

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 substance 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 substances in the workplace. However, there is legislation on substance misuse 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:

- a. Producing or attempting to produce a controlled drug;
- b. Supplying or attempting to supply a controlled drug to another;
- c. Preparing opium for smoking;
- d. 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 substances at work, 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 misuse problem has the same rights to confidentiality as they would for any other health related condition.

Manager Guidance

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 substance misuse 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 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 substances, 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 disciplinary action 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 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, drugs or substances 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, drugs or substances may amount to a disciplinary matter. Consider the appropriate action following the incident. This may include an investigation under the Disciplinary Procedure.

Substance Misuse - FAQ

I suspect one of my team has a problem with substance misuse. What should I do?

If you suspect a member of staff may have a substance misuse problem you should arrange to ensure that their work (or continued attendance at work) does not pose a health and safety risk to themselves or others, and then hold an informal discussion with the individual, following the guidance set out in this document.

If the member of staff is in a safety critical role, hold the conversation immediately. Depending on the outcome of the conversation, it may be necessary to transfer the individual to alternative duties until advice can be taken, or the University can be confident that the substance misuse issues are no longer ongoing.

If having spoken to the individual there is still reasonable suspicion of substance misuse refer the employee to Occupational Health via HR.

One of my team has told me in confidence that they have a problem. What should I do?

Whilst individuals sometimes ask for matters to be kept confidential, and whilst we have duties under data protection legislation to ensure this confidentiality, we must also meet our duties of care as an organisation. Advise the member of staff that it is essential you refer them to Occupation Health, and ensure that they are aware of the University's position on substance misuse (provide them with a copy of the policy). Clearly outline the standards that must be maintained.

It has been reported to me by a third party that one of my team is misusing substances but I have no real evidence. What should I do?

As we have a duty of care towards all of our staff; even if there is no evidence as such, it is still important to discuss the matter with the individual concerned. Follow the guidance in this document around having a conversation with staff about concerns about potential substance misuse.

Can we test someone that we believe is under the influence of substances at work?

We do not normally engage in drug or alcohol testing for our staff. However, if you believe that there are particular circumstances that apply that mean this should be considered, please discuss it with HR before taking any action.

One of my team is receiving support via the University for a substance misuse problem. What should I be doing as the manager?

It is important to keep a regular and open dialogue with any individual who is receiving support for substance misuse, whether or not they are at work during this time. Agree a regular meeting, and check in regularly about whether any specific support is required. Document your discussions with them.

One of my team is away from work due to substance misuse. Is this treated as sickness absence?

Yes. Normal sickness procedures and contractual sick pay will apply. For the avoidance of doubt, substance misuse is not considered a disability (although conditions arising from a dependence on drugs, alcohol or substances may be).

I have talked to a member of staff I am concerned about, but they deny that there is a problem. What are my next steps?

If you still believe that the individual may be misusing substances, advise them that you wish to refer them to Occupational Health.

One of my team has been receiving treatment for a substance misuse problem, but they are also underperforming. What should I do?

It is not unusual for someone to experience difficulties at work whilst dealing with substance misuse. Ensure that you keep a record of the performance issues, and discuss them with the member of staff. Also ensure that they are aware of the necessary performance standards required of them and their role. Whilst the University wishes to support staff with a substance misuse problem who are seeking treatment, this has to be balanced against the needs of students, colleagues and the University itself. It may become appropriate at some point to invoke the Disciplinary procedure. Each situation is different, so take advice from HR before commencing any formal action.