



Guide

Managing drug and alcohol misuse at work

A guide for
people management
professionals

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Acknowledgements

The CIPD is very grateful to those individuals who gave their time to contribute to this guide.

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Introduction

The bare facts on alcohol consumption and drug use in the UK are frightening. More than a quarter of men report that they drink over the recommended maximum 21 units of alcohol a week, while 17% of women consume over the 14 recommended units of alcohol for their gender – up from 10% in 1988¹.

In all, 36% of 16- to 59-year-olds have used one or more illicit drugs in their lifetime, with 12% having used an illicit drug at least once in the last year. Among 16- to 24-year-olds, 28% have used an illicit drug in the previous 12 months².

But should what employees do in their lives outside work concern employers? The answer to this question is 'yes', but only if the level of use has an impact on individuals' attendance or performance or if it could increase the risks of accidents at work or have an impact on the health and safety of the general public.

Given the levels of consumption in society, it's not surprising that four out of ten respondents to the CIPD survey, *Managing Alcohol and Drug Misuse at Work*, identified the consumption of alcohol as a significant cause or very significant cause of employee absence and lost productivity. A third of organisations reported that drug misuse had a similarly negative effect in the workplace.

There's plenty of other evidence of the negative impact that alcohol consumption has on organisations, individuals and the economy. A 2003 study by Leontaridi found that between 6% and 15% of the 176 million working days lost to sickness absence in 2001 was due to alcohol-related sickness.

The Government's Strategy Unit, in its report for the National Alcohol Harm Reduction Strategy, estimated that the alcohol-related output loss to the UK economy was up to £6.4 billion a year as a result of:

- increased sickness absence due to injury – drinking 7-plus (for women) or 14-plus (for men) units per week raises the likelihood of absence from work through injury by 20%
- the inability to work (unemployment and early retirement), and
- premature deaths among economically active people (people of working age).

Health and safety legislation is another reason why organisations should take the issue of alcohol and drug misuse at work seriously. The Health and Safety at Work Act 1974 requires both employers and employees to maintain a safe working environment and the employer, the employee or both could be liable if an alcohol-related accident occurs at work.

It's in the interests of employers who care about their employees and want a healthy and engaged workforce to manage this issue effectively through effective policies and procedures and the provision of support for individuals who develop dependency problems.

However, the 2007 CIPD *Managing Drug and Alcohol Misuse at Work* survey shows that a significant proportion of employers have no policies on either alcohol or drug misuse at work.

Even where employers do have policies in place, the CIPD survey shows that many don't communicate them effectively to managers and staff.

The most common method of communicating policies on drug and alcohol misuse is through the staff handbook, with two-thirds of respondent organisations providing information in this way.

Just a third of employers train managers in how to manage these sorts of problems at work and only a fifth train employees generally in the organisation's policies, procedures and approach to tackling the issue.

Other proactive methods for communicating policies and procedures on drug and alcohol misuse at work, such as poster or publicity campaigns, the use of internal noticeboards, newsletters and email alerts, are not widely used.

Policies may also cover the issue of testing for drug and/or alcohol misuse, but any approach to testing should be a risk-based one that takes into account the nature of the business. Relevant factors will include whether the organisation or some roles within it are safety-critical, as well as concerns over organisational reputation, alcohol- or drug-related absenteeism or poor performance. A blanket 'Big Brother' approach to testing without good reason will damage employee relations.

Research by the CIPD has found that organisations that seek to monitor their employees excessively are unlikely to create a work environment that encourages trust, loyalty and commitment. The CIPD research report, *Pressure at Work and the Psychological Contract*, reveals that employees who are closely monitored or under excessive surveillance tend to have more negative attitudes towards work and are more likely to suffer from stress.

When dealing with alcohol or drug misuse at work, employers have to strike a balance between using the disciplinary procedure for conduct-related incidents and providing support where individuals have acknowledged they have a problem.

Employers that do invest in employees with drug and alcohol problems by providing them with support to tackle binge drinking or drug use, or more deep-seated dependency issues, are likely to be successful in helping such individuals overcome their problems.

The CIPD survey shows that where people with alcohol and/or drug problems are provided with help by their employers by referral to specialist treatment or through rehabilitation support, more than 60% remain working for the organisation after successfully overcoming their problems.

Workplaces present opportunities for early detection, intervention and support. They are settings that can promote the health of workers and influence the health of their families and community. The stability that ensues from holding down a job is often an important factor in facilitating recovery from alcohol- and drug-related problems. Similarly, support and treatment may help to enable employees with a problem to return to work after receiving help. As a result employers, the business community, employees and their families, as well as society as a whole, can benefit.

References

¹Office for National Statistics. (2004) *Living in Britain: Results from the 2002 General Household Survey*. London: The Stationery Office.

²Home Office. (2002) *The British Crime Survey 2001/2002*. London: The Stationery Office.

Part 1: Developing a policy

Effectively implemented policies will help employers to manage this challenging issue by ensuring:

- a clear understanding within the workplace of the rules relating to alcohol and drug misuse
- a greater awareness in the workplace of the effects of drugs and alcohol and, consequently, early recognition of any problems
- the necessary procedures and support are in place should a problem arise
- that key staff have been trained to understand the issues involved and have the skills and knowledge to deal appropriately when there is a problem
- that employees are aware that the organisation will support them if they acknowledge that they have developed a dependency problem and need help.

Define the need for a policy

Management endorsement

The person championing the introduction of a policy, probably a personnel/HR specialist supported by an occupational health specialist, will need to present a case to senior managers, as the successful implementation of a policy will only occur if it's seen by the workforce to be endorsed by top management.

Developing a policy on drug and alcohol misuse can provide a framework to enable organisations to:

- improve health and safety standards
- reduce employee absence levels
- enhance productivity
- retain key talent.

Establish a working party

A recommended useful starting point is the establishment of a working party, drawn from sectors of the workforce. The working party needs to agree its terms of reference and is likely to contain representatives from management, trade unions,

personnel, occupational health, health and safety, and other employees drawn from different levels and functions in the organisation, particularly those with responsibility for implementing the policy. The size and make-up of the working party will vary with different organisations. The working party should initially carry out the following actions:

Auditing the workplace

Drug and alcohol misuse will often be hidden within an organisation. An audit will help find the links between possible instances of substance misuse and factors associated with the workplace. Ways this can be done include:

- **People audit** – examining records on performance and capability, absenteeism, work-related illness, early retirements, accidents, disciplinary and dismissal cases.
- **Process audit** – do processes inherent to the organisation result in employees experiencing high and sustained levels of pressure that might/do result in stress? Can stress, which may lead to alcohol and drug misuse as a coping mechanism, be reduced?
- **Corporate culture** – does the culture of the organisation condone or encourage the use of alcohol and drugs? This means asking questions such as:
 - Is alcohol served in the premises?
 - Is drinking at lunchtime encouraged during working hours via peer group pressure?
 - Does achieving promotion require joining the after-working-hours pub group attended by managers?
 - What measures are already in place that would support the policy implementation?

Examining corporate culture should indicate if the existing corporate culture reinforces or undermines the purpose of a substance misuse policy.

The people, process and corporate audit should provide a picture of the links alcohol and drugs use and misuse has with the workplace, and alert the working party as to what needs to change or to be monitored, to ensure any substance misuse policy is not undermined.

Ideally the policy should apply to alcohol and illegal drugs, and consideration should be given to including prescription and over-the-counter medications that may affect performance.

It's important for each organisation to identify its own particular needs and to reflect these in the policy, for example an organisation that operates in a safety-critical industrial sector will probably require a more complex and punitive policy with strict and specific rules than an organisation that operates in the leisure and tourism sector.

Identify resource implications. Designing and implementing a policy will require resources. These include the degree of consultation, the emphasis on educating the workforce, the size and geographical distribution of the organisation, the effort that will have to be put into preparing the organisation for implementation, particularly the role of supervisors and managers, monitoring the effect of the policy, and so on.

Consult

Initial communication

It's sensible to start a communications exercise well in advance, even before the policy is agreed, in order to:

- ensure the process is open and transparent, as the emphasis is to support rather than police staff
- clarify any misunderstandings and apprehensions, and gauge the views of the workforce.

The more that employees are seen to be involved in drawing up a policy, the more they will feel they have ownership of the policy and the desire to see it work successfully.

This is very important with a substance misuse policy, because the policy will have an effect on the private lives of a proportion of employees, and their trust needs to be won over.

Initial communication will also raise the general awareness and interest in the issue, and engender a sympathetic positive approach to colleagues with drug- and alcohol-related problems.

The communication approaches used will vary with the size of the organisation, number of operating units, work patterns, and so on. For example, a simple starting approach would be a letter from the chief executive announcing the commencement of the consultation process.

To gauge the views of the workforce, consultation can take place via any of the following: meetings, use of employee suggestion schemes, questionnaires, ballots, and discussions with trade union and staff representatives. The method of consultation chosen will be that which best suits the organisation.

Engagement with employees at the early stages will help foster credibility and trust. It allows discussion on issues over which they have concerns and should result in a meaningful policy with defined procedures and clear lines of accountability.

Why winning trust is important

According to the CIPD research report, *Working Life: Employee Attitudes and Engagement 2006*, only one in four employees trust senior management to look after their interests.

Richard Reeves, in his article 'The trouble with trust' (*Management Today*, March 2005), concludes that if mutual confidence between management and staff is lost, performance is affected. Reeves cites the Brookings Institution research that has shown there is good evidence that employees who are more trusted are more likely to be trustworthy themselves. Similarly, Cohen and Prosa's book on social capital, *In Good Company*, points out that trust is a function of a relationship, that is, trustworthy people are not just hired; they are made. Reeves illustrates the point:

‘While much of the rhetoric in corporate life is about empowerment and “letting go”, levels of supervision and surveillance have in practice often been rising. With CCTV cameras, e-mail checks, phone monitoring, swipe cards recording movement, drug testing – all the equivalent of large lurid banners above the entrance to the office saying “Hi! We don’t trust you.”’

What needs to be communicated?

Three main issues need to be communicated:

- why alcohol and drugs should not be brought into the workplace, and the potential adverse effects on employees, customers and the public
- the existence and the operation of the organisation’s policy
- the advantages of seeking help and gaining access to support and treatment.

This dialogue between the employer and the employee may enable some to see the potential dangers to themselves, other colleagues and the organisation if drugs or alcohol are misused. It should be made clear that help will be given to all those who need it, but the consequences of refusing to accept help should also be explained.

Management commitment and the involvement of employees and their representatives at the early stage of policy development are therefore critical in ensuring that the policy will work.

Drafting the policy in detail

The substance misuse policy must relate to existing policies

A substance misuse policy should be built on and supported by policies relating to the disciplinary procedures, sickness schemes, communication, training and welfare. This way the substance misuse policy will become an important and integral part of employee relations in total and, in particular, of promoting good health among employees.

The policy should include four main elements:

- 1 Clearly explain why the organisation is concerned about alcohol and drug use and why it’s seen as a problem in the workplace and that everyone is responsible for making the policy work.
- 2 Ensure all staff clearly understand what the employing organisation will and will not allow in relation to employees’ drug and alcohol use, as it affects their employment.
- 3 Set out clearly the rules and procedures for managing issues relating to drugs, alcohol and other substances to include both the supportive and disciplinary elements:
 - supportive procedures should aim to encourage employees to seek help and gain access to support and treatment
 - disciplinary plus performance and capability procedures should explain when and how such procedures would be invoked. For example:
 - the consequences of reporting to work unfit due to alcohol or drugs
 - impaired performance as a result of use of alcohol or drugs outside the workplace
 - explaining that if help is refused and/or impaired performance continues that capability/disciplinary action may result
 - the consequences of possessing and/or dealing in drugs at work
 - when dismissal action may be taken, for example in cases of gross misconduct.
- 4 Explain who is responsible for administering and maintaining the policy.

