



# **GMB Health and Environment Department**

## **Briefing**

### **Drugs and Alcohol at Work**

**October 2002**

<b>Contents</b>	<b>Page</b>
<b>1. Introduction</b>	<b>1</b>
<b>2. Setting the Scene</b>	<b>1</b>
<b>3. The Legal Situation</b>	<b>2</b>
- <i>General Laws</i>	
- <i>The Transport and Works Act 1992</i>	
- <i>The Road Traffic Act 1988</i>	
- <i>The Misuse of Drugs Act 1971</i>	
<b>4. The Effects of Drug and Alcohol Abuse in the Workplace</b>	<b>3</b>
<b>5. Key Concerns for the GMB</b>	<b>3</b>
- <i>Factors which can lead to Drug and Alcohol problems at work</i>	
- <i>Non Inclusive Policies</i>	
- <i>Testing</i>	
- <i>Disciplinary Action</i>	
<b>6. Testing</b>	<b>4</b>
- <i>Types of Testing</i>	
- <i>GMB's Position on Testing</i>	
- <i>For Cause/Reasonable Suspicion and Post Accident Testing</i>	
- <i>Random Testing</i>	
- <i>How Samples are Tested/Chain of Custody</i>	
- <i>Dealing with a positive result</i>	
- <i>Legal Issues and testing</i>	
- <i>Contractual Changes</i>	
<b>7. Support</b>	<b>8</b>
<b>8. Negotiating a Policy</b>	<b>9</b>

## **1. INTRODUCTION**

An increasing number of UK employers are introducing workplace drug and alcohol policies. This is largely due to influence from US companies and the introduction of the Transport and Works Act 1992. In principle the GMB supports responsible workplace drug and alcohol policies but has concerns about the wide and often indiscriminate use of drug and alcohol testing. This paper sets out the background to drug and alcohol policies and gives details on what needs to be considered when negotiating a policy.

## **2. SETTING THE SCENE**

### ***Tackling Drugs to Build a Better Britain - The Government's Ten Year Strategy for Tackling Drugs Misuse***

In 1998 the Government launched its 10 year strategy for tackling drugs misuse "*Tackling Drugs to Build a Better Britain*"<sup>1</sup>. The Government's vision outlined in this strategy is "*a healthy and confident society increasingly free from the harm caused by the misuse of drugs*"

One of the Government's action areas includes the workplace where the strategy aims to support the implementation of drugs in the workplace initiatives in line with Health and Safety Executive guidance for employers<sup>2</sup>. The Government has also set an objective to reduce the levels of drug-related absenteeism/dismissals from work.

One of the underlying principles of the Strategy is joint action and working in partnership to address the issue. At a recent conference on Drugs and Alcohol in the Workplace<sup>3</sup> Keith Hellawell, the Government's Drug Tsar, stressed the importance of partnership at a workplace level stating that "*Policies that work are those agreed between unions, management and the workforce*". Keith Hellawell added that bad policies without workforce agreement led to resentment and an organisational culture of management versus the workers.

Studies show that illegal drug use by the population as a whole is on the increase. It therefore follows that many workforces contain some people who use drugs. It has been estimated that 92% of men and 84% of women in the general population use alcohol to some degree<sup>4</sup>. Of these some will develop alcohol and drug problems and many of these will be employed. Specific figures taken from two leading UK organisations dealing with drug and alcohol issues, DrugScope and Alcohol Concern<sup>5</sup>, state that:

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<sup>1</sup> Tackling Drugs to Build a Better Britain, April 1998 published by The Stationery Office price £6.50

<sup>2</sup> Drug Misuse at Work – a guide for employers (INDG91) available free from HSE Books

<sup>3</sup> BFI 3<sup>rd</sup> Annual Combating Drugs and Alcohol in the Workplace Conference 20<sup>th</sup> February 2001, London Guildhall.

<sup>4</sup> Office for National Statistics (2000) Living in Britain: Results of the 1998 general Household Survey. London: The Stationery Office

<sup>5</sup> Drug and Alcohol Workplace Service – guidance sheet no.2 "Impact of Alcohol and Drug Problems on the Workplace. DrugScope and Alcohol Concern

- 40% of the workforce under 40 years of age and 45% of those between 16 and 29 have experimented with illicit drugs.
- 25% of those seeking help for drug problems are in employment
- Contrary to popular belief, most people with drink problems are in work
- 1 in 25 people is dependent on alcohol and the majority of these are employed
- 43% of organisations do not have a workplace alcohol and drug policy and 84% do not run awareness programmes for staff

### **3. THE LEGAL SITUATION**

There is no specific law stating that employers must introduce a drug and alcohol policy and or drug and alcohol testing. However it is possible that the proposed Safety Bill, announced in the Queens Speech of November 2000, will introduce the duty to test safety critical personnel working in civil aviation e.g. pilots, cabin crew and maintenance staff and those working on board ships.

