Substance Misuse (Policy & Procedure)

OFFICIAL

Publication Scheme Y/N	Can be published on Force Website
Department of Origin	Professional Standards Department (PSD)
Policy Holder	Chief Superintendent PSD
Author	D/Superintendent (ACU)
Related Information	ACPO Substance Misuse and Testing Guidance Home Office Circular 011/2012 Home Office Circular 45/2005 Police (Conduct) Regulations 2020 Discipline Police Staff (Policy & Procedure)
Date First Approved at BMG	14/12/2005
This Version	Version 2.5 – 22/02/2022 (SMB Sept 2022)
Date of next Review	01/09/2025

September 2022

Policy

Statement

Merseyside Police is committed to providing a safe, healthy and productive working environment. Alcohol and Drug misuse includes the use of illegal drugs, the misuse of prescribed drugs, non-prescribed preparations and the consumption of alcohol leading to impaired performance. The misuse of alcohol and drugs can lead to reduced efficiency, increased risk of accidents, increased sick leave, potential misconduct and criminality. This can have serious consequences for individuals, their families and the wider police service.

The Force does not approve of the excessive or inappropriate use of alcohol or the misuse of drugs, whether illegal or prescribed. Possessing and supplying illegal drugs are criminal offences. The Standards of Professional Behaviour makes it clear that officers and staff should present themselves as 'fit for work' and breaches of the Standards enable the organisation to take disciplinary or misconduct proceedings where appropriate. However, the Force recognises the difficulty of breaking a cycle of dependency and will offer help to those who volunteer that they may have a drink or drug misuse problem. Where officers or staff recognise that they need help, the primary aim of the Force should be to support and assist that person as far as is possible.

Aims

To provide a safe and healthy working environment to all staff, comply with Home Office Guidance and Police Regulations, and maintain the safety and confidence of the public.

Objectives

The objectives of this policy are:

a) To provide appropriate support mechanisms to staff and officers who have identified themselves as having a problem with alcohol and/or other substance misuse.

b) To enable staff and officers to perform their duties in a manner that does not bring risk to themselves, colleagues or members of the public.

c) To assist in maintaining public confidence in Merseyside Police.

d) To assist in the prevention of substance misuse through an effective regime of testing that is proportionate to the scale of the problem.

Application and Scope

All police officers and police staff, including the extended police family or agency staff and those working voluntarily or under contract to Merseyside Police must be aware of, and are required to comply with, all relevant policy and associated procedures.

Where testing is carried out because a Chief Officer has reasonable cause to suspect, on the basis of intelligence, that an officer has used a controlled drug, the Home Office determination now allows testing to cover one other controlled drug or drug group in addition to the five categories of controlled drugs currently set out in the determinations.

Outcome Evaluation

By the use of support, rehabilitation, prevention and detection the policy seeks to provide the following outcomes:

a) A safe and healthy working environment.

b) The confidence of the public that officers and staff are not the subject of substance misuse.

c) An effective regime of testing that prevents and detects substance misuse and provides results that can be used to assess the level of future testing required that is of a scale that is proportionate to the problem.

Procedure

Version History

30/06/2010	V 2.0 - Policy and procedure amended to reflect Police Staff Council agreement that proportionate testing procedures be extended to police staff occupying safety critical or vulnerable posts.
24/09/2013	V 2.1 - Policy updated to fully reflect requirements of current ACPO Guidance (2012) and Home Office Circular 11/2012. Local representatives of Police Federation, Superintendents Association and UNISON have been consulted.
21/05/2014	V 2.2 – More detail added to provide clarification re voluntary disclosure with emphasis on support & welfare.
01/05/2018	V 2.3 – Amended to include changes from ACPO to NPCC, random testing to include staff in their probationary period and contact details for wellbeing.
11/01/2021	V 2.4 –Amended to include 2020 Police Conduct Regulations, include 'Anabolic Steroids', as a performance enhancing drug, list the agreed police staff vulnerable posts for random drug testing.
22/02/2022	V.25 – Amended to include Voluntary Referrals and Rehabilitees (7.7.5)
29/09/2022	V.25 – Amended re national guidance re CDB Oil (6.2)

Contents

1. Legal and Statutory Issues

1.1 The Health and Safety at Work Act places duties on employers to ensure a safe place of work and safe systems of work. This would include clear rules about coming to work under the influence of alcohol and/or drugs, the use of alcohol or drug taking while at work.