Appendix 1 on page 31 shows some examples of policy statements that can help in the drafting and agreement of the policy in more detail.

Finalising the policy

Consultation

Once the first draft has been agreed, it should be presented to the board of directors, union and other employee representatives. This would enable any unforeseen difficulties to be aired and hopefully resolved.

The draft should also explain how the policy will be communicated to employees, what training is required for employees, and how any related procedures and organisational practices that require amending will be conducted.

Communication

Many policies are formulated after extensive research and consultation but don't work because this stage is forgotten. If the policy isn't widely known then employees won't be able to comply with its terms and will fail to report other employees who infringe the policy. The policy could be publicised by:

- announcing the policy with a letter from the chief executive
- carrying out a series of briefings for line managers, union officials and other key personnel
- displaying a new policy on noticeboards and providing copies to all employees
- reinforcing the message via existing communication systems, such as team briefings.

Training

Directors, senior managers, personnel specialists, line managers, occupational health staff and the union employee representatives would all benefit from training, which could include:

- information on the effects of drug and alcohol misuse at work
- help and support available for staff
- basic interviewing and advisory skills
- supervisors, line managers, and so on will benefit from training on how to implement the policy.

Managers should be trained to behave with caution and, where there are doubts, to seek a medical opinion via occupational health.

Revising procedures

These are likely to include:

- performance and capability procedures
- the disciplinary rules and procedures
- the contract of employment
- existing grievance procedures
- staff handbook
- health and safety policy
- separate notes to contractors and other visitors
- how to amend any aspects of the existing corporate culture that could potentially undermine the effectiveness of the policy.

Launching and operating the policy

Implementing the policy

It may be necessary to nominate a member of the senior management team to take responsibility for the effective operation of the policy. It's also advisable for one person, possibly the policy co-ordinator, to maintain a database of information on the facilities available locally for the diagnosis and treatment of drug and alcohol dependency. It's likely that the personnel, occupational health, and health and safety departments will be involved in the process of implementation.

Training and communication

With any policy the most important thing is how you communicate it to employees and the people who are going to have to implement it – the line managers. The CIPD 2007 *Managing Drug and Alcohol Misuse at Work* survey finds that too few employers are proactively communicating their policies on the issue to staff, with the most common approach being through the staff handbook. Only a third of organisations provide training to managers and just a fifth to employees more generally.

However, for organisations that want to ensure the policy on drug and/or alcohol misuse at work is implemented effectively, there's no substitute for training to enable managers and front-line supervisors to understand how the policy works and what the issues are.

Training for managers and front-line supervisors should include the main points of the policy and what the policy is intended to achieve. It should also include the wider issues, such as how someone's use of drink and

drugs can affect the wider community, the family as well as the impact it can have on the workplace. All supervisors and managers should have this training, as should any member of staff involved in any form of safety-critical work such as driving or working with machinery.

Training should deal with the very sensitive issue of how to approach somebody that is suspected of having issues with drink or drugs. It should also include what to look for and how the symptoms may manifest themselves in the workplace. The training should include how the issue should be documented and, if necessary, how the disciplinary process should be used. Just as importantly any programme should cover what sources of support there are in the organisation for people with drug and/or alcohol problems, such as employee assistance programmes. Line managers also need to be trained in how to support the individual recovering from a drug and/or alcohol problem back into work. Managers also need to understand issues around lapse/relapse and how these should be dealt with as part of any rehabilitation.

To finish there should be some form of practical exercise, such as case studies, where managers are given different scenarios and have to use the skills learned in the training along with the knowledge of the company policy to come up with a strategy for dealing with the individual concerned. This allows the trainer to gauge whether those on the course have absorbed the information and are capable of understanding its implications and addressing the issues with regard to an individual's needs, company policy and the law.

Ensuring all staff are aware of the organisation's policies on managing drug and/or alcohol misuse at work is also vital. This can be done reasonably cheaply and with great effect by putting up posters and issuing information sheets on the effects of drugs and alcohol via occupational health departments or just distributed with pay slips. Posters can be put up alongside health and safety material. The intranet and email alerts can also be used to raise awareness of the issue among employees on an ongoing basis. Lunchtime seminars can be delivered to staff to highlight policies as well as how drug and alcohol misuse has an impact on individuals' health and on their families.

Enforcing the policy

There are two aspects involved in enforcing the policy:

- 1 Dealing with infringements – it is imperative that a fair procedure should be followed, whether it's a disciplinary matter or a capability issue. An adequate system of monitoring work performance is therefore crucial. Without it, early recognition of the dependency problem is much less likely.
- 2 Dealing with complaints – employers should actively encourage employees to make use of the grievance procedure if they have any complaints about any aspect of the drug and alcohol policy and its operation. Grievances should be dealt with appropriately and within the agreed procedure. Failure to do this may lead to employers having to defend their actions in unfair dismissal claims.

Monitoring and reviewing the policy

Monitoring the policy

It's crucial to monitor the operation of the policy to ensure the rules are clearly understood and complied with. When infringements do occur, these must be dealt with and be seen to be dealt with consistently and fairly across all staff.

Statistical evidence that may be useful in monitoring the success of the policy includes:

- any decrease in sickness and absence levels, especially when a link can be established to drug and alcohol problems
- any increase in accident rates
- the number of drug- and alcohol-related disciplinary cases
- the number of employees who have voluntarily sought help
- the number of drug- and alcohol-related problems that have been reported by colleagues.

Reviewing the policy

The policy should also be periodically reviewed through consultation with the employees and/or their representatives. The aim is to judge the policy against its purpose and objectives. This could include conducting annual health and safety surveys and audits of the opinions and attitudes of employees and managers. Information can be gathered on:

- the clarity of the rules contained within the policy
- the general awareness of the dangers of drug and alcohol misuse and what sensible behaviour constitutes
- whether the climate is conducive to self-referral
- the ability of managers and employees to meet their responsibilities under the policy
- any changes since the initial audit was carried out by the working party.

In this way difficulties and problems can be brought to the surface and hopefully resolved. This should minimise employee discontent and lead to a happier and healthier working environment.

Summary

Organisations should have clear rules on the use of drugs and alcohol in relation to the workplace:

- Policies should apply to all employees and contractors, where applicable.
- Consultation should take place with all employees prior to the implementation of a drug and alcohol policy. A realistic timeframe should be allowed for this process.
- Organisations should try to design and implement a policy that is tailored to the organisational setting and takes account of employer and employee responsibilities.
- Suspected cases of drug or alcohol misuse should be fully investigated and, where possible, medical opinion should be sought before deciding on a course of action.
- In misconduct cases, it's essential to follow a fair disciplinary procedure.
- Policies should be designed to encourage employees with drug- or alcohol-related problems to seek help, and to assure them that they will be treated fairly and confidentially.
- In enforcing the policy, managers must be trained to recognise the signs of drug or alcohol dependency, and to be competent in basic interview skills.
- Further information on workplace policies can be found by accessing a free learning package at www.westsussexdaat.co.uk/daapw

Case study

The Scottish Court Service has revised its policy on substance misuse at work so that it covers drug misuse as well as alcohol misuse.

Personnel Policy Manager Ellie Lessels said that the decision to broaden the policy's focus beyond alcohol had been taken because of the recognition that drugs are increasingly widely used in society.

The policy, which has been developed in agreement with the union, prohibits the consumption of alcohol and drugs in the workplace and in company vehicles. It also discourages lunchtime drinking but does not prohibit outright the consumption of alcohol during lunchtimes provided it is of a reasonable level. Unreasonable consumption is defined as over the legal drink-drive limit or, in the opinion of management, the individual's performance is impaired. The policy makes clear that management can take action if an individual's behaviour is likely to cause offence or distress or impacts in any way on their performance.

Lessels said that the policy emphasises that support is available for employees that acknowledge they have a dependency problem but also states that if employees refuse help and their performance or behaviour continues to deteriorate, then disciplinary action will be taken.

In addition the policy provides some guidance for managers on the possible early warning signs of substance misuse, such as absenteeism, lateness, poor concentration, reduced performance and errors of judgement.

Lessels said the revised policy has been communicated via the intranet and the internal newsletter and discussed at senior management meetings and sheriff-clerk meetings. The organisation's people management training courses contain information on how to spot tell tale signs and to intervene and raise concerns they have with individuals at an early stage. Attendance management training covers this in more detail.

For individuals with drug and/or alcohol problems, the Scottish Court Service provides a significant degree of support. This includes an employee assistance programme providing a confidential helpline and up to eight face-to-face counselling sessions. The substance misuse policy covers rehabilitation for individuals with drug and/or alcohol problems and issues such as performance monitoring, review meetings and signs of progress.

The organisation provides a range of policies to help support employee well-being and prevent individuals developing substance misuse problems. These include a wide range of flexible working arrangements, including flexitime around core hours, job-sharing, part-time working and for some staff – where roles allow – term-time working. It also provides free health screening every 18 months and is about to introduce an online lifestyle management programme that enables employees to get personalised advice on diet and exercise. Other support includes access to an occupational health service.

Part 2: Recruitment – including health screening

Employing individuals with previous drug/alcohol problems

Individuals with former drug or alcohol problems should not be overlooked with regard to employment by reason of their substance misuse alone. Drug or alcohol dependence can affect anyone at any time and employers should remain open-minded. Some individuals may have attended university, achieved degrees and held challenging senior jobs prior to their use of substances and the need to step off the career ladder. Others may have great potential but for one reason or another they left school without any qualifications.

Anyone who has overcome drug or alcohol dependency has not done so easily. It takes courage, determination, effort and commitment. Over time individuals will have addressed their issues, become self-aware and developed many strengths, not least the desire and capacity to change. Such individuals can be effective employees, particularly if they receive the support required for all new employees, including induction, appropriate training and ongoing line management support.

Applications will need to be considered on an individual basis, taking into account the type of work the individual will be undertaking, whether administrative or people-focused, the extent and type of drug or alcohol problem and whether it is current.

The principle of ensuring that staff are competent to perform the job for which they are being employed should be the main driver behind any recruitment.

The employer will need to consider, among other issues:

- the nature and seriousness of the substance misuse
- the attitude and confidence of the individual in relation to their rehabilitation
- the commitment of the individual to their recovery from substance misuse

- criminal convictions
- Rehabilitation of Offenders Acts (ROOA)
- Disability Discrimination Act (DDA)*.

(* The definition of 'disability' under the DDA does not include addiction to alcohol or any other substance (unless addiction is the consequence of medically prescribed drugs or treatment). Addiction is not a disability in itself so no adjustments are required. However, some adverse health effects that can be caused by alcohol/drug misuse can lead to medical conditions that may constitute a clinically recognisable condition under the DDA.)

The most important issue is to ensure that each employee is equipped with the skills and competence necessary to carry out their role effectively.

Employers with a positive approach to the employment of former substance misusers need to have a robust system in place to maintain and monitor support and individual progress. Ultimately the employer is responsible for making decisions about who they do or do not employ.

Applicants should also be made aware of the employer's drug and alcohol workplace policy and procedure. They will need to know what is expected of them and what they can do if they experience problems. It's also good practice for employers to include within the policy and procedure the consequences of the employee experiencing a relapse.

The use of medication for a substance misuse problem should not be considered drug misuse in itself, although it may indicate an issue with drug dependency if it's substitute medication (for example methadone).

Employees should seek advice from their GP on any medicines they're taking.

