**Substance Misuse**

The purpose of this guidance is to provide assistance and advice for managers in dealing with staff affected by alcohol, drug or substance misuse. These guidance notes should be read along with the University policy on Substance Misuse.

It is understood that many people who start to take substances will do so because of difficult times in their lives such as bereavement, financial troubles, relationship difficulties or many other social problems. It is also accepted that it is easier and cheaper to intervene early with an effective support system than ignore it and have to rely on the disciplinary process later on.

## Recognising a problem with substance misuse

In most cases, it is the behaviour associated with alcohol and drug misuse that will be most obvious to managers and colleagues. Possible indicators are listed below. It is essential to bear in mind that other factors, such as illness or stress, can also produce these signs – so thoroughly examine each situation before acting.

*Possible indicators of misuse:*

* Patterns of depression or fatigue (often after the weekend)
* Absenteeism – short term/frequent patterns
* Poor timekeeping
* Erratic performance
* Lack of discipline
* Unusual irritability or aggression
* Over-confidence
* Sudden mood swings
* Inappropriate behaviour
* Reduced response times
* Becoming easily confused
* Reduced productivity
* Deterioration in relationships with colleagues, customers or managers
* Financial irregularities
* Dishonesty and theft

**Remember:** These are only signs – they can all be caused by other factors.

## Relevant legislation

As with many legal issues, managers are advised to seek expert advice on their specific circumstances. Substance misuse may involve both employment law and criminal law. HR can provide advice.

Outside certain industries, such as public transport, there is little legislation directly related to drugs and alcohol in the workplace. However, there is legislation on substance abuse that can affect an employer and their staff.

**Misuse of Drugs Act 1971:** this is the key UK legislation relating to the control and classification of drugs. This act and its subsequent amendments set out the penalties for possession and supply of various illegal drugs.

**Section 8 Misuse of Drugs Act 1971:** A person commits an offence, if being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises, that is to say:

1. Producing or attempting to produce a controlled drug;
2. Supplying or attempting to supply a controlled drug to another;
3. Preparing opium for smoking;
4. Smoking cannabis, cannabis resin or prepared opium.

**This is a criminal offence with individual liability.**

Not taking reasonable action to prevent this has been legally found to constitute “permitting”.

**Health & Safety at Work Act 1974:** sets out the duty of care of employers to their members of staff in the workplace. Section 2 places a duty on employers to provide a safe place of work and competent staff. Failure to deal with a member of staff who is under the influence of alcohol or drugs, who may constitute a risk to others, could leave an organisation open to prosecution. Managers should complete a risk assessment for their area.

**Management of Health & Safety at Work Regulations 1999:** regulation 3 places a duty on the employer to make a suitable and sufficient assessment of the risks to health and safety of colleagues and others affected by their undertaking.

**Common Law:** places a duty on the employer to take reasonable care of the health and safety of the people that work for them.

**Provision and Use of Work Equipment Regulations 1998:** requires employers to assess any additional risk as a result of using work equipment in the conditions that exist in their business and particularly any special needs of young workers.

**Data Protection Act 1998:** all health and medical information is sensitive personal data under the terms of the Data Protection Act. All information surrounding possible drug or alcohol misuse must be handled securely and confidentially.

**Road Traffic Act 1988:** sets out the offence of driving or attempting to drive a motor vehicle while unfit through drink or drugs. Employers may be liable unless they can show ‘all due diligence’.

## Confidentiality

A member of staff with a substance or alcohol abuse problem has the same rights to confidentiality as they would for any other health related condition.

Support can be provided via Occupational Health. They will be treated in strict confidence and no details will be given to an individual’s manager without the express consent of the member of staff concerned.

Any help or treatment given through Occupational Health will be treated confidentially between the member of staff, Occupational Health and where necessary, any external agency involved.

# Managing staff with substance misuse issues

When faced with a situation where a member of staff has been under-performing because of, or if there has been an incident that may be linked to, a drug or alcohol problem, it is important to act promptly, taking advice where necessary.

Initially, it will be necessary to raise the matter with the member of staff concerned, following the advice set out in these guidance notes. Usually, a referral to Occupational Health will be required, via Human Resources.

With support, substance and alcohol misuse problems can be successfully dealt with. Consider the full costs of recruiting and training to replace staff; supporting their recovery may be more cost effective.

## Handling conversations about substance misuse

When there is a reasonable suspicion of substance misuse, it is important to act promptly. Formal evidence may not always be available, but there is a duty to safeguard the health and safety of staff, students and other members of Staff.

* Ensure that the meeting can be conducted in private.
* Advise the member of staff of the concerns, including observations or examples of relevant behaviour, or impact on performance. Take any relevant supporting documents or information where applicable.
* Enquire after their health.
* Give them the chance to explain their version of events and encourage them to discuss the issue.
* Explain the University’s position on substance misuse and provide a copy of the policy. Ensure that they are aware that whilst support will be provided, they must not attend work under the influence of substances under any circumstances.
* Offer help in confidence, including sources of support and advice.
* Propose a referral to Occupational Health. Seek their approval for this. If approval is not forthcoming, explore why they are reluctant to do so.
* If they admit to a problem, ask what support they need, particularly around time for treatment or any temporary amendment to duties.
* Agree a course of action, including scheduling a review meeting.

## Misconduct and Performance

Every support will be provided to members of staff who have acknowledged that they have a problem with substance misuse, and are engaging with treatment and Occupational Health. However, there may be occasions where it is necessary to invoke the disciplinary procedure in relation to substance misuse.

The University Disciplinary Policy and Procedure will apply in these circumstances, depending on the nature of the issue. Advice is available from Human Resources.

The University’s disciplinary policies make it clear that incapability due to substance misuse maybe a disciplinary matter. Examples include; where a member of staff has failed to engage with Occupational Health, when a member of staff attends work under the influence of alcohol or drugs, where the matter is affecting their ability to effectively perform their duties, or having a negative impact on students, colleagues or the University.

As with all disciplinary matters, employers are obliged to conduct reasonable investigations into misconduct matters and take into account mitigating factors. Even if the police or other law enforcement agencies have been involved, managers will still need to consider whether dismissal is an appropriate option. Pending charges will not necessarily be legitimate grounds for dismissal, so always seek advice from HR.

In the event that a member of staff engages with treatment, the manager *may* exercise their discretion to suspend disciplinary proceedings. Realistic outcomes and timescales will need to be agreed. Staff must be advised that that failure to show improvement in the area identified will result in the formal processes recommencing.

## Dealing with incidents

In the event that a member of staff appears to be suffering from an excessive consumption of alcohol or drugs in the workplace, urgent action may be required depending on the person’s condition. In a real emergency call an ambulance. If a first aider is available, ask them to attend.

In the event that medical assistance is not required, the member of staff should be sent home. If necessary, ensure that they get home safely.

Attending work under the influence of alcohol or drugs may amount to a disciplinary matter. Consider the appropriate action following the incident. This may include an investigation under the Disciplinary Procedure.