1.2 Staff have a general responsibility to present themselves fit for duty. If their judgement is impaired by the consumption of alcohol or the misuse of drugs, they are unlikely to be fit for duty. It is for a senior officer/ manager to determine whether a member of staff is unfit for work, due to consumption of alcohol. There are of course many reasons why people may appear intoxicated- for example diabetes or a side effect of prescribed medication. However, reporting for duty whilst having previously consumed alcohol (for example, on the previous evening) does not equate with the criminal offence of using drugs. Managerial action needs to reflect this.

1.3 It must be recognised that certain medical conditions such as diabetes or clinical depression and/or disabilities such as bi-polar disorder or epilepsy require regular medication and accordingly that officers or staff whose behaviour patterns are aberrant or irrational may be suffering from a clinical overdose or under dose of prescribed medication. In other words, the inappropriate or inadequate use of medication may not be the fault of the person concerned.

1.4 As with drugs, self-declaration of a drink problem is a matter that should be managed through the occupational health service, rather than being regarded as a disciplinary matter.

1.5 There is a power to conduct tests with cause.

1.6 If it appears that a member of staff in any role is under the influence of alcohol whilst at work appropriate managerial action must be taken immediately.

1.7 Arrangements for testing for alcohol misuse for Police Officers and staff are dealt with at Section 11 of this policy.

1.8 This policy and its associated procedures are disclosable under the Freedom of Information Act

2. Alcohol

2.1 Alcohol is a substance that can be misused, and which can impair judgement. However, it is in an entirely different category from drugs, in that its use is not illegal.

2.2. On the contrary, responsible social use of alcohol is wholly acceptable, with alcoholic drinks being served at official functions and dinners. On the other hand, individuals can become dependent on it, and may indulge in patterns of use that impair performance. There is a general responsibility of ALL police Officers and Police Staff to Never consume alcohol or use substances inappropriately at any time during working hours, or when you intend to work before the effects have worn off, this includes:

- Periods when you are ‘on-call’ or ‘standby’ and are being paid to do so,
- Following late night drinking and /or use of substances when reporting for an early shift

- Under legislation, you have a duty to take reasonable care for health and safety of yourself and any other person who may be affected by your actions or omissions at work.

2.3 Anyone who misuses alcohol is at risk of harm. Merseyside Police does not approve of the excessive and inappropriate use of alcohol. However, the Force will offer help to those who may have an alcohol problem in a sympathetic, fair and consistent manner.

2.4 The longer a person's alcohol problem is allowed to develop, the greater the risk of:

a) Damage to an individual's health, psychological stability and quality of life.

b) Impairment of an individual's ability to carry out their duties effectively and safely.

c) Jeopardy to the safety of other Force staff and members of the public.

d) Impairment of the ability of the Force to fulfil its operational commitments.

e) Individuals becoming involved in Misconduct or Criminal Proceedings, which may result in severe consequences to the individual concerned.

2.5 It is therefore important that we identify at an early stage those members of staff who are beginning to be affected by excessive or inappropriate alcohol consumption and encourage them to seek counselling or treatment. In this way we will create an environment that encourages those who misuse alcohol to admit having a problem and to seek treatment, thus taking responsibility for their own health.

2.6 All staff should recognise that they have a part to play in terms of the implementation of this policy, either because of their own problems or because of a problem that a colleague may have.

2.7 Prevention is an integral part of the policy, and the occupational health unit has a lead role in providing appropriate advisory input to individuals and on training courses, signposting the way to appropriate care and support.

2.8 Where problems exist with conduct or work performance and are evidenced by specific instances of excessive consumption of alcohol, the application of this policy may not prevent Misconduct procedures from being followed. Serious breaches of conduct could result in Misconduct procedures being followed even for those where there is an acknowledged recurrent problem.

3. Other Substance Misuse

3.1 The threat posed to policing by substance misuse has been formally recognised by NPCC nationally in their policy statement on Substance Misuse.

"The misuse of alcohol and drugs can lead to reduced efficiency, increased risk of accidents, increased sick leave and potential misconduct and criminality. This can have serious consequences for individuals, their families and the wider police service."