If driving is a job requirement, there are additional considerations if former or current drug and alcohol misusers apply. Applicants for holders of a driving licence are required to inform the Driver and Vehicle Licensing Authority (DVLA) of any medical condition that may affect fitness to drive, including 'dependence on/or problem use of drugs or alcohol in the past 3 years'. A licence is then likely to be refused or revoked until after 6–12 months of abstinence. A licence may be issued, after assessment and medical review, to someone on a supervised methadone or buprenorphine prescribing programme. There's more information at www.dvla.gov.uk

See also the CIPD recruitment factsheet at www.cipd.co.uk/factsheets

Another useful document is *Recruitment and Retention* by the National Treatment Agency for Substance Misuse. Go to:

www.nta.nhs.uk/publications/documents/nta_recruitment_and_retention_2004_ddsp4.pdf

Offering voluntary placements/work trials

Some employers have had success where they have provided stable users with opportunities within the workplace on a voluntary basis as part of their rehabilitation. Such an arrangement brings mutual benefits.

For example, it provides an employer with the additional opportunity of a trial period to assess an individual's skills, ability, competence and potential. As is often the case when individuals experience unemployment or long-term absences from work, an individual who is 'in recovery' from drug or alcohol dependence is likely to, initially, have low self-confidence and self-esteem. Resuming or starting employment can be very daunting for them. However, undertaking a voluntary placement or work trial can be key to an individual's recovery and reintegration into the working environment. It gives them the opportunity to rebuild their confidence and skills until they're ready to move from, say, income support to paid employment. In many cases, given this second chance, such individuals have become highly motivated, committed and loyal employees.

Employers need to ensure they have an appropriate volunteer/work trial policy and procedure in place.

Employment of those with a criminal record

Having a criminal conviction should not automatically exclude someone from employment. An objective assessment will:

- focus on a person's abilities, skills, experience and qualifications
- consider the nature of the conviction and its relevance to the job*
- identify the risks to the organisation's business, customers, clients and employees
- recognise that having a criminal record doesn't always mean a lack of skills, qualifications and experience
- note that high-quality training, leading to qualifications, is available in prisons.

(* Some organisations may have agreed guidelines for employing ex-offenders, for example some police authorities won't employ people with any criminal history of violence. However, in cases where guidelines don't exist, the appointing manager will have to use their discretion and treat each situation on its merits.)

When recruiting for positions of trust that involve regular contact with children and vulnerable adults, employers have a duty to make checks on an applicant's criminal record and other relevant information (for example information held by the local police). Under such circumstances, a Criminal Records Bureau (CRB) check provides employers with the release of information on convictions that, otherwise, would be considered spent under the Rehabilitation of Offenders Act 1974 and would not have to be disclosed. Employers can request standard or enhanced-level disclosures, depending on the type of contact.

For more information, see the CRB website at www.crb.gov.uk

Employers should note that it's likely that a former substance misuser may have a criminal record/history. Often information that is shared on a disclosure will be dated only around the time they were misusing substances. It would be important to take this into account when assessing employment suitability.

Subsequent decisions will take account of individuals' potential to change and the change in personal circumstance of the individual since the offence was committed, and will reflect a balanced judgement.

Organisations should develop policies on employing people with criminal records and make appropriate changes to their recruitment and employment practices. Many offenders who get jobs turn out to be reliable and committed employees who are loyal and hard working. Employment is often one of the single most important factors in reducing reoffending.

The CIPD 2007 *Employing Ex-offenders to Capture Talent* survey report provides invaluable information on UK employers' policies, views and experiences in connection with employing ex-offenders (available at www.cipd.co.uk/subjects/dvsequ/exoffenders/_empexoffdr.htm?lsSrchRes=1)

Progress2Work assists people recovering from illegal drug misuse into work. It is a useful resource for employers and job seekers. For more information visit www.jobcentreplus.gov.uk/jcp/partners/progress2work/index.html <http://www.jobcentreplus.gov.uk/jcp/partners/progress2work/index.html>

Pre-employment checks

Any job offer must be subject to satisfactory pre-employment checks. There are certain checks that must be done, such as checking that the applicant is entitled to work in the UK and, as mentioned above, CRB checks for jobs working with children or vulnerable adults. A large number of companies also require a routine pre-employment health assessment.

Pre-employment health assessment

Pre-employment health assessments are undertaken by occupational health professionals who then report back on the person's fitness or otherwise for the job in question.

The aim of the pre-employment health assessment is to:

- ensure that the potential employee is fit for the proposed job

- identify new staff with health problems who may require special support or modification of duties or environment to undertake their job successfully in the light of a medical condition or a disability as defined under the Disability Discrimination Act 1995
- advise on the requirement for health surveillance or screening in relation to a particular job role, for example jobs requiring additional health surveillance like food handling, night work, driving, and work involving hazardous substances.

The most common form this takes is the 'pre-employment health questionnaire'. This is a self-completed form that usually provides sufficient information for advice to be given on a person's fitness to undertake a particular role. However, it's probable that a company that is considering employing someone with a history of drug or alcohol dependency will request a more detailed assessment of their fitness for work as part of their 'duty of care' to both the potential employee and their current employees. This will be undertaken either by an occupational health nurse adviser or an occupational physician.

A person who is returning to employment following treatment for alcohol or drug dependency will be vulnerable and time can be an important element in the success of this venture. If the fitness to work assessment is likely to be delayed by the need for additional reports from the person's doctor, it could be worth considering whether an interim solution could be put in place.

If the general pre-employment health questionnaire would pass the person as fit, it may be possible for the person to be taken on a temporary contract or for a probationary period in the interim. In this situation it's advisable for their manager, occupational health, the employee, HR and their GP to work together to establish an individual's needs in relation to their work.

The Health and Safety Executive's publication *Drug Misuse at Work: A guide for employers* has some useful information (available at: www.hse.gov.uk/pubns/indg91.pdf).

More information on the recruitment of stable users may be found in *Taking a competency approach to fair recruitment in the substance misuse field – a practical guide* www.westsussexdaat.co.uk

References

It's recommended that references are taken up on all potential employees to check factual information such as dates of employment, qualifications gained, previous jobs held and sickness absence record. However, employers need to bear in mind that some former drug or alcohol users are likely to have gaps in their employment history that may make finding a suitable referee more challenging.

Detailed guidance on confidentiality when giving and receiving references may be found in the 'employment records' section of the Employment Practices Data Protection Code, which is available on the Information Commissioner's Office website at www.ico.gov.uk The Code has guidance on what to do when a worker asks to see their own reference.

For more general information on best practice in recruitment and selection, see www.cipd.co.uk

Part 3: Providing support and taking disciplinary action

Providing support and taking disciplinary action are interconnected processes within the workplace. While handling a single situation it is often necessary to move between these two courses of action. When problems with substance misuse arise at work they involve many legal, personal and confidentiality issues that all need to be balanced to provide the best result for everyone – the employee, the team and the company. It's in no one's interest for the company to lose a good worker.

It's good practice to approach these issues from a supportive standpoint – unless the facts allow for an obvious and immediate assessment of inappropriate behaviour. A disciplinary approach would be appropriate in instances of serious drunkenness at work or an employee taking, storing or dealing drugs on the premises. Issues relating to illegal drugs and the articles associated with them on the premises come under the Misuse of Drugs Act and require immediate police notification (see Part 6 on page 28). Where disciplinary measures are taken, they need to be proportionate and be seen by employees to be fairly applied.

It can be difficult for people to admit to themselves or others that their substance misuse is out of control. They need to know that their alcohol or drug problem will be treated as a health issue wherever possible rather than an immediate cause for dismissal or disciplinary action. The main aim will normally be to encourage any employee with an alcohol or drug dependency problem to voluntarily seek treatment. Effective communication about the support available provides reassurance. Therefore it's important at the beginning of an initial performance interview to make clear the company's policy on health support once a problem is declared and to reassure the employee of confidentiality, job security and the help that will be offered, within certain parameters.

Most commonly problems at work are due to the behaviour or poor performance following and caused by the consumption of alcohol or drugs, rather than the presence of an illegal substance itself. It's this performance issue that is of most relevance initially to the company rather than the cause. Once a performance issue has been defined, the causes of the problem can be looked at. However, whether or not an answer is available at this point in the process, it's possible to follow usual performance procedures, that is to set targets, offer training to the employee if needed and monitor for a specific period. During this process, and particularly if it moves towards the possibility of dismissal, the person may eventually admit they have an alcohol or drugs problem.

Different types of problem and diverse jobs will lead to different performance issues that will require different approaches, for instance:

- safety-critical work
- alcohol (the most commonly used drug in the world)
- illegal drugs – taken during leisure time
- illegal drugs brought on to company premises for own use or to deal
- prescription medicines
- solvents (issues include young people at work, health and safety procedures for solvent storage/use)
- one-off incident
- a pattern of incidents
- dependency
- repeat problems or a relapse.

It's in employers' interests to provide guidance and support for employees who may not have substance dependency problems but who are bingeing on drugs and/or alcohol in their private lives to the point where it's starting to have an impact on their health or performance. See the case study opposite.

Case study

Charlotte, a manager for a financial services firm, has dramatically reduced her heavy weekly alcohol consumption with the support of her employer following concerns over her health.

The high-performing risk manager, who is in her late 30s, initially spoke to her manager because she was suffering from insomnia, although she was well aware that she was also drinking too much.

'I was getting in to the office very tired and often quite hung over, and although the buzz of work would get me through the day, I was aware that this was something that I needed to sort out,' she explained.

The company's occupational health department recommended that she have a medical to check there was no underlying physical health condition behind her sleep problems and then referred her to chartered psychologist Dr Noreen Tehrani to try and identify any underlying reasons for her difficulties.

'I have a reasonably stressful job which I love and I am highly driven and ambitious at work, which means that I have problems switching off, which was affecting my sleep. I often woke up at about 1am or 2am and then struggled to get back to sleep before my alarm went off at 6am. I was also drinking fairly heavily, partly to help me relax and take the edge off things when I got home as well as perk me up if I was going out after work,' she said.

Charlotte was typically drinking on five nights out of seven every week with work colleagues and friends and consuming about 40 units of alcohol – about three times the recommended level for women of 14 units.

Through her discussions with Dr Tehrani, Charlotte accepted that her alcohol consumption was contributing to her sleeping problems and they discussed strategies to help her cut down.

One of these was for her to tell her friends and colleagues that she was trying to cut down on her alcohol consumption because of health concerns to try and remove any peer pressure to drink.

'They have been really supportive and have tried to help me – when I let them. I think it would be very difficult to cut down if you were trying to hide what you are doing from your friends.'

Charlotte is trying to stick to a weekly maximum of 20 units a week and to increase the number of dry days in a week. In addition, she's experimenting with alternating alcohol drinks with soft drinks when she goes out in an effort to reduce her consumption levels.

As a result of her reduced alcohol consumption, in combination with the use of relaxation techniques, Charlotte is sleeping better. She is also, with the encouragement of Dr Tehrani, trying to build more exercise into her life on a day-to-day basis by increasing her walking.

Charlotte estimates that since acknowledging that she had a problem she has cut her weekly alcohol consumption by half.

Confidentiality and privacy

Employees with a drink or drug problem have the same rights to confidentiality and privacy as they would if they had any other medical or psychological condition. Health information is sensitive personal data under the Data Protection Act. All information and reports surrounding possible drug or alcohol misuse must be handled securely and confidentially. This includes the recording of performance interviews with regard to both support and disciplinary action. Care should be taken with the wording of emails and interdepartmental memos regarding supportive and disciplinary meetings. All employees have the right to see their personnel record and the right to privacy. The right to privacy includes the content of lockers. If a search is deemed necessary, this should be conducted by the police.