#### **General Laws**

Employers have a general duty under the Health and Safety at Work etc. Act 1974 to ensure, as far as is reasonably practicable, the health, safety and welfare of their employees. Employers also have a duty under the Management of Health and Safety at Work Regulations 1999 to assess the risks to the health and safety of employees. If an employer knowingly allows an employee under the influence of drugs or alcohol to continue working and his or her behaviour places the employee or others at risk then the employer could be prosecuted. Employees also have a responsibility to take reasonable care of themselves and others who could be affected by what they do at work.

#### **The Transport and Works Act 1992**

This Act makes it a criminal offence for those working in 'safety sensitive' (e.g. drivers, guards, conductors, signalmen, maintenance staff, supervisors of maintenance staff and look-outs) on railways, tramways and guided transport systems to be unfit through drugs and/or drink at work. The operators of the transport system would also be guilty of an offence unless they have shown due diligence in trying to prevent such an offence being committed. This legislation has led to a large number of rail companies introducing random drug testing.

#### **The Road Traffic Act 1988**

This Act states that any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be guilty of an offence. The current alcohol limit for driving is 35 micrograms of alcohol in 100 millilitres of breath or 80 micrograms of alcohol in 100 millilitres of blood, although there are proposals from Europe to reduce this level.

## **The Misuse of Drugs Act 1971**

This Act makes the production, supply and possession of controlled drugs unlawful except in certain specified circumstances (e.g. when they are prescribed by a doctor). If an employer *knowingly* permits the production or supply of any controlled drugs, the smoking of cannabis or certain other activities to take place on your premises he/she could be committing an offence.

## **4. THE EFFECTS OF DRUG AND ALCOHOL ABUSE IN THE WORKPLACE**

The very real cost for an individual with a problem is the loss of their job and source of income, relationship breakdowns as well as the devastating effects that alcohol and drug misuse can have on health.

The cost to industry due to drug use is estimated at £800 million each year and sickness absence related to alcohol costs an estimated £2 billion a year to industry. Drugscope and Alcohol Concern point to studies which show that employees who use drugs have approximately 60% higher rates of absenteeism and a 47% higher rate of involuntary termination than other workers. In an estimated 20-25% of workplace accidents alcohol is a contributory factor<sup>4</sup>. Little research has been done on the effect of drugs and workplace accidents although the following drugs are known to slow down a user's reaction times:

Cannabis

Benzodiazepines – which includes prescribed tranquillisers such as Valium and Librium

Opiates – e.g. Heroin and Codeine

In addition to absenteeism and accidents, alcohol and drug use can effect performance and productivity and workplace morale, where colleagues feel they have to cover up or work harder for someone's problem.

For these reasons the GMB supports responsible and sustainable drug and alcohol policies.

## **5. KEY CONCERNS FOR THE GMB**

### **Factors which can lead to drug and alcohol problems in the workplace**

The GMB is concerned about the link between work conditions and increased alcohol or drug use. Work related stress, be it as a result of a violent incident,

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bullying, heavy workloads or long working hours, can lead some individuals becoming increasingly dependent on drugs or alcohol. In addition, jobs which mean working away from the family in relative isolation can lead to an increased reliance on alcohol. Some workers working long shifts or doing two jobs have to rely on illegal stimulants e.g. amphetamines to get through the day or night. It is vital that any workplace action on drugs and alcohol also addresses these factors.

### **Non Inclusive Policies**

Some workplaces have tried to introduce drug and alcohol policies, including a ban on alcohol for only certain levels of employees with the exclusion of management grades. This point is emphasised by the Health and Safety Executive<sup>2</sup> above. Policies must be all inclusive and across the board which means including managers and senior executives. There may be certain instances where testing policies vary i.e. testing is carried out on certain safety critical grades and not others, this issue is discussed in more detail below.

### **Testing**

Many employers are trying to introduce testing without a framework policy or safeguards. Whilst the GMB does not oppose testing per se, there are many instances where testing is unnecessary. Where testing has to be introduced it should be part of an integrated framework policy and carried out under strict controls. Testing is discussed in more detail below.