3.2 Merseyside Police is committed to the provision of a safe, healthy and productive working environment. Policing involves, in many areas, high-risk activities where there is also a high degree of contact and interaction with the public. We are duty bound to ensure that our staff and officers are fit to carry out their duties safely and effectively. Any member of our staff or officer who is misusing a substance will place at risk not only their colleagues, but also in certain circumstances, the general public**.**

3.3 Substance Misuse is also likely to involve at least deception and in the case of illegal substances, criminal acts in the procurement and use of those substances. This behaviour brings with it increased opportunities for compromise through either coercion or inducement, leaving staff, officers and the Force vulnerable and bringing into question the integrity of the individual. This cannot sit comfortably with the position of trust and expectation of integrity that the general public demand and that all Police staff and officers must respect**.**

3.4 There is a growing problem with substance misuse within society; our staff and officers are recruited from within this group. The problem relates to the recreational use of illegal substances.

3.5 As our establishment numbers change, our demographic profile is changing. A greater percentage of our staff and officers will have grown up exposed to the drug culture and it is statistically probable that more of our staff and officers will have used, or continue to use, controlled or illegal substances. In addition to the recreational use of illegal substances, there are increasing opportunities within society for sportsmen and women to use 'performance enhancing' drugs i.e., anabolic steroids. The possible misuse of such drugs within some areas of the police service cannot be disregarded.

3.6 We have a legal duty of care to our workforce under Common Law, the Health and Safety at Work Act 1974, and the Police (Health and Safety) Act 1997. We therefore have a duty to ensure that the vast majority of our staff and officers who are not substance misusers, and members of the general public, are not affected or put at risk by the actions of those few who are.

3.7 For this reason, a challenge to the implementation of substance misuse testing procedures in respect of the Human Rights Act 1988 (Article 8(2) - Right to respect for private and family life), is not thought likely to succeed. This is based on the view that there is an overriding prima facia case for satisfying the interests of public health and safety, the prevention of crime and disorder, and National Security.

3.8 Substance Misuse testing in the workplace is not a new phenomenon. There are numerous examples of private companies and law enforcement agencies in many countries successfully introducing Substance Misuse Testing programmes.

3.9 In the U.K. Substance Misuse Screening is designed to help create and maintain a healthy workforce and to support the ethos of high integrity, individual responsibility and accountability. It will also demonstrate a commitment to enhance public trust in the integrity of Merseyside Police and the service we provide.

4. Substance Misuse Testing

4.1 The protocols dealing with these issues are promulgated by the Home Office, on the advice of the Police Advisory Board for England and Wales, pursuant to Police Regulations and Determinations thereto.

4.2 **Scope**

4.2.1 In specified circumstances, Merseyside Police Officers and staff will become liable to be tested for signs of substance misuse. The testing will aim to identify the misuse of any substances that are legally available and also the misuse of drugs that are available on prescription. It also covers the use, in any form, of the following illegal drugs - Amphetamines, Cannabis, Cocaine, Opiates and Benzodiazepines. Samples collected from officers will be screened, and where necessary analysed, using recognised testing methods and techniques.

4.2.2 Where testing is carried out in accordance with 19A (1)(a) because a Chief Officer has reasonable cause to suspect, on the basis of intelligence, that the officer has used a controlled drug, the testing may cover one other controlled drug or drug group in addition to the controlled drugs listed in paragraph (4.2.1), provided that the officer is informed prior to testing of the drug(s) or drug group(s) for which he or she is to be tested.

4.2.3 The Police Staff Council has agreed that proportionate testing procedures will be extended to Police Staff who occupy Safety Critical or Vulnerable Posts. In line with the processes adopted for Police Officers, a process of 'With Cause' testing will be extended to Police Staff.

4.2.4 Substance Misuse Testing is designed to help create and maintain a healthy workforce and supports the ethos of high integrity, individual responsibility and accountability. It will also demonstrate a commitment to enhance public confidence in the service we provide.

4.2.5 This policy will not affect the principle that all members of the Merseyside Police who have a persistent substance misuse problem and who acknowledge their dependence and seek professional assistance prior to any incident coming to notice, may undertake a rehabilitation regime. This will not apply in circumstances where any misuse has also involved supply to other persons.

4.3 Substance Testing

4.3.1 This policy of testing by the Force will be proportionate to the problem. The testing regime will not be of a scale that implies a lack of trust in our professionalism, or of a nature that might undermine the existing sense of responsibility to alert senior officers / managers to signs that a colleague might have a substance misuse problem.