It is the employee's choice whether to be open with none, some or all colleagues about the reasons they may need extra time off and what they're doing about their problems. Openness can result in greater understanding and support for the person concerned; however, legally, this is and must be the choice of the employee.

Training in support and disciplinary procedures

Line managers and supervisors are most often the people who provide the day-to-day support and take the disciplinary action. They need to fully understand the company's policy and procedures and their importance. They need to agree with its fairness rather than feeling they would be 'dropping a mate in it' by following these procedures.

Training needs to be provided to give managers and supervisors the confidence and skills they require to make early identification and interventions should problems arise in the workplace. They need clear procedures to follow and the confidence that senior management will support them in their actions when they do, for example, have to refuse to admit someone back to the shift after lunch because of alcohol. Line managers also need training in confidentiality issues and how to handle situations sensitively. Not all managers have natural people skills. In safety-critical areas of work they will need to be familiar and confident with the more stringent policies and procedures that might be in place, for example drug testing.

Managers also need to be trained in the legal issues surrounding drugs and alcohol in the workplace. For example, the company would be breaking the law if any manager knowingly turned a blind eye to illegal drug-related activities taking place on the premises. If drugs are being used on company premises or dealing is occurring, the company is liable for what is happening on their premises under the Misuse of Drugs Act and they must inform the police.

Performance issues – conduct and capability

Conduct and capability issues can be addressed whether the person acknowledges alcohol or drugs as the cause of a performance problem or not. Recognising this enables managers and supervisors to take these issues forward with more confidence. Managers can feel vulnerable and insecure when approaching alcohol or drug issues with employees. They don't have the skills to diagnose or counsel and many managers are all too aware of becoming mired in the moral and ethical questions that surround these issues.

Alcohol and drug misuse impairs judgement, concentration and co-ordination (among other problems). The following indicators are signs of possible alcohol or drug misuse (it's important to note that these can also be caused by other factors, such as stress, physical illness, mental health problems or the effects of prescription drugs; each case should be considered on its merits):

- repeated patterns of depression, or fatigue from sleeplessness, which last two to three days
- erratic performance
- unusual irritability or aggression
- overconfidence
- inappropriate behaviour
- sudden mood changes from extreme happiness to severe depression
- reduced response times
- a tendency to become confused
- reduced productivity
- absenteeism
- poor time-keeping
- lack of discipline
- deterioration in relationships with colleagues, customers or management
- dishonesty and theft
- financial irregularities.

Behind an alcohol or drug problem there may be a personal or work issue that needs to be acknowledged so that assistance can be sought where possible.

Personal issues that may require support include:

- alcoholic family member – this can cause severe problems at home or feelings of isolation, helplessness, loss of self-esteem and depression, and a person's work may well suffer
- bereavement
- family breakdown or divorce
- the stresses of being the carer of a disabled child or elderly relative.

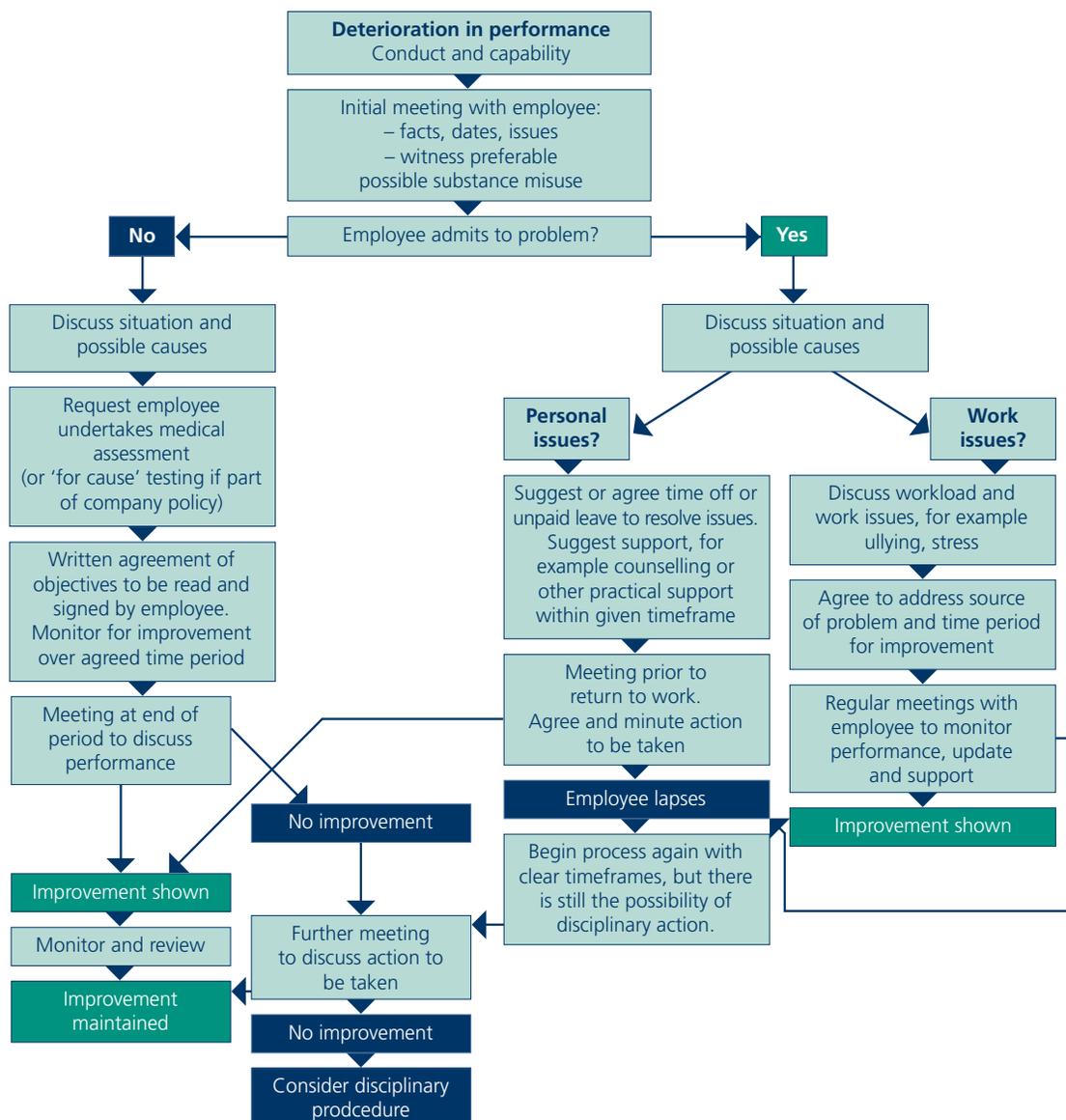
Work issues that should be addressed if they're described as part of the problem include:

- work-related stress
- bullying and harassment.

The initial performance interview (see Figure 1)

When a performance or conduct and capability issue is raised there should be an initial meeting between the line manager and the employee to discuss the performance issue and the actions that need to be taken by all parties to rectify the situation. A record should be kept of all meetings with the time, date, those present and the actions agreed upon.

Figure 1: Flowchart of support and disciplinary procedures



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It's important that the approach taken at this initial meeting is supportive rather than confrontational to leave open the possibility for the employee to request assistance in the future. The performance issue(s) that have been occurring should be defined and possible reasons or causes discussed (not assumed). The company's policy on health support, once a problem is declared, should be made clear and the employee reassured of confidentiality, job security and that help will be offered within certain parameters. The actions that could be taken by all parties should be discussed, for example training can be offered to the employee. A plan should be agreed and put into place and targets should be set for improvement in the performance problems. The arrangements and performance are then monitored for an agreed period.

Once the employee declares a problem with alcohol or drugs, the line manager will benefit from the support of HR and/or the company's occupational health adviser to plan the way forward. A useful next step is to obtain medical advice (with the employee's consent) and for the person to be advised of potential sources of support, which may include the company's occupational health adviser or physician, the employee's GP or an employee assistance programme (EAP). The employee should be offered onward referral to supportive counselling and treatment agencies (see page xx).

Once a way forward has been determined, it's important to come to a decision about a reasonable timescale with the employee and, where relevant (with the employee's permission), with substance misuse and occupational health specialists. Reasonable time off for rehabilitation or counselling should be discussed and offered (see 'Treatment considerations' on page 22). If redeployment – either for a period of time or permanently – is a consideration, it's important that the reasons behind this decision are discussed with the employee, the period for redeployment should be defined and a review date set. Following recovery the situation should be monitored for an agreed period.

Disciplinary action (see Figure 1)

Unacceptable conduct, which may be alcohol- or drug-related, should be subject to normal disciplinary procedures. Dismissal should be a last resort. A court may find a dismissal unfair if an employer has made no

attempt to help an employee whose work problems are related to substance misuse.

If the person rejects help and support for the performance issues, disciplinary procedures can be instigated. There's always the option to suspend disciplinary action at any time if the person admits to the cause of the problem and asks for help. Best practice would then, in the majority of cases, be to offer the help and support, but with the proviso that the disciplinary proceedings will be reinstated if the agreed course of treatment is not completed, or the problems reoccur.

Treatment considerations

Treatment options for substance misuse are diverse; they can take place in a mixture of in-patient and out-patient settings. Medical advice should be sought via the employer's occupational health service arrangements with probable onward referral to supportive counselling and treatment. The company will need to make different allowances or adaptation depending on the treatment option chosen. The choice is the employee's in consultation with doctors or specialists and it will depend on the problem, needs and personal preferences of the individual together with their home, family and financial situation. It may prove necessary to try different approaches before finding the way forward. It's good practice to offer a realistic period of time off work to an employee for treatment. Return to work will be suitable for different people at different stages of recovery.

Common treatment situations include:

- daily counselling sessions – these will be available locally. Company procedures should recognise that these are a necessity and should allow the employee flexibility to attend
- three to six weeks of in-patient detox and rehabilitation followed by extended out-patient therapy and/or participation in 12-step self-help groups, such as Alcoholics Anonymous, Narcotics Anonymous, and so on
- medication that is dispensed daily from a local pharmacy may be prescribed. Employees should be allowed the flexibility in their working hours to collect them.

Ongoing liaison between treatment services and occupational health services, HR staff or managers may be useful to see whether the employee is attending for treatment and following advice. In this situation confidentiality needs to be scrupulously observed.

It's important to be sensitive to the employee's needs, and aware of potential difficulties they may experience during work-related social occasions, for example where alcohol may be available.

Return-to-work support

Each person's recovery process is different and returning to work will be appropriate for different people at different stages of recovery, but a flexible return to work can form a useful part of a person's rehabilitation. As the time draws near, a return-to-work plan should be made with the employee in consultation with occupational health or HR, taking into account advice from treatment agencies involved.

When people are recovering from drug or alcohol problems, they often lack self-esteem and lose confidence in their skills and in socialising with their work colleagues. Returning to work can be easier for the employee if there has been regular contact either with the line manager, occupational health or HR (whichever is most relevant in the situation). It's also helpful to encourage informal contact with other employees prior to return to work, for example inviting the person in for a cup of tea or a company quiz night, instead of just telephoning them as the return to work comes closer. Just crossing the threshold can be a difficult barrier to overcome and will help in the return-to-work process.

An employee may need some time to settle back into the workplace after an absence due to a drug or alcohol problem. It's psychological vulnerability that usually prompts relapses; for this reason employees returning to work should be given the time to settle into their responsibilities and avoid stressful environments. Flexible return-to-work options can help, including:

- flexible working with agreed time off for counselling sessions

- work part-time, gradually increasing to full-time (over an agreed timescale)
- gradually assume responsibility
- be redeployed within the organisation (temporary or permanent)
- undertake stress reduction measures.