### **Disciplinary Action**

Some employers will go down the disciplinary route without first considering support and treatment for workers with problems; this is simply unacceptable. When a policy is first being introduced there should be an education programme for managers and Trade Union Representatives which points to the signs and symptoms of problems drinking or drug use and how to encourage someone to seek support. Employees should also be given training and awareness on the issue and where/how to get help. Denial can be common in cases of addiction so awareness, information and access to confidential support/advice are vital if disciplinary action is to be avoided. Disciplinary action should only be used as a **last resort** when someone consistently refuses to take up support or treatment. Disciplinary action must be consistent.

## **6. TESTING**

### **Types of Testing**

There are five types of testing namely:

- **Pre-employment Testing**
- **For cause/Reasonable Suspicion Testing** – carried out when a supervisor or manager has cause or reasonable suspicion that someone is at work under the influence of drugs or alcohol.

- **Post Accident Testing** – testing following a workplace accident
- **Random Testing/Unannounced Testing** – where a percentage of the workforce are tested for drug and or alcohol use every year. There is **no warning** for this type of testing.
- **Rehabilitation Testing** – introduced when worker returns following a treatment programme to ensure that the treatment has been successful and that they haven't had a relapse.

### **GMB's position on Testing**

The GMB believes that testing policies should only be introduced in certain safety critical jobs e.g. driving and operating dangerous machinery. Even in such instances random testing should be opposed. The use of testing is limited as a positive result from a test does not necessarily prove impairment at that time but only that a particular substance has been used. This is particularly true for drug rather than alcohol use. Cannabis, for example, can be detected even if it was used 28 days ago. Drugscope state that random testing can be counterproductive by causing resentment amongst staff, particularly if used in non-safety critical situations. Keith Hellawell also has concerns about the indiscriminate use of drug testing and is on the record as saying that "*Drug Policies in the workplace are not about testing...(drug testing) could be creating more problems than already exist*"<sup>3</sup>. The Health and Safety Executive in their guidance leaflet for employers "Drug Misuse at Work"<sup>2</sup> point out that testing is only likely to be acceptable if it can be seen to be part of an organisation's occupational health policy and is clearly designed to prevent risks to the misuser and others.

### **For Cause/Reasonable Suspicion and Post Accident Testing**

This type of testing is acceptable for safety critical workers. However in order to prevent harassment and victimisation the following guidelines need to be followed when putting this testing in place:

- Defined criteria for supervisors and managers on when it is acceptable to implement this type of testing e.g. types of behaviour, types of accidents/incidents.
- Documentation of the incident
- Training and Education of supervisors and managers on the signs and symptoms of drug and alcohol problems and to encourage people with problems to seek support before managers have to resort to testing
- In the case of post accident testing the test should only be part of the investigation which must look at other factors which could have led to the incident e.g. fatigue, damaged machinery etc.
- Adequate training and information for safety critical workers on what types of drugs are to be tested for, acceptable levels of alcohol, action in case of failed test and how to seek support.

## **Random Testing**

As stated earlier random testing should be opposed as it is unreasonable to test an employee without cause or reason to suspect that they are working under the influence of drugs or alcohol. However where the employer persists in introducing random testing, Trade Union representatives must ensure that the system is truly random and that employees are given adequate information and training on what is to be tested for, acceptable levels of alcohol, action in case of failed test and how to seek support.

## **How are Samples Tested/Chain of Custody**

Most organisations will carry out breathalyser type tests for alcohol and urine tests for drugs. Hair samples can be used to test for drugs and there is increasing use of this method in the USA, however there is still a debate on the accuracy of hair tests. Blood tests can be used to pick up drugs and/or alcohol but are infrequently used as they are invasive.

Samples should only be collected by a suitably trained person and in the case of urine tests the sample donor must witness the labelling and sealing of the sample. Machinery used to carry out breath tests must be regularly checked and calibrated for accuracy.

It is important that this happens in a sensitive manner and in a suitable environment that protects the privacy of donors. The GMB opposes any type of testing where the donor has to be “watched” whilst giving a urine specimen to ensure that it is not tampered with, this is common practice in drug testing of athletes and sport persons but is simply unnecessary and unacceptable in the workplace. Testing companies can ensure that samples are not tampered with (which usually means diluting the urine) by putting blue dye down toilets and locks on taps.

Employees must give consent to a test and must be informed on what is to be tested for. Urine tests for drugs should be used to test for pregnancy or other conditions.

A chain of custody is the set of procedures that ensures that samples are transported securely from the point of donation to the laboratory, demonstrating authenticity if legally challenged. A sample is usually separated into two containers, sealed in a tamper proof bag and labelled. One sample is analysed and one is kept in case of a challenge requiring a re-test. Many companies contract out their testing service, the GMB supports this as long as laboratories carrying out drug testing are accredited by the United Kingdom Accreditation Service (UKAS).