4.3.2 Testing may be carried out in the following circumstances:

a) Testing with cause for all Police Officers and Police Staff (that is, where there is a reasonable suspicion of substance misuse).
b) Pre-employment screening and targeted random testing in the probationary period for both student officers and police staff.
c) Pre-employment screening of Special Constabulary,
d) Pre-employment screening of Police Staff (PCS&TOs, CSIs, Senior CSIs and Custody Assistants) and
e) Random Screening of all Police officers.
f) Random testing of Police Staff in Safety Critical or Vulnerable Posts. These being identified as: call handlers and dispatchers, crime scene investigators, police staff investigators, custody detention officers, PCSO's and any other police staff drivers.

4.3.3 The intention of the Merseyside Police testing regime is to be preventative. The regime is designed to:

a) Encourage those with a substance misuse problem to identify themselves, so that they may be supported in seeking treatment.
b) Minimise the chances of individuals who misuse substances entering the police service in the first place.
c) Deter officers and staff from substance misuse through the application of a policy that makes detection a real possibility.
d) Screen staff in safety critical areas, so as to minimise any risk of operations being prejudiced by impaired judgement.
e) Protect officers in posts in which they may be vulnerable to malicious allegations of substance misuse.

5. Random Testing

5.1 Regulation 19(1)(d) of the 2003 Regulations has been amended so that any serving police officer selected in accordance with a regime of routine random testing may be required to provide a sample. This replaces the existing provision for the Secretary of State to specify categories of officers who may be tested.

6. Substances Tested For

6.1 Testing covers the illicit use of the following substances:

- Amphetamines (including ecstasy)
- Cannabis
- Cocaine
- Opiates (e.g., morphine and heroin)
- Benzodiazepines

6.2 There may be legitimate reasons for a drug being present in a specimen. For example, the presence of morphine may indicate heroin abuse, or the use of a legitimate medicine (e.g., a painkiller or an anti-diarrhoea preparation). Officers and staff required to take a test are provided with a confidential medical questionnaire on which they should declare all medications they are taking. The content of such declarations is confidential to the occupational health service of the force, the outside contractor taking the test (if appropriate) and to the medical officer reviewing the result of a test.

CBD Oil

The increase in awareness and media interest around the use and legality of cannabis medicines may cause confusion amongst staff on where they stand should they wish to use widely available products. The following guidance from the National Police Counter Corruption Advisory Group.

CBD may lead to failed drug test

The Home Office have identified a study that the use of CBD products may cause individuals to fail a drug test. The psychoactive ingredient tetrahydrocannabinol (THC) may not be listed in the ingredients of a CBD product and tests have shown some CBD products may return a positive test, which would not distinguish between the use of CBD and the illicit use of Cannabis. This may subsequently lead to disciplinary action.

Staff and officers who are subject to a workplace drugs test policy are advised to avoid the use of CBD products.

6.3 Forces have the power to test officers and staff they have cause to suspect that an officer is misusing controlled drugs. The requirement if to take a test should be imposed by an officer of an appropriate senior rank. For 'cause' to be established, the test of 'reasonable suspicion' must be satisfied. It should be made clear to the officer / staff member that testing 'with cause' may either prove or disprove intelligence or allegations made. A single and unsubstantiated allegation, particularly if made by a member of the public who may have malicious intent, would not normally amount to cause. It is good practice to record in writing the reasons for suspecting an officer / staff member has misused controlled drugs.

6.4 One additional drug or drug group (for 'with cause' testing only, where the reason for the test is based on intelligence and the officer has been informed of the drug(s) or drug group(s) for which he or she is being tested).

7. Procedures for Substance Testing

7.1 There are some differences that may apply to the procedures used for testing at pre-employment and for serving officers. If a prospective member of staff/officer does not wish to submit to a test, he or she may withdraw from the recruitment process.

7.2 A serving Police Officer or Police Staff member is obliged to submit to a test, if so required, and may, as a consequence, have to declare information about medications that he or she is taking. These declarations may have the effect of disclosing personal information that the officer or staff member is entitled to expect will be treated in confidence by Occupational Health in line with relevant legislation. Any information collated for this purpose is defined as sensitive personal information under the Data Protection Act 1998 and as such must be appropriately secured.

