ensuring that staff do not work excessive hours;
  - Providing areas for rest and relaxation;
  - Protecting staff from bullying or harassment, either from colleagues or third parties;
  - Protecting staff from discrimination;
  - Providing communication channels for employees to raise concerns; and
  - Consulting employees on issues which concern them.

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<sup>3</sup> Extract from ACAS, Defining an employer's duty of care. <http://www.acas.org.uk/index.aspx?articleid=3751>

3.3.4. An employer can be deemed to have breached their duty of care by failing to do everything that was reasonable in the circumstances to keep the employee safe from harm. Employees also have responsibilities for their health and wellbeing at work - for example, they are entitled by law to refuse to undertake work that isn't safe without fear of disciplinary action.

**3.4. Legal Duties**<sup>4</sup> - An employer owes their employee the following duties, which can be implied by the law or may be found in the employment contract.

- Fair recruitment practice.
- Give an employee a “statement” of employment (usually in the form of a contract), within two months of the employee starting work.
- Give employees correct information about rights under their contract.
- Abide by express and implied contractual terms.
- Informing, and consulting, when changes are made.
- Terminating a contract fairly.
- Duty to pay the employee the agreed amount if the employee arrives for work and can work.
- Provide the employee with work to do.
- Observe Health & Safety Regulations.
- Comply with the Working Time Regulations and Holiday entitlements.
- Adhere to the Minimum Wage.
- Treat employees fairly which prevents claims for discrimination.
- Consider requests for flexible working.
- Grant maternity leave, paternity leave and parental leave and allow staff to return to the same job.
- Provide a workplace pension scheme to staff and contribute towards it.
- Give employees reasonable opportunity to have their complaints looked at.
- There is no duty to provide references to an employee, (except where the reference is required by the Financial Conduct Authority). However, if a reference is provided by the employer, the employer owes a duty to the employee to make sure the reference is completed with reasonable skill and care and is true, accurate and fair. The employer also owes a duty to the receiver of the reference not to make any negligent statements about the employee.

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<sup>4</sup> From Compact Law, What obligations/duties does the employer owe to the employee?  
<https://www.compactlaw.co.uk/free-legal-information/employment-law/employer-obligations-to-employee.html> & Ensuring you fulfil your legal duties as an employer by MS Solicitors <http://www.ms-solicitors.co.uk/employer/employer-responsibilities/>

3.4.1. The employer and employee also owe each other a duty of 'Mutual Trust & Confidence', basically they must show respect for the rights of each other. Examples of breaches:

- Harassing or victimising employees, particularly in front of other employees who are less senior than the victim;
- Physical violence by the employer or employee;
- Theft by employee;
- There is no duty to pay Contractual Sick Pay;
- There is an obligation on an employer to pay statutory sick pay for the first 28 weeks an employee is absent due to sickness in any period of 3 years; and
- Employees entitled to at least four weeks holiday in any one year period.

### **3.5. Summary**

3.5.1. The above sections provide an overview of the duties of GCRB as an employer and complement the range of other duties placed upon the Board. Some of the duties relate specifically to the arrangements in place for employing staff e.g. terms and conditions. There are also a range of other duties, e.g. duty of care and health and safety, that extend to a wider group of people, such as those seconded, or contracted, to GCRB.

3.5.2. The executive will develop a response to the list of employer duties outlined above. This plan will show the actions taken to ensure compliance, together with the proposed actions and resources required.

## **4. Risk Analysis**

4.1. The identification of these duties, and subsequent development of actions, mitigates the risks posed. As such this report contributes to the reduction of the risk of the following risks:

- a breach of legislation/guidance/code of practice and this results in a failure of governance; and
- standards of governance fall below the level required.

## **5. Legal Implications**

5.1. Many of the duties outlined above are enshrined in statute and legally enforceable. As such, there are specific penalties associated with non-compliance, e.g. the 2016 Health and Safety Sentencing Guidelines. Others duties are embedded in common law, e.g. Duty of Care, and an employer may be sued for damages through a civil action in the event of a breach.

## **6. Financial Implications**

- 6.1.** There are no direct financial implications associated with this report. However, there may be resource implications associated with the actions necessary to ensure full compliance with the duties outlined.

## **7. Strategic Plan Implications**

- 7.1.** Through the conditions of grant associated with the Regional Outcome Agreement, GCRB is required to conduct its affairs in accordance with the expected standards of good governance, which include establishing appropriate arrangements in relation to the duties of an employer.