## **Dealing with a positive result**

There is a risk of having false positive results. Many over the counter or legally prescribed medicines e.g. Valium and codeine can give a positive result. In addition, certain medical conditions could show up positive drug or alcohol tests. Normally, before undergoing a test employees are asked whether they have taken any of the



types of drugs which could indicate a false positive. Where there is a positive the test should be subject to an independent medical review. The independent medical review will be able to assess whether the result is a false positive or not. Employers should only be notified of test results that are positive **AFTER** they have been verified by independent medical review. Even if the medical review reports a positive result the employee must be an opportunity to challenge the result and request independent re-testing using the second stored sample.

## **Legal issues and testing**

### **The Human Rights Act 1998**

The HRA creates new rights against public authorities (e.g. hospitals, schools) meaning that public sector workers will be able to challenge their employer directly for a breach of the act. However workers in the private sector cannot challenge their employer directly but can attach a breach of the HRA onto other employment issues e.g. wrongful dismissal.

Article 8 of the HRA gives the right to respect for a private and family life, home and correspondence and is the most relevant article in relation to drug and alcohol testing. Article 8 is not an absolute right and exemptions exist where:

Interference is lawful – i.e. if it is in accordance with the law. If the new Safety Bill introduces a duty on employers to test air crew this would be lawful under Article 8

In the interests of economic well being of the nation

Interference is proportionate – this means striking a fair balance between the rights of the individual and the rights of the organisation. Examples given by a leading employment solicitor<sup>6</sup> on a proportionate response by organisations include in cases of national security, public safety, protection of health and protection from crime. The leading employment solicitor<sup>6</sup> also added that random testing for drugs and alcohol *“may not be proportionate unless there is a high risk to the company”*

The effect of the Human Rights Act (HRA) on drug and alcohol testing in the UK has yet to be tested however it may be possible to challenge dismissal cases where non-safety critical staff have tested positive or where non-safety critical staff have refused to be tested.

### **Contractual Changes**

The introduction of drug and alcohol testing will usually mean changes to the contract of employment. Changes should not be made without agreement. If agreement is reached then a new statement incorporating the changes must be issued within a month of the change being made. The statement must set out the changes in full.

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<sup>6</sup> Joanna Blackburn – Mischon de Reya Solicitors speaking at BFI 3<sup>rd</sup> Annual Combating Drugs and Alcohol in the Workplace Conference 20<sup>th</sup> February 2001, London Guildhall.

## **7. SUPPORT**

Access to support is perhaps the most important part of any policy. Support can be in-house, external or both. However it is vital that it is confidential and independent. Employers should recognise that employees may have more confidence in seeking external support. Where in-house occupational health services are used as a source of support and advice they should not be involved in any testing procedures as the role of implementing testing and providing support and are conflicting.

An excellent example of workplace support is found in London Underground. The support system has the backing of the main Trade Unions ASLEF and RMT. The substantial resources that London Underground put into offering support was a balance against the extensive testing regime that they have. London Underground has a purpose built unit providing support and assessment for staff who come forward for help with drug and alcohol problems. Three highly qualified and experienced drug and alcohol professionals staff the unit. Workers with problems are firstly assessed by one of the unit's staff and then, if necessary referred for treatment. Treatment options include group work, day care or residential treatment (including detox). After treatment is finished the unit is involved in the after care which includes continuing support and monitoring of the employee. London Underground spend £120, 000 on staffing the unit and a further £120, 000 on treatment. They deal with 100-120 referrals a year with 50% being self-referrals. The unit and support programme has had business benefits in relation to sickness absence. Sickness absence rates for someone with a drug or alcohol problem in the 2 years prior to entering treatment were on average 31 days per year, this has dropped to 8 days per year in the 2 years following treatment.

Where employers are large organisations bringing in extensive testing the GMB should negotiate well resourced and competent support services along the lines of the one introduced by London Underground.

In-house occupational health departments may not necessarily have the appropriate qualified staff to support an individual with a problem but may however be involved in their return to work programme.

For smaller organisations the employer should find out what services are provided locally and make workers aware of these services and how to contact them if needed. However, long waiting times and scarce resources may make it difficult for workers to get support at the earliest opportunity in certain parts of the country, this is particularly the case in alcohol support services. In such cases the GMB should encourage employers to pay for such services.

Employers should treat absence for treatment, counselling and rehabilitation as per normal sickness and workers who have followed a treatment programme and have been successfully rehabilitated should not suffer any detriment in relation to career prospects and opportunities.

Employers should be aware that relapses are common when treating people for addiction and policies should take this into account.