7.3 By contrast, all aspects of the collection and on-site screening of samples from potential recruits / employees, including the taking of information about medications, may be undertaken as a part of the OHU recruitment function.

7.4 **Off Duty**

7.4.1 A member of a police force who is off duty shall not be recalled to duty for the purposes of testing for controlled drugs or alcohol.

7.5 **Conducting the test**

7.5.1 There are a number of methods that can be adopted to screen people for drug use. Merseyside Police has adopted oral fluid and urine testing for current officers and staff with urine or hair testing used for pre-employment tests for operational roles.

7.5.2 All pre-employment tests, tests as part of medicals and all evidential tests within Merseyside Police will be conducted by suitably qualified staff from the Occupational Health Unit or other authorised body. Random screening tests will be carried out by officers from PSD.

7.5.3 Random screening tests will incorporate the use of Oral Fluid Testing screening tests. Evidential samples for laboratory analysis will incorporate Urine Testing.

7.5.4 Methods used to randomly select officers and staff will vary but will involve an ethical and transparent process.

7.5.5 In the event that any initial screening test is positive, a further 'with cause' evidential urine test will be requested. This process will be carried out by the OHU or other authorised body. There will be a secure chain of custody for collection, analysis and independent medical review of any further sample taken for the laboratory analysis and the laboratory analysis will be undertaken by an appointed independent agency.

7.5.6 Where completion of the paperwork in respect of an officer/staff or new entrant involves disclosure of medication being taken, that paperwork will be seen by occupational health unit staff only.

7.6 **Split samples**

7.6.1 Provision will always be made to allow the donor the opportunity to have an independent analysis of the specimen to challenge the outcome of a laboratory analysis. A split sample (at the time of collection) provides an effective means of providing this opportunity.

7.7 **Self Declaration**

7.7.1 Staff with substance misuse problems should be encouraged to identify themselves and should be assisted in seeking treatment. However, self-declaration cannot be used to avoid the consequences of a positive test.

7.7.2 Any such declaration must be made before an officer/staff member is notified of any requirement to take a test. A self-declaration made after the officer/staff member is notified of the requirement to take a test cannot be used to frustrate the disciplinary proceedings that may result from a positive test result.

7.7.3 Self-declaration of a controlled drug under the Misuse of Drugs Act will be treated in accordance with NPCC Guidance, with welfare and medical support being the priority. However, these cases should be referred to PSD. The PSD review and any investigation of the incident will give significant weight and credit to the voluntary disclosure in line with the Home Office Guidance. The type and frequency of drug use, the officer's or staff member's role at the time and any other relevant information will be considered.

7.7.4 However, individuals who self-declare will still be subject of investigation, criminal or conduct, if their behaviour breaches the standards expected of them, for example attending work under the influence of drink or drugs.

7.7.5 If a person has been referred to the OHU by a third party and is not willing to receive medical help or co-operate with any assessment or denies that there is a a problem when there is evidence to the contrary, the OHU will be unable to help them and should therefore refer the matter back to the line manager who will inform PSD of the situation. PSD will then be responsible for any further action deemed necessary which may involve a 'Just Cause' request under the policy.

7.7.6 **'With cause' Testing**

The definition of '*With Cause'* testing (not extended sampling) is

Where there is reasonable cause to suspect an individual is misusing controlled drugs.

For cause to be established, the test of 'reasonable suspicion' must be satisfied. It should be clear to the officer/employee that testing 'with cause' may either prove or disprove intelligence or allegations made. A single and unsubstantiated allegation (particularly, if made by a member of the public who may have a malicious intent) does not normally amount to sufficient cause

7.7.7 **'With cause' extended sampling Police officers only**

Consider 'With Cause-Extended Sampling' if information/intelligence possessed by the Head of PSD is corroborated and provides reasonable cause to suspect that a police Officer (not police staff member) has used controlled drugs over an extended period (i.e., on more than one occasion).

7.8.1 An officer of at least the rank of Assistant Chief Constable may authorise a maximum of three samples of urine or oral fluid (saliva) to be required from a police officer in their force (or on secondment to or from their force) where there is corroborative intelligence which gives reasonable cause to suspect that the officer has used a controlled drug over an extended period (i.e., on more than one occasion).