Monitoring on return to work can be useful for both the manager and the employee. Current performance can be discussed and any issues that arise day to day. These can be regular informal meetings or they can take the form of performance appraisal meetings.

Relapses

Recovery from physical addiction is one part of the process and recovery from psychological addiction another. Successful recovery from alcohol or drug problems involves a person changing their reactions to life circumstances, their patterns of behaviour and thinking patterns. This takes time and involves the need for a willingness to incorporate new concepts and ideas into their life. Relapses do occur, especially in the early stages of recovery. Companies often prefer to take the potential for relapses after the return to work into account, especially if the person has shown good progress before the relapse and if the work involved is not safety-critical. Monitoring that gradually decreases over an agreed period can be incorporated into the return-to-work support, depending on the frequency and nature of the relapses.

Finally, it's useful to recognise that line managers, occupational health and HR can apply the policy to the best of their abilities and take action as they see fit. But as with all staff behaviour, they, and the company, can only do so much. The responsibility for ensuring staff don't come to work under the influence of alcohol or drugs ultimately lies with employees themselves.

Part 4: Supporting the substance misuser

How the manager can initially support the substance-misusing employee

As pointed out in Part 3, it can be difficult for the person to admit to themselves or others that their substance use has become misuse and is out of control.

Managers need to be able to identify the particular performance issue that is causing concern, discuss this with the employee – either in an informal one to one, in a return-to-work interview or during the individual's appraisal – and then monitor the employee's performance against targets.

The manager's goal will be to encourage the employee to acknowledge that there is a problem that needs solving.

The manager should be seen to be firm but also fair, demonstrating qualities of concern and empathy, combined with practical, non-judgemental advice and direction. The tone of this discussion between manager and employee is crucial. An aggressive or hectoring attitude by the manager is likely to drive the substance misuser into denial.

The limits of the manager's role

The potential consequence of loss of employment can be a strong motivator for the employee to recognise the need to change their behaviour. However, just as importantly, the employee must be confident that if they do acknowledge they have a problem, they'll be offered support to help them overcome it. It's important to note that managers cannot be expected to diagnose and counsel substance misusers; they don't have the skills to do this. Instead they should seek medical advice via the employer's occupational health service arrangements, or advise the employee to see their GP or other supportive counselling and treatment agencies.

Counselling and treatment services for the substance misuser

Specialist agencies that counsel or treat substance misusers will initially offer their clients/patients an assessment interview. Sometimes the assessment may be more than one session. The client/patient will be informed of the results of the assessment, and a recommended plan of action will be discussed with them, with the client/patient being able to ask questions and suggest what they think would be helpful for them. The substance misuser is not under any obligation to enter counselling or treatment; they can withdraw at any time. Assuming they do wish to continue, a formal care plan will be designed specifically for them, and usually they will be allocated a specialist key worker. They may see their key worker individually, or as part of a group, or both.

Below is a short description of the main types of organisations that offer services to substance misusers:

- **GP** – a small number of specialist GPs offer a treatment service, but many GPs simply refer on to local specialist substance misuse treatment and/or counselling agencies.
- **Specialist substance misuse treatment agencies** – most substance misuse treatment and counselling agencies in the UK are publicly funded and are free to attend. They are usually NHS or voluntary/independent sector organisations. There may be a waiting list for in-patient treatment, but usually out-patient treatment and counselling is offered fairly promptly. Following formal treatment, a follow-up service is normally available to prevent subsequent relapse. Publicly funded agencies will only share a patient's progress with the patient's written consent. Reports on progress are likely to be limited to whether the patient attended as requested, and if they appear to be engaged in the process. With the patient's permission these

agencies will often be willing to make a more detailed report to the employer's occupational health medical practitioner (for example a GP), particularly if occupational health made the referral.

- **Private sector substance misuse counselling and treatment agencies** – all residential treatment centres must be officially registered. The private sector is more likely to be able to offer treatment at times to suit the substance misuser and their employer, and alongside peers who can also afford private treatment or care. It's important that a private sector agency is also able to provide some form of follow-up service after formal treatment to prevent subsequent relapse.
- **Self-help groups** – organisations such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) provide peer-led group and individual support to their members, who recognise they need support with controlling their alcohol/drug consumption. Some people can find the structured philosophy very helpful. An assessment is not conducted.

- **Employee assistance programmes (EAPs)** – these provide a broad-based portfolio of counselling services (usually including substance misuse) for an organisation's workplace employees. Their rationale is that employees bring their problems to work, these problems may become unmanageable, and a troubled employee is an inefficient worker. An EAP may be outsourced by an employer or may be in-house.
- **Telephone helplines** – these are useful for initial advice and times of crisis.

The different types of services listed above vary in the way they respond to the substance misuser. Different types of response seem to work with different people. There's no single magic solution, as people and their circumstances do vary. However, what's important is for the employer to encourage the employee in making that first step in seeking help. Some substance misusers are able to get their lives back in order at the first attempt. For others it will be an arduous process, with relapses en route.

Case study

Dave, a store manager for a well-known retail organisation, was finally forced to confront his drinking problem when his new line manager began to take a hard line on managing his performance.

Dave, 47, had worked for the organisation for 20 years and had built a reputation as a high-performing employee, but over time his work had started to suffer from his heavy drinking.

'I had always been a work hard, play hard person. I was not coming in to work pissed or drinking at lunchtimes but over time it had affected how I was performing. The problem with alcohol is that it blinds you to your effectiveness at work. You are not going to admit there is a problem – you are more likely to blame your employer,' said Dave, who is married with three children.

'This new manager did not take into account my previous 20 years for the company; he was just interested in how I was performing there and then.'

Dave had already been having counselling provided by the company for post-traumatic stress disorder stemming from an incident at work some time previously, and the added pressure for him to perform being exerted by his line manager proved to be the last straw.

'I gave up work and the problem that created is that if you take work out of the equation you have a lot more time to drink,' he said.

Dave's life spiralled out of control to the point that the only thing that mattered was the next drink. It was only when he was admitted to a specialist private rehabilitation centre for a month-long programme of therapy funded by the company's private medical insurance scheme that he finally understood that this was his last chance. He was given medication and group therapy, but he emphasised that it was only the reality check of hitting rock bottom that made him confront his addiction.

'You have to be confronted by reality, not just that you will lose your job and your family but that those things won't matter because you'll be dead anyway. You have to understand that you are an alcoholic and you can never drink again.'

Dave was very grateful to one of the company's personnel managers who stayed in touch with his family while he was receiving therapy and provided vital support for his wife.

Dave subsequently returned to work and received counselling from a chartered psychologist who tried to help him identify what aspects of his life caused him pressure and may make him susceptible to start drinking.

'Pressure at work was definitely an issue. She (the counsellor) helped me look at my management style and change how I managed people. I now spend much more time developing people and I have become a more consultative and effective manager,' he said.

Two years after his last drink Dave is aware of how close he came to losing everything that matters to him and it is this knowledge that helps protect him from returning to his previous lifestyle as he goes forward.

Part 5: Testing for drug and alcohol misuse at work

Employers should think carefully before introducing a policy for testing for drug and alcohol misuse at work. Organisations that introduce testing regimes that aren't proportionate to the risks to health and safety or to the business that they're trying to manage could find themselves falling foul of the law.

In addition, research by the CIPD has found that organisations that seek to monitor their employees excessively are unlikely to create a work environment that encourages trust, loyalty and commitment. The CIPD research report, *Pressure at Work and the Psychological Contract*, reveals that employees who are closely monitored or are under excessive surveillance tend to have more negative attitudes towards work and are more likely to suffer from stress.

Article 8 of the Human Rights Act 1998 sets out the right to respect for private and family life. It also covers how organisations hold and use information about employees.

The Data Protection Act 1998 sets out rules to make sure any personal information on employees held by employers is managed properly. This includes any information on employees from drug and alcohol testing.

The Office of the Information Commissioner has published some very useful guidance that summarises what employers can and can't do in respect to testing employees for drug and alcohol misuse under the Data Protection Act. Adhering to the Information Commissioner (IC) guidance should also ensure employers don't breach article 8 of the Human Rights Act.

Testing must be justified and appropriate for the nature of the business

The IC guidance recommends that before obtaining information through drug or alcohol testing employers should ensure that the benefits justify any adverse impact, unless the testing is required by law.

Key points

- The collection of information through drug and alcohol testing is unlikely to be justified unless it's for health and safety reasons.
- Post-incident testing where there's a reasonable suspicion that drug or alcohol use is a factor is more likely to be justified than random testing.
- Given the intrusive nature of testing, employers would be well advised to undertake and document an impact assessment.

An impact assessment involves:

- identifying clearly the purpose(s) for which health information is to be collected and held and the benefits this is likely to deliver
- identifying any likely adverse impact of collecting and holding the information
- considering alternatives to collecting and holding such information
- taking into account the obligations that arise from collecting and holding health information
- judging whether collecting and holding health information is justified.

Personal information obtained through testing should be kept to a minimum

According to the IC, employers should aim to minimise the amount of personal information obtained through drug and alcohol testing.

Key points

Only use drug or alcohol testing where it provides significantly better evidence of impairment than other less intrusive means.

- Use the least intrusive forms of testing practicable to deliver the benefits to the business that the testing is intended to bring.
- Tell workers what drugs they're being tested for.
- Base any testing on reliable scientific evidence of the effect of particular substances on workers.
- Limit testing to those substances and the extent of exposure that will have a significant bearing on the purpose(s) for which the testing is conducted.

The criteria used for testing must be clear

Organisations should ensure the criteria used for selecting workers for testing are justified, properly documented, applied consistently and are communicated to workers.

Key points

- It's unfair and deceptive to lead workers to believe that testing is being carried out randomly if, in fact, other criteria are being used.
- If random testing is to be used, ensure that it's carried out in a genuinely random way.
- If other criteria are used to trigger testing, for example suspicion that a worker's performance is impaired as a result of drug or alcohol use, the employer should make sure workers are aware of the true criteria that are used.

Random testing should be limited to workers in safety-critical roles

Employers should confine the obtaining of information through random testing to those workers who are employed to work in safety-critical activities.

Key points

- Collecting personal information by testing all workers in a business will not be justified if in fact it's only workers engaged in particular activities that pose a risk.
- Even in safety-critical businesses, such as public transport or heavy industry, workers in different

jobs will pose different safety risks. Therefore collecting information through the random testing of all workers will rarely be justified.

Testing for illegal use of substances in workers' private lives is unlikely to be justified

Organisations are advised to gather information through testing that is designed to ensure safety at work, rather than to reveal the illegal use of substances in a worker's private life.

Key points

- Very few employers will be justified in testing to detect illegal use rather than on safety grounds. Testing to detect illegal use may, exceptionally, be justified where illegal use would:
 - breach the worker's contract of employment, conditions of employment or disciplinary rules, and
 - cause serious damage to the employer's business, for example by substantially undermining public confidence in the integrity of a law enforcement agency.

Policies on testing must be clearly communicated to all workers

Employers should make sure that workers are fully aware that drug or alcohol testing is taking place, and of the possible consequences of being tested.

Key points

- Explain your drug or alcohol policy in a staff handbook and, where possible, use other means of communicating the policy on a regular basis, such as email alerts or employee newsletters.
- Explain the consequences for workers of breaching the policy.
- Make sure workers are aware of the blood-alcohol level at which they may be disciplined when being tested for alcohol.
- Don't conduct testing on samples collected without the worker's knowledge.

For further details of the guidance provided by the Information Commissioner go to www.ico.gov.uk

Case study

A Midlands-based manufacturing company is introducing a new policy on managing drugs and alcohol in the workplace underpinned by testing but only where there is suspicion of misuse. Their HR manager said the new policy is being brought in primarily because of health and safety concerns at the company.