## **8. NEGOTIATING A POLICY**

### **Step One - Consultation**

Trade Union Representatives must be consulted on the planning and implementation of Drug and Alcohol Policies. There is a legal duty, under the *Safety Representatives and Safety Committee Regulations 1977*, to consult Trade Union Safety Representatives on issues and changes affecting health and safety “in good time” i.e. before changes are implemented. Even in workplaces where the trade union is not recognised employers have a duty under the *Health and Safety Consultation of Employees Regulations 1996* to consult employees collectively or via an elected representatives on health and safety issues.

Consultation also makes good business sense, as failure to consult usually means failure of the policy, a culture of resentment and suspicion.

### **Step Two – Discussing the Framework of the Policy**

At the very least a policy should contain the following

**Aims** - Including whom the policy will apply to and why the policy exists. The framework policy must apply to **all** staff. The primary reason for the policy should be to protect the health, safety and welfare of all staff.

**Responsibility** – Including who is responsible for carrying out the policy. A commitment from senior management is essential to the success of the policy.

**Definition** – Including a definition of drug/alcohol misuse. What is acceptable or unacceptable under the policy e.g. whether there is to be a total ban of alcohol consumption in the workplace

**Information** - A commitment to education and awareness raising programmes to all employees on drug and alcohol issues must be a part of the policy

**Training** - A commitment to training managers and Trade Union Representatives on recognising the signs and symptoms of alcohol or drug problems and encouraging workers to seek support. It is vital that Trade Union Representatives are included in management training as the TU rep is often the first person that someone with a problem will trust enough to talk to.

**Support** – Including the types of support available for workers with problems and a statement encouraging those with a drug/drink problem to seek help voluntarily. A further statement should be included stating that absence for treatment and rehabilitation will be regarded as normal sickness and the recognition that relapses may occur

**Confidentiality** – A statement assuring employees that a drug and alcohol problems will be treated in strict confidence

**Disciplinary Action** - The circumstances in which disciplinary action will be taken

**Monitoring and Reviewing** – A statement that the policy will be regularly monitored and reviewed in consultation with Trade Union Representatives

### **Step Three – To Test or not to test?**

The GMB believes that testing should only be introduced for safety critical workers and only in specific circumstances i.e. just cause, reasonable suspicion or post accident. The arguments against random testing and against the testing of non-safety critical employees, highlighted in the text of the briefing, should be used to oppose random testing (including the potential impact of the Human Rights Act).

The employer should come up with a list defining what workers/jobs are safety critical and this list should be agreed with the Trade Union. Supervisors and Managers of safety critical workers will need to be included in the list.

A list of circumstances when testing is appropriate must be outlined and agreed. Managers and supervisors should be given training on when and where it is acceptable to implement just cause, reasonable suspicion and post accident testing.

Workers must be made aware of the acceptable levels of alcohol and what would constitute a failure. Any training and awareness should include this. Workers should also be made aware of what types of drugs they are going to be tested for.

Workers who are subject to testing should have the right to discuss the issue/be accompanied by their Trade Union Representative.

In the case of post accident testing the Trade Union Safety representative has the right to investigate the accident and look at other possible causes. The manager/supervisor should also investigate the accident and look at other causes besides possible alcohol or drug use.

**The following questions also need to be asked:**

- Who will do the testing? The person must be competent and trained to carry out the test and equipment used e.g. breathalysers must be regularly maintained and calibrated. In the case of drug testing an UKAS accredited laboratory should be used.
- How will test samples be collected? How will they ensure privacy, security and the splitting of samples in case of the need to challenge the test
- What action will be taken if a positive result is given? Ensure an independent medical review to pick up false positives in the case of over the counter/prescription drugs. Disciplinary procedures must be fair and consistent and must include the right to be accompanied and the right to challenge the result.
- What are the consequences if someone refuses to take a test?

Where testing is to be carried out the above points should be covered in the framework policy. Where testing is included in the policy and test failures result in disciplinary action the need for education, awareness, training and support are of utmost importance.

Where the employer imposes random testing ensure that the selection is truly random

#### **Step Four – Reaching Agreement**

Trade Union Representatives will need time to consult members on the new policy. Contractual changes need to be discussed and agreed.

#### **Step Five – Implementation of the Policy**

It is good practice, particularly where testing is going to be implemented to have a lead in period sometimes called a “grace” or “amnesty” period before the policy is fully implemented. This can be anything from 6-12 months, during this time the training, information, awareness and support elements of the policy should be implemented giving people with a problem the chance to seek support at the earliest opportunity.

#### **Step Six – Monitoring and Review**

The policy should be subject to regular monitoring and review. Trade Union Representatives should be part of this regular monitoring and review process to ensure that the policy is both effective and fair.