7.8.2 The three samples can be required over a maximum period of 90 days, with day one being the day on which the first sample is required and the period finishing at midnight on day 90. When calculating the 90-day period, no account should be taken of any periods of sick leave.

7.8.3 The officer will not be given any advance notice of the requirement to provide each sample.

7.8.4 The officer will be informed at the time that the first sample is required that two further samples may be required within the designated time period. On each occasion a sample is taken the officer will be informed of the drug(s) or drug group(s) against which his or her samples will be tested.

7.8.5 The officer will be entitled to have a 'police friend' as defined in the Police (Conduct) Regulations 2020 present when the samples are being taken. However, a delay in a police friend attending will not delay the testing procedure provided that the officer has been able to consult a police friend

8. Immediate consequences of positive test results at the on-site screening stage

8.1 On-site drug screening tests should be carried out only by a suitably qualified or trained person. The Officer/staff member being tested should be advised that any positive screening test results provide a provisional indication only and are subject to further laboratory analysis and medical review, either of which could result in the final result being negative. Any Officer who provides a positive on – site screening test, must provide a further specimen to be forwarded for external laboratory analysis. (See Annex 1. Chain of Custody Collection – Para 13)

8.2 An officer/staff member's manager should be informed immediately of a positive on-site screening test result, as there may be a risk in continuing to deploy the officer/staff member on the full range of duties. PSD/ACU should also be advised. At this stage there is no final result, as this can only be provided by laboratory analysis, so the language used to describe the outcome of an on-site test is very important. In particular, the manager should not be told that "a test has been failed" as this is not the case.

8.3 It is for the manager to assess the risk in relation to the duties due to be undertaken by the officer/staff member, but there would be a presumption of removal from duties involving contact with the public. Formal restriction / suspension would be appropriate only if a positive result was confirmed following laboratory test and medical review. Relevant welfare consideration should be given to that officer/staff member.

8.4 Difficulties arise, inevitably, for both the officer/staff member and management from a positive result at the screening stage. A confirmed result, either positive or negative, will not be available until the completion of laboratory analysis and medical review, a process that is likely to take two or three days. However, any difficulties arising from this delay are outweighed by the benefit that screening enables there to be an instant confirmation of a negative result.

8.5 **Handling confirmed positive results**

8.5.1 Test results from random and 'with cause' testing will following laboratory analysis and medical review be forwarded to the relevant PSD/ACU officer.

8.5.2 In a pre – employment cases the relevant Recruitment Manager will be informed of the result and will then assess the suitability for appointment.

8.5.3 A positive result from an officer/staff member who has self-declared a substance misuse problem prior to being tested should be reviewed by Occupational Health to assess whether the result is consistent with an agreed programme of rehabilitation treatment.

8.5.4 All other positive results will be referred to the Professional Standards Department for consideration of appropriate action. It is for the Professional Standards Department to confirm the result to the officer/staff member and their manager, and of any immediate action, including suspension from duty where appropriate.

8.5.5 Any claim by the officer/staff member concerned that there was a reason (other than a medical reason) for the positive result should be dealt with by the Professional Standards Department or through formal disciplinary proceedings.

9. Liability

9.1 An officer/staff member who has misused controlled drugs suffers a double jeopardy. They are at risk of disciplinary proceedings that might lead to dismissal and may also be at risk of criminal prosecution. Because of this double jeopardy, and whether or not criminal proceedings are contemplated, cautioning and interviewing should be to the standards required under the Police and Criminal Evidence Act (PACE).

9.2 The penalty for refusal to take a test is no less than the penalty for failing a test. The liability to take a test, for Police Officer, is established in Police Regulations, thus a failure to take a test when required to do so is a failure to obey a lawful order and a breach of the Standards of Professional Behaviour. As a result of these procedures the failure to take a test when required to do so for a member of Police Staff is a breach of the Standards of Professional Behaviour.

9.3 There is no substantive criminal offence of having an unlawful substance in the body, only a presumption that the offence of "possession" must have been committed beforehand.

9.4 Such a presumption may be rebuttable by medical evidence that the positive test resulted from use of a lawful medication. The presumption of possession that would arise from a positive, medically confirmed test result should be, in the case of Police Officers and Police Staff, treated as discreditable conduct. The maximum penalty for both failure to obey a lawful order or instruction and discreditable conduct is the same, i.e., dismissal.