The company, which employs just over 1,000 people in the UK, is introducing the new policy following consultation with its unions.

The policy will mean that if there's reasonable suspicion that an individual is under the influence as a result of their behaviour or performance, they will be required to take either a breathalyser test for suspected alcohol misuse or a urine test if there's a suspicion of drug misuse. Anyone refusing to take a test when requested is likely to be subject to disciplinary action.

Approximately 40 members of staff, including a number of union representatives, have been trained to conduct breath tests, while in the event of suspected drug misuse the testing will be done by members of the specialist firm the company has employed to manage the testing and analysis.

If an individual is to be tested, there will be one of the 40 trained staff present, a member of HR, a union representative if requested and a member of the senior management team.

The HR manager is placing a lot of emphasis on awareness-raising and training prior to the launch of the new policy. This will include briefing the senior management team, training for line managers, and training provided by the drug and alcohol service provider on how to conduct testing. There will also be a poster campaign and all staff will be issued with a policy pamphlet outlining the main elements of the new policy. Thereafter line managers will be reminded of its main elements during the regular six-monthly employment law update training sessions provided by the company. The policy will also be subject to review after 12 months to assess how it's working and whether it needs to be fine-tuned in any way.

As part of the launch the company will highlight a three-month amnesty period to encourage people to come forward and acknowledge they have a problem, providing, wherever possible, support for employees who may have a dependency problem. This support will come from the company occupational health service provider, which provides counselling and will also help individuals access the right specialist sources of advice and support. The company is also planning to introduce an employee assistance programme, which will include a confidential telephone helpline.

The company is currently supporting an individual's rehabilitation from alcohol dependency after he acknowledged that he had a problem. The individual's GP is working with the company's occupational health service provider to facilitate the employee's return to work and recovery. Once back to work he will be breathalysed, with his agreement, on a regular basis to ensure that he's managing his dependency problem until it's felt that he has made a successful recovery.

Part 6: The legal implications of managing drug and alcohol misuse at work

The legal implications of trying to combat drug or alcohol misuse in the workplace are many and varied. This legal guidance is designed to offer general advice on the legal implications and to propose methods of dealing with common issues.

What are the likely legal issues?

Drug and alcohol misuse can trigger a number of different issues for managers and HR departments to deal with, including misconduct, performance, health and safety, and dishonesty. As a result, employers need to adopt a reasonably flexible approach to dealing with incidents involving drug and alcohol misuse. The normal legal mantra is to be as consistent as possible when dealing with employees, and similar offences should normally result in similar sanctions. But employers will need to review the specifics of each case and consider what action is most appropriate.

Misconduct

Traditionally, the misuse of drugs or alcohol has been seen as a misconduct issue. Today, there is a much greater awareness of issues associated with dependency and addiction and employers increasingly consider misuse of drugs or alcohol as a capability issue. This approach has clear benefits for the employee in terms of offering longer-term support and rehabilitation opportunities, but there will still be circumstances in which an employer is entitled to treat behaviour as misconduct.

Employers should carry out a thorough investigation into any allegations about drug or alcohol misuse. A key issue will be whether the incident suggests that the employee suffers from an addiction, or whether the misuse is occasional. If it's occasional, it's more likely that it should be treated as misconduct. The misconduct can manifest itself in different ways, for example:

- breach of a specific contractual term or policy provision (for example a provision requiring staff not

to attend work while under the influence of alcohol or drugs)

- unauthorised absence
- erratic behaviour, fighting or insubordination
- inability to perform duties
- bringing the employer into disrepute.

Each of these is potentially worthy of disciplinary action, provided that the employee is aware of the possible consequences and a proper procedure is followed. Whether each of these could provide grounds for a fair dismissal is another matter. The case law is varied and very much fact-specific. For example, in *Connor v George Wimpey ME & C Ltd* (EAT 387/82), the EAT upheld the dismissal of an oil-rig worker who returned to work drunk, accepting that such a working environment warranted a 'no tolerance' rule in relation to alcohol. On the other hand, the EAT held in *Scottish Grain Distillers Ltd v McNee & another* (EAT 34-35/82) that the possession of a small amount of alcohol in a locker, despite a publicised 'no tolerance' rule, was a trivial breach and did not warrant dismissal.

Tribunals are more likely to be sympathetic to employers in cases involving safety-critical working environments.

Employers can, of course, take action in relation to the consequential behaviour following drug or alcohol misuse. This might include two drunk colleagues fighting at a work party, or an employee under the influence of drugs being abusive to a client. A full investigation should be carried out, including any underlying issues associated with the substance abuse (for example addiction, stress, depression). Even if there's a substance abuse problem, this can be dealt with separately while also acknowledging and applying a sanction in relation to the consequential behaviour. So an employee might be placed on a rehabilitation programme, while simultaneously receiving a final written warning for fighting.

Health and safety

Employers have legal duties to both employees and third parties in relation to health and safety. If an employee might place colleagues in danger by their behaviour, the employer has a responsibility to remove that danger. This may mean increasing the level of supervision or, in extreme cases, proceeding to a suspension or dismissal (preceded, of course, by any appropriate warnings). An employer will have an equivalent duty to ensure the safety of the employee themselves, so may need to take steps to remove them from the working environment, either temporarily or permanently, if their behaviour persistently results in them being a danger to themselves.

Employees have an individual legal responsibility in relation to their own health and safety and that of their colleagues. In theory, they could be sued for negligence if they fail to carry out their work with reasonable care due to the influence of drink or drugs and cause damage or injury as a result.

Lunchtime drinking

Employers are entitled to enforce a 'zero tolerance' approach to alcohol in the workplace, which would include a ban on lunchtime drinking. However, employers should think carefully about their approach - do they only want to impose a ban on those in safety critical roles? Do they want to impose a limit? Do they want to make sure that staff are capable of work in the afternoon, in which case a statement that staff should not work under the influence of drink/drugs is probably sufficient - i.e. staff can have a drink at lunchtime, but if it affects their performance it will be a disciplinary issue. If 'zero tolerance' is the approach, this should be widely publicised and strictly enforced.

Off-duty misbehaviour

Generally speaking, employers will not have a right to discipline or dismiss an employee for their off-duty behaviour. However, if an employee's actions have an effect on the business, an employer may be entitled to step in. This may be because the level of performance significantly drops as a result of recreational drug use, or because they have been charged with a drug-related offence. There may be a 'reputation' issue, but the employer will need to show that the employee's behaviour does genuinely reflect badly on the employer.

An exception to this general rule is where an employee is convicted of a drink-driving offence and has their driving licence removed as a result. If the employee's job requires them to be able to drive (and there's no alternative role or other reasonable means of them carrying out their role), an employer would be entitled to dismiss. This could be a potentially fair reason on the grounds of 'illegality' – that is, the employee can no longer carry out their role without infringing the driving ban.

Should you get the police involved?

It may be appropriate to consider police involvement where there's an allegation of criminal conduct (for example violence, supply of illegal drugs, drink driving). Whether or not an employer notifies the police about criminal conduct is a question that inevitably has to be dealt with on a case-by-case basis, although a reasonably consistent approach is preferable. Factors to take into account might include:

- seriousness of the offence
- whether the offence was committed outside of normal working hours
- whether any third party has been hurt as a result.

It's worth remembering that it's an offence under the Misuse of Drugs Act 1971 for an employer knowingly to allow its premises to be used for the production or supply of controlled drugs.

It's possible that, if an employer notifies the police that an employee has committed a criminal offence and the police subsequently find that there's no case to answer, an employee could claim that there has been a breach of trust and confidence. This could lead to a constructive unfair dismissal claim. If the employer can show that it acted reasonably and that there were reasonable grounds for its belief that a criminal act had occurred, it should be able to successfully defend such a claim. However, employers should be careful to investigate any alleged activity before filing a complaint.

Privacy

See Part 5 (page 25) for more on the legal issues surrounding privacy.

Confidentiality

It is, of course, vital that any information about an employee's health is kept in strictest confidence. The Data Protection Act 1998 requires employees to give explicit consent to the processing of any 'sensitive personal data' by their employer. Most employment contracts now include the employee's consent to processing of personal data, but employers should obtain explicit consent before seeking and using any health records or medical reports.

Sensitivities can arise where an employee is granted significant periods of leave (whether paid or otherwise) to work on rehabilitation. Employers should consider with employees how best to present it to their colleagues and should ensure that the employee's privacy is protected as far as possible.

Disability discrimination

Employees may have claims under the Disability Discrimination Act (DDA) for reasons related to a dependency on alcohol or drugs. While alcoholism and drug addiction in themselves are not covered by the DDA, they may result in or be indications of other conditions that are covered. For example, alcohol misuse (not a disability) may result in, or be a symptom of, depression (potentially a disability). Employers should take medical advice on any 'consequential or related' illness and consider whether there is a DDA risk. If so, employers should take the normal steps of considering all reasonable adjustments and taking full medical advice before considering a dismissal.

Key legislation

The Employment Act 2002 (Dispute Resolution) Regulations 2004

When taking disciplinary action employers must follow a minimum three-step disciplinary and dismissal procedure:

- the employee must be given written information in advance about the circumstances that may lead to disciplinary action or dismissal
- they must be invited to a meeting to discuss the issue and be allowed a companion at the meeting, and
- they must be allowed to appeal against the outcome of the meeting.

Misuse of Drugs Act 1971

Section 8 of the Act allows for the prosecution of 'occupiers of premises' who permit the supply of controlled drugs on their premises. Turning a blind eye to such activities is not an option because not taking reasonable action to prevent supply constitutes 'permitting'.

Health and Safety at Work etc Act 1974

Section 2 of the Act places a duty on employers to provide a safe place of work and competent employees. Employers also have a responsibility under section 3 of the Act to look after the health and safety of others, for example members of the public. Under section 7 employees have a duty to take reasonable care for the health and safety of themselves and of other persons who may be affected by their actions and behaviour at work, as well as to co-operate with regard to matters relating to health and safety.

The Management of Health and Safety at Work Regulations 1999

Under regulation 3 employers have a duty to conduct a risk assessment of the risks to the health and safety of employees and others affected by the organisation.

Provision and Use of Work Equipment Regulations 1998

This requires employers to assess any additional risk as a result of using work equipment in the conditions that exist in their business, as well as any special needs of young workers in line with the Management of Health and Safety at Work Regulations.

Data Protection Act 1998

The Data Protection Act 1998 sets out rules to make sure any personal information on employees held by employers is managed properly. This includes any information on employees from drug and alcohol testing.

Human Rights Act 1998

Article 8 of the Human Rights Act 1998 sets out the right to respect for private and family life. It also covers how organisations hold and use information about employees.

Road Traffic Act 1988

This sets out the offence of driving or attempting to drive a motor vehicle while unfit through drink or drugs. The legal limit for alcohol is 80 milligrams of alcohol per 100 millilitres of blood. Companies should ensure this is reflected within their car policy.

Transport and Work Act 1992

This Act makes it a criminal offence for specified jobs to be undertaken by those unfit through drink or drugs. Employers may be liable unless they can show 'all due diligence'.

This section was written by Ailsa Murdoch and James Walters, associates within the Employment and Incentives Department at Lewis Silkin.

Appendix 1: Example policy statements

Example policy statements

Below are some example statements under each heading to assist in the drafting and agreement of the policy.

The statements that are likely to be essential components of such a policy are in normal font, while other more specific statements that may be suitable for certain organisations, depending on the resources available and type of business, are in italics.