10. Occupational Health Support

10.1 The Occupational Health Unit will provide support to any member of staff who may approach them to declare, in confidence, a substance misuse problem.

10.2 There are, however, some circumstances in which the interests of the proper administration of justice may over-ride an absolute confidentiality. In particular, Chapter 18 of the Disclosure Manual agreed between NPCC and the Crown Prosecution Service places on all witnesses a personal responsibility to declare any matter that may affect their credibility as a witness in a court case.

10.3 In some circumstances substance misuse on the part of a staff member acting as a witness may have to be revealed to the Crown Prosecution Service, as the damage to the credibility of the individual as a witness may be a factor to be considered in a decision whether to proceed with a prosecution.

10.4 The personal responsibility under Disclosure Procedures should be drawn to the attention of members of staff, by the Occupational Health Unit, at the time at which any self-declaration of a substance misuse problem is made. The need to make a declaration to CPS will not arise in every case; each should be considered on its own facts and merits. Any declaration to CPS should be properly managed, with appropriate support provided to the individual concerned. Additional advice and guidance can be obtained from the Professional Standards Department.

11. Testing for Alcohol

11.1 Officers and staff have a general responsibility to present themselves fit for work. If their judgement is impaired by the consumption of alcohol, they are unlikely to be fit for duty. It is for a senior officer or manager to determine whether an officer or police staff member is unfit for general duties, due to consumption of alcohol. However, reporting for duty whilst having previously consumed alcohol (for example, on the previous evening) does not equate with the criminal offence of using drugs. Managerial action needs to reflect this.

11.2 As with drugs, self-declaration of a drink problem is a matter that should be managed through the occupational health service, rather than being regarded as a disciplinary matter.

11.3 There is a power to conduct tests with cause, if it appears that an officer is under the influence of alcohol. Officers should be liable also to random testing should risk of impairment appear to warrant this, on a scale to be agreed with the local staff associations.

11.4 There is a presumption that a person is unfit to work in a safety critical area (as defined elsewhere in this policy) if they have more than 29 mg% in blood (39 mg% in urine, 13 micrograms% in breath). This compares with a limit of 80 mg% in blood for driving.

11.5 Where testing is carried out, it should be conducted using breath-testing equipment capable of making measurements at the 13 micrograms% level (equivalent to the 29 mg% blood level). Officers and staff should never be tested on apparatus held in a custody suite, unless the suite is cleared of all other users.

11.6 Each “breath test” should consist of two consecutive breath specimen tests from the subject, with the final result being declared as the lower of the two results.

11.7 If a supervising officer or manager smells alcohol on the breath of an officer or police staff member liable to alcohol testing, a breath alcohol test can be administered after a wait of 15 minutes. (This is to deal with the eventuality that at the time the suspicion of excess drinking is aroused; a proportion of the alcohol consumed may still be in the subject’s stomach. Alcohol must be absorbed into the body to register in a breath alcohol test.)

11.8 It should always be open to an officer or police staff member to declare that they suspect they might have inadvertently exceeded the limit. Any such declaration should be made before the subject is notified of any requirement to take a test.

11.9 Such declarations should not result in the officer or police staff member being penalised, provided there is no pattern of continuing excess. A declaration may be particularly

appropriate in circumstances of an unexpected change of duty, for example being allocated to driving duties involving possible use of the police exemptions under the Road Traffic Act, due to a staff shortage.

11.10 Failure to take a test when required to do so is a failure to obey a lawful order or instruction and a breach of the Standards of Professional Behaviour.

Annex 1.

GUIDANCE ON AND OVERVIEW OF PROCEDURES

Overview of Drug Testing Procedures

1. The outcome of a drug test is expressed as “Positive” or “Negative”.

2. The purpose of drug testing is to establish whether the donor of the specimen has consumed a controlled drug at some time prior to the collection of the specimen. The identification of a drug in a specimen is not the complete picture as there may be legitimate reasons for the drug being present.

3. For example, the presence of morphine in a urine specimen may indicate that the donor is a heroin misuser (heroin is converted to morphine in the human body) but equally it may indicate only that the donor had legitimately taken an anti-diarrhoea preparation, which contained morphine as its active ingredient.

4. Drug testing involves three integrated stages: collection, analysis and medical review.

5. All final drug positive test results should arise from analysis conducted in an accredited laboratory. On-site screening tests may be used to screen out negative results, but a positive indication at the screening stage must go forward to full laboratory analysis and medical review.