Purpose of the policy, for example:

- to help protect employees by raising awareness of the problems of drug and alcohol misuse and to encourage those with a problem to seek help
- to ensure that employees' use of either drugs or alcohol does not impair the safe and efficient running of the organisation, or result in risks to the health and safety of themselves, other employees, customers and the general public
- to comply with all relevant legislation in this area.

Objectives, for example:

- to set out the rules regarding the use of intoxicating substances so that employees are aware of the likely consequences for their employment if they misuse them
- to identify any alcohol and drug problems at an early stage
- create a climate that encourages employees experiencing problems with drug or alcohol misuse to face up to the problem and seek help
- ensure that the image and reputation of the company is maintained.
- to increase employee confidence in seeking help for alcohol/drug problems
- to reintegrate employees with drug/alcohol problems back into the workplace
- provide a framework within which substance misuse problems can be managed in a fair and consistent manner

- achieve a balance between supporting an employee who asks for help with a problem and the overriding need to preserve health and safety at work and the delivery of a high-quality service.

Scope of the policy, for example:

- The policy applies to all employees at all levels, including volunteers, management board.
- The policy applies to all contractors and agency staff working on company premises.
- This policy covers (for example) the misuse of illegal drugs, misuse of alcohol, prescription drugs where the individual is dependent and there is a consequent effect on their employment.

General principles (such as prevention, recognition, conduct versus capability and confidentiality), for example:

- The organisation treats drug and alcohol dependency as a health problem that requires special treatment and help rather than as a disciplinary matter. It also recognises that early identification is more likely to lead to successful treatment.
- The organisation promises to maintain the strictest confidentiality when dealing with individuals, within the limits of what is practicable and within the law.
- *Employees seeking help will be allowed time off for treatment and every effort will be made to assist them in returning to good health and efficiency.*

Education and training, for example:

- *Education and training is an essential and ongoing part of the company's approach to the problem of drug and alcohol misuse in the workplace.*
- Information and publicity about drugs and alcohol in the workplace are conveyed through pamphlets, posters and noticeboard information.
- Guidance will be provided to managers to enable

the policy to be effectively communicated and implemented.

- *Managers will be trained to recognise the early signs of drug and alcohol misuse.*

Employee assistance, for example:

- *When an employee admits to a drug or alcohol problem, current/relevant disciplinary proceedings will be suspended and the organisation will assist the employee in a successful rehabilitation.*
- *Where an employee has been diagnosed as having a drug or alcohol problem, reasonable time off with pay will be allowed for counselling.*
- *If an employee has successfully completed a course of counselling or other treatment and later relapses, the organisation will consider whether to permit another period of treatment or to invoke the disciplinary procedure.*
- *During the period of treatment, the occupational health staff will keep the manager up to date regarding the employee's progress, the likely return-to-work day and whether alternative employment needs to be considered. After the return, the occupational health unit and the manager will jointly review the employee's progress.*

Alternative employment, for example:

- *If an employee's work responsibilities are seen to be an obstacle to their recovery, then redeployment will be considered.*

Example rules

Alcohol, for example:

- *Employees are responsible for maintaining sensible and safe drinking levels.*
- *Employees are not allowed to drink during working hours. This includes meal breaks and on-call duties.*
- *No employee is banned from drinking, but they must maintain a professional conduct during working hours.*
- *No employee should report to duty within certain hours of drinking alcohol.*
- *There will be no consumption of alcohol on company premises, other than at the sports and social club and at special events, for example retirement parties and training events authorised by the appropriate director.*
- *Permission must be sought by employees who*

are representing the company, while entertaining clients with social drinking, whether this is during or outside of normal working hours.

- *An alcohol-related incident will be reported to the police as necessary.*

Drugs, for example:

- *No employee may possess, consume or provide drugs or alcohol while on duty (except prescription drugs prescribed to the individual).*
- *Drug possession or dealing will be reported to the police, without exception.*
- *No employee shall report for work while under the influence of drugs.*
- *Employees in safety-critical jobs who are found to be under the influence of illegal drugs will be liable to dismissal, regardless of the circumstances.*
- *Employees on prescribed medication that may affect their ability to perform their duties must notify the occupational health unit before reporting for duty.*

Disciplinary action, for example:

- *Where disciplinary action is appropriate but the employee concerned has a drug or alcohol problem, this may be taken into account as a mitigating factor.*
- *Where employees refuse to accept that they have a problem with drugs or alcohol, or refuse treatment or the treatment fails, disciplinary action will be taken, which could lead to dismissal.*
- *Where the employee admits to a drug and alcohol problem and this is affecting their job performance, the organisation's capability policy will be invoked.*
- *The following incidents are considered to be serious offences warranting dismissal subject to the disciplinary procedure and a full investigation:*
 - (i) *possessing, using or selling illegal drugs in the workplace*
 - (ii) *being convicted of any criminal offence connected with drugs, regardless of whether the offence took place inside or outside the workplace.*

Searching employees' belongings

When it's suspected that an employee is storing illegal substances, and the employer wishes to search their personal belongings, a clear framework is required to prevent possible allegations of assault, intrusion into

privacy, allegations of false findings and so on. Should another employee take possession of an illegal substance, then they could be assumed as personally 'in possession' or have 'intent to supply'. As this is a complex area, it may be helpful to contact the police for information. Areas you need to consider include:

- *What exactly are you searching for?*
- *Whose responsibility is it in the organisation to undertake the search?*
- *Where and when is the search carried out?*
- *Is the search with the permission of the worker? Or is there a process to invoke if permission is not granted?*
- *How is searching carried out (usually under supervision)?*

Managers' responsibilities, for example:

- Managers should be aware of the signs of drug or alcohol misuse, the effect on performance, attendance and health, and take appropriate but sympathetic action.
- Managers are responsible for ensuring that visitors and contractors are made aware of the terms of the policy.
- Managers are responsible for ensuring the overall safety and welfare of employees and others they come into contact with.
- Managers should make sure that staff understand the policy and are aware of the rules and consequences regarding the use of alcohol, drugs and other intoxicating substances.
- Managers should make sure that staff are aware of the support that is available to them should they have a problem.
- Managers should monitor the performance, behaviour and attendance of employees as part of the normal supervisory relationship.
- Managers should intervene at an early stage where changes in performance, behaviour, sickness levels, attendance patterns are identified to establish whether alcohol or drug misuse is an underlying cause.
- Managers should provide support and assistance, where appropriate and for a reasonable period, to staff who are dependent upon intoxicating substances to help their recovery.

- Managers should instigate disciplinary measures where appropriate to do so.
- Managers are strongly recommended to seek advice from the HR department when substance misuse is suspected and the above steps need to be taken.

Employee responsibilities, for example:

- Employees are responsible for familiarising themselves and ensuring adherence to the policy and for reporting breaches of the policy.
- Employees are expected to co-operate with any support and assistance provided by the council to address an alcohol or drug misuse problem.
- Employees should not 'cover up' for a colleague with an alcohol- or drug-related problem but instead should encourage the individual to seek help.
- If an employee falsely reports that another employee is misusing, then the disciplinary process will be invoked.
- Employees must report for work, and remain throughout the working day, in a fit and safe condition to undertake their duties and not be under the influence of alcohol or drugs.
- Employees are expected to present a professional, courteous and efficient image to those with whom they come into contact at all times and therefore have a responsibility to adopt a responsible attitude towards drinking and taking prescribed and over-the-counter drugs.
- Employees who experience side effects as a result of taking prescribed or over-the-counter medicines that impair their ability to perform their duties safely and satisfactorily must notify their line manager immediately.

Review process, for example:

- *The consultation process has now been concluded and this policy will take immediate effect.*
- *Employees who have concerns about any aspect of the policy or its operation should initially submit their complaint, verbally or in writing, to their line manager or trade union representative.*
- *This policy will be reviewed on a periodic basis of...*
- *The HR service is responsible for administering, monitoring and reviewing the operation of the policy.*

Appendix 2: Specific sources of help and advice

Help for the substance using employee

Drinkline – a government-funded free service. Can provide advice to the alcohol drinker or anybody concerned about the drinker. Has a database of local support and treatment services that can help the drinker.

Helpline: 0800 917 8282

Website: www.drinkaware.co.uk

Talk to FRANK – a government-funded free service, previously named the National Drugs Helpline. Can provide advice to the drug user or anybody concerned about the drug user. Has a database of local support and treatment services that can help the drug user. The focus of the helpline is for young people and concerned parents, but will also assist adult drug users.

Helpline: 0800 77 66 00

Website: www.talktofrank.com

The website provides detailed information on drugs that the non-specialist can understand.

Alcoholics Anonymous – the largest self-help group for people who acknowledge they cannot handle alcohol, and want a new way of life without it. Services are free.

Helpline: 0845 769 7555

Website: www.alcoholics-anonymous.org.uk

The comprehensive website explains the philosophy of AA, what to expect, and local groups.

Narcotics Anonymous – the largest self-help group for people who want to stop using drugs. Services are free.

Helpline: 0845 373 3366

Website: www.ukna.org (includes details of local groups)

Cocaine Anonymous – national self-help group specifically for cocaine users.

Helpline: 0800 612 0225, open 10:00am to 10:00pm

Website: www.cauk.org.uk/index.html

Adfam National – the largest non-statutory organisation that works with and on behalf of families affected by drug and alcohol problems. Helpful for the family of the alcohol or drug user.

Helpline: 020 7553 7640

Website: www.adfam.org.uk

The Home Office website for drugs policy includes a contact list of drug (and alcohol) action teams responsible for co-ordinating drug and alcohol treatment services in each English local authority area. These local teams should be able to advise on which specific treatment agency the alcohol/drug user should approach in their local area.

Website: www.drugs.gov.uk/dat/directory

Advice for the employer England and National

Advisory, Conciliation and Arbitration Service (Acas)

Helpline: 08457 474 747

Website: see below

www.acas.org.uk/index.aspx?articleid=697 for summary information on developing an alcohol misuse policy, particularly useful for smaller organisations.

www.acas.org.uk/index.aspx?articleid=698 for summary information on developing a drug misuse policy, particularly useful for smaller organisations.

Health & Safety Executive (Great Britain)

Helpline: 0845 345 0055

Website: see below

www.hse.gov.uk/pubns/indg240.htm a summary of alcohol information and the key considerations in developing a workplace policy.

www.hse.gov.uk/pubns/indg91.pdf a summary of drugs information and the key considerations in developing a workplace policy.

Alcohol Concern – a non-statutory organisation that provides information, advice, consultancy and training on workplace and a wide range of alcohol policy issues. The consultancy and training service is fee based.

Helpline: 020 7264 0510

Website: www.alcoholconcern.org.uk

Release – a registered charity able to advise on specialist areas of drugs law.

Helpline: 0845 4500 215 (legal matters), open 11:00–13:00 Monday–Friday

Website: www.release.org.uk

United Kingdom Accreditation Service (UKAS) – the sole national body recognised by government for the accreditation of testing laboratories.

Helpline: 020 8917 8400

Website: www.ukas.com.

Faculty of Occupational Medicine – a registered charity that aims to advise on and maintain the highest standards in occupational medicine. Publishes *Guidance on Alcohol and Drug Misuse in the Workplace, 2006* specifically for occupational health specialists.

Helpline: 020 7317 5890

Website: www.facocmed.ac.uk

The Employee Assistance Professionals Association – EAPA is the professional body for employee assistance programmes (EAPs). It represents the interests of professionals concerned with employee assistance, psychological health and well-being in the UK.

Helpline: 0800 783 7616

Website: www.eapa.org.uk

Northern Ireland

Health & Safety Executive (Northern Ireland)

Helpline: 0800 0320 121

www.hseni.gov.uk/workplace_drugs_and_alcohol_policies.pdf guidelines on developing and implementing workplace drug and alcohol policies in the context of Northern Ireland, including a list of the drugs and alcohol co-ordination teams (DACTs) that should be able to advise on which specific treatment agency the alcohol/drug user should approach in their local area.

Scotland

The Scottish Drugs Forum – a non-statutory information and policy agency.

Telephone: 0141 221 1175

Website: The website includes a contact list of drug (and alcohol) action teams responsible for co-ordinating drug and alcohol treatment services in each Scottish local authority area. These local teams should be able to advise on which specific treatment agency the alcohol/drug user should approach in their local area.

www.sdf.org.uk/sdf/sdf_display.jsp?pContentID=567&p_applic=CCC&p_service=Content.show&

Wales

DAN 24/7 – Tel: 0800 6 33 55 88 a free 24/7 Bilingual Helpline which provides access to appropriate local and regional services (funded by the Welsh Assembly)

<http://wales.gov.uk/topics/housingandcommunity/safety/substancemisuse/helpline/?lang=en>)

Appendix 3: Model drug and alcohol workplace policy

1 Introduction

- 1.1 The inappropriate use of alcohol or drugs can damage the health and well-being of employees and have far-reaching effects on their personal and working lives. At work, alcohol or drug misuse can result in reduced levels of attendance, sub-standard work performance and increased health and safety risks not only for the individual concerned but also for others, for example work colleagues, members of the public, contractors, service users. Furthermore, the effects of alcohol or drug misuse are likely to be detrimental to the organisation's reputation and image and its ability to deliver high-quality services.
- 1.2 The organisation is committed to providing a safe and productive work environment and to promoting the health, safety and well-being of its employees. The Drug and Alcohol Policy is designed to ensure that employees are aware of the risks associated with alcohol/drug misuse and the consequences, including the legal consequences, of their actions.

2 Objectives

- 2.1 The policy aims to:
 - raise staff awareness of the risks and potential harm to health associated with the use of intoxicating substances
 - set out the rules regarding the use of intoxicating substances so that employees are aware of the likely consequences for their employment of misusing them
 - create a climate that encourages employees who may be misusing drugs or alcohol to come forward and seek help
 - provide a framework to enable instances of substance misuse by employees to be handled in an appropriate, fair and consistent manner
 - achieve a balance between supporting employees who come forward with a problem and the overriding need to preserve:
 - the health, safety and welfare of employees and others* with whom they come into contact
 - the organisation's reputation
 - the delivery of high-quality, effective services.

* section 2 of the Health and Safety at Work etc Act 1974

3 Scope

- 3.1 This policy covers the use and misuse of intoxicating substances, which include alcohol, solvents, legal and illegal drugs, prescription and over-the-counter medicines and other substances that could adversely affect work performance and/or health and safety.
- 3.2 This policy applies to ALL employees.
- 3.3 The organisation also expects agency and casual workers, contractors, volunteers and others working on its behalf to comply with this policy. Failure to do so is likely to result in the working arrangements being terminated.

4 Managers' responsibilities

4.1 Managers are required to:

- be aware of the signs of alcohol and substance misuse and the effects on performance, attendance and health of employees (see guidance notes)
- ensure the health, safety and welfare of employees and others with whom they come into contact
- ensure that staff understand the policy and are aware of the rules and consequences regarding the use of alcohol, drugs and other intoxicating substances
- ensure that staff are aware of the support that is available to them should they have a problem
- monitor the performance, behaviour and attendance of employees as part of the normal supervisory relationship
- intervene at an early stage where changes in performance, behaviour, sickness levels, attendance patterns are identified to establish whether alcohol or drug misuse is an underlying cause
- provide support and assistance, where appropriate and for a reasonable period, to staff who are dependent upon intoxicating substances to help their recovery
- instigate disciplinary measures where appropriate to do so.

4.2 Where a manager is aware, or suspects, that an employee is misusing intoxicating substances they are strongly advised to seek advice from their HR manager on the approach to be adopted.

4.3 Such matters will be treated confidentially as far as is legitimately and legally possible. For example, it may be necessary in order to provide effective support for information to be shared with others, for example occupational health, other agencies.

5 Employee responsibilities

5.1 Employees are required to familiarise themselves with this policy and comply with its provisions.

5.2 They are expected to present a professional, courteous and efficient image to those with whom they come into contact at all times. They therefore have a personal responsibility to adopt a responsible attitude towards drinking and taking prescribed and over-the-counter drugs.

5.3 Employees are not permitted to possess, store, trade or sell controlled drugs on organisation premises or bring the organisation into disrepute by engaging in such activities outside of work. The only exception would be where an employee has a prescription.

5.4 Employees are strongly encouraged to seek help if they have concerns regarding their alcohol or drug consumption. It is recommended that they approach either their line manager or HR in the first instance so that the organisation can arrange for the provision of appropriate support to help speedy rehabilitation, for example referral to the occupational health service, medical professionals, professional drug/alcohol treatment agencies, and so on.

5.5 Employees are expected to co-operate with any support and assistance provided by the organisation to address an alcohol or drug misuse problem.

5.6 Employees should not, even with the best of motives, 'cover up' for, or collude with, a colleague with an alcohol- or drug-related problem but instead should encourage the individual to seek help.

5.7 Where the individual concerned does not wish to come forward to seek help, and their colleague(s) genuinely suspect that the individual may be misusing drugs or alcohol, they have a responsibility to raise their concerns with the employee's line manager.

5.8 At work

- 5.8.1 Employees must report for work, and remain throughout the working day, in a fit and safe condition to undertake their duties and not be under the influence of alcohol or drugs.
- 5.8.2 Employees must not consume alcohol or drugs at any time while at work including during rest or meal breaks spent at or away from work premises. Exceptions apply to drugs prescribed for the individual or over-the-counter medicines used for their intended purpose (in accordance with the instructions given by the prescriber, pharmacist or manufacturer) and where the safety of the individual or others with whom they come into contact is not compromised.
- 5.8.3 This restriction does not apply to work-related functions or activities that take place at the end of an individual's working day after which they are not returning to work.
- 5.8.4 Employees must notify their manager immediately should they be prescribed medication or plan to take over-the-counter medicines that may cause side effects and impair their ability to undertake their duties safely and effectively. This is particularly important if they occupy a post where it is not only their own personal safety but those of others that could be jeopardised.
- 5.8.5 Similarly, employees who experience side effects as a result of taking prescribed or over-the-counter medicines that impair their ability to perform their duties safely and satisfactorily must notify their line manager immediately.
- 5.8.6 Employees are not obliged to disclose the actual medical condition being treated nor the medication – simply the impact/side effects.

5.9 Outside working hours

- 5.9.1 Employees must not consume intoxicating substances before coming on duty or when they may be required to attend work at short notice, for example when they are on call.
- 5.9.2 Intoxicating substances such as alcohol may remain in the system for some time and even small amounts can impair performance and jeopardise safety. Employees are personally responsible for allowing sufficient time for the intoxicating substance to leave their system before reporting for work.
- 5.9.3 These restrictions should be incorporated into local workplace rules and must be brought to the attention of all staff as part of their induction and should be made available to staff to refer to subsequently.

6 Breaches of the policy

- 6.1 The organisation will, where appropriate to do so, adopt a constructive and supportive approach when dealing with employees who may be experiencing drug or alcohol dependency/addiction.
- 6.2 This means that employees seeking assistance for a substance misuse problem will not have their employment terminated simply because of their dependence/addiction.
- 6.3 However, if performance, attendance or behaviour is unacceptable, despite any support and assistance that can be offered, ultimately dismissal may be unavoidable.
- 6.4 Notwithstanding the above, there will be circumstances where breaches of the policy, whether dependency-related or not, will be treated as a disciplinary matter and may result in the summary dismissal of the employee. Examples of issues that will be subject to disciplinary action, including the possibility of dismissal, are:
 - deliberate disregard for personal safety and that of others associated with the use of intoxicating substances
 - unacceptable behaviour in the workplace associated with the use of intoxicating substances
 - being found incapable of performing normal duties satisfactorily and safely as a result of consuming alcohol or taking drugs

- consuming intoxicating substances during the working day including rest and lunch breaks or when rostered on call and liable to be called upon to work at short notice
- possession, consumption, dealing/trafficking, selling, storage of controlled drugs either on work premises or engaging in such activities outside of work
- being disqualified from driving as a result of alcohol- or drug-related offences (employees required under their contract of employment to drive a vehicle)
- making malicious or vexatious allegations that a colleague is misusing intoxicating substances.

This list is illustrative only and should not be regarded as exclusive or exhaustive. Disciplinary action will be in all cases proportionate to the circumstances of the breach of the policy.

- 6.5 Where evidence warrants, the organisation will inform the police of illegal drug use or any activity or behaviour over which there are concerns as to its legality. For example, it would be necessary to report criminal behaviour associated with alcohol abuse such as having a drink-driving accident in a work vehicle.
- 6.6 No part of this policy will override the organisation's Performance Management Procedure, Code of Conduct for Employees or any employment-related professional code of conduct.

Definitions

Intoxicating substance – a substance that changes the way the user feels mentally or physically. It includes alcohol, illegal drugs, legal drugs, prescription medicines (for example tranquillisers, anti-depressants, over-the-counter medicines), solvents, glue, lighter fuel.

Controlled drugs – these are drugs covered by the Misuse of Drugs Act 1971. They include both drugs with no current medical uses as well as medicinal drugs that are prone to misuse. All are considered likely to result in substantial harm to individuals and society.

Harmful/problematic use or misuse – use of an intoxicating substance or substances that harms health, physical, psychological, social or work performance but without dependency being present.

Dependency – a compulsion to keep taking an intoxicating substance either to avoid effects of withdrawal (physical dependence) or to meet a need for stimulation or tranquillising effects or pleasure (psychological dependence).

Addiction – a state of periodic or chronic intoxication produced by the repeated intake of an intoxicating substance. This means that a dependency has developed to such an extent that it has serious detrimental effects on the user and often their family as well, and the individual has great difficulty discontinuing their use. The substance has taken over their life.

Appendix 4: Employing ex-substance users – risk assessment

Issues	Reasons
Are they competent to do the job?	This must be the main driver behind any recruitment.
What is this individual's history of drug misuse versus what is the type of work they will be undertaking?	Assessment is required to ascertain whether their individual history will have a detrimental effect on the work or the people they will be interacting with. The key is to treat each person and case as an individual rather than follow a blanket rule. Will they be interacting with the public? What is your customer base?
Are they on medication?	Prescribed medicines could affect performance in some kinds of work. Medical advice should be sought where the individual is prescribed medication in relation to their drug misuse (such as methadone).
Are there any other legal issues to consider?	<p>If driving is part of the job, it should be noted that individuals must inform the DVLA of any medical condition that may affect fitness to drive (including dependence on or misuse of drugs/alcohol in the past three years).</p> <p>Has the individual a criminal record in relation to their substance misuse? (If yes then this issue would need to be considered separately.)</p>
Are there any insurance issues to consider?	Organisations should check their individual policies if appropriate.
Will there be a phased induction to the work (such as gradual increase in hours)?	Employees may find this helpful as part of their induction, especially if they have been out of work for some time.
Will there be a comprehensive induction?	Employees who have been away from work for some time may need a more comprehensive induction to gain confidence.
Will there be adequate supervision?	Employers need to monitor and manage any risk and to ensure the employee is given sufficient and appropriate information and assistance on a regular basis.
Is there a clear policy on drug and alcohol use in the workplace?	Employees need to know what is expected of them.
Is there an employee assistance programme in place?	Employees need to know how to seek help if needed.

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