6. The first stage of the drug testing procedure is the collection of the specimen. The collection of a specimen from a donor is straightforward, but it must be conducted in such a way as to maintain the Chain-of-Custody of the specimen, with full documentation at all stages. The collector must be properly trained, with the standards applying being those that would apply to any other procedure in which it is important to maintain the integrity of an exhibit.

7. Analysis is the process of seeking to detect drugs in the collected specimen. If no drugs are found in the specimen, the drug testing procedure is complete at that stage, and the force will be advised of the "Negative” outcome.

8. If the analysis identifies one or more drugs in the specimen, further work is required. The positive analytical results need to be interpreted in the light of any factors that may provide a legitimate explanation for the presence of the drugs (e.g., medications taken by the specimen donor in the days before the test). This process is referred to as “Medical Review” and is conducted by a medical practitioner (the “Medical Review Officer”), in case there is a need for a medical discussion with the donor. The medical practitioner reviews the evidence and arrives at an opinion as to the origins of the drugs identified. If their presence can be explained by the use of prescribed or proprietary medication the force will be advised of a "Negative” outcome.

9. If the presence of drugs in the specimen cannot be accounted for in this way, the force will be advised of a "Positive” outcome. The “Positive” outcome reported will include the details of the drug(s) identified. In any case where there is any doubt, the overriding principle of the medical review process is to give the benefit of that doubt to the specimen donor.

10. In summary, the outcome of a comprehensive drug testing procedure involves three integrated stages: collection, analysis and medical review. A “Negative” result for a

specimen indicates that no illicit drug use has been identified. A “Positive” result indicates that there is evidence of illicit drug use that cannot be explained by any of the legitimate medications used by the donor

Chain-of-Custody Collection

11. The general principles of Chain-of-Custody collection can be summarised as follows:
    - to ensure that the donor understands the procedure.
    - to document medications taken by the donor.
    - to maintain the chain-of-custody.
    - to avoid cheating by the donor (specimen dilution, adulteration, substitution etc).
    - to allow the donor to provide a specimen in appropriate circumstances (e.g., privacy for urine collection).
    - to adopt procedures that allow the donor to have access to the specimen for independent analysis (e.g., splitting the specimen).
    - to allow the donor to observe the whole procedure by which the specimen is packaged ready for transport to the laboratory.
    - to ensure that the specimen is untouched at any stage, thereby avoiding contamination.
    - to ensure that the specimen is sent to the laboratory in tamper-evident packaging.

12. The collection process is facilitated by the use of a special Chain-of-Custody collection kit. The documentation is usually provided by a multi-part, duplicating Chain-of -Custody form. The documentation is completed by, or in the presence of the donor, who will sign to confirm that the urine or saliva specimen is theirs. The sample will be sealed in the presence of the donor. Any information provided about medication will be confidential to the testing laboratory, a medical review officer, and the occupational health service.

13. The urine testing kit usually contains two containers, and, after collection, the specimen is divided between the two and these are both labelled and sealed with tamper evident security seals in preparation for dispatch to the laboratory for analysis. Both specimen containers remain together. One container, the “A” sample, is used at the laboratory for drug analysis whilst the second is stored at the laboratory under secure conditions, on behalf of the donor, as a back up in case he/she wishes to challenge a positive laboratory result. The donor has the right to challenge the results of a drug test using the second part of the split specimen. In the case of a challenge, the sealed “B” sample will be sent to an independent accredited laboratory of the donor’s choice. The donor is required to meet the cost of the transfer and subsequent analysis, but these costs will be reimbursed in the event that the test on the “B” sample is negative.

14. The top copy of the Chain-of-Custody form is forwarded with the specimen to the analysis laboratory while copies of the form go to the donor, the collector and to the responsible manager in the Force. A further copy of the form, bearing the details of recent medications goes to the Medical Review Officer.

15. The general principles of Chain-of-Custody saliva and urine collection are the same. The major difference is that a saliva specimen does not have to be provided in privacy, which reduces the measures that need to be adopted to minimise the risk of "cheating". A further difference is that the small volume of the sample means that specimens are not always split, so an alternative approach may be taken to providing the donor with an opportunity to have an independent specimen analysis. Merseyside Police has determined that it will be urine samples that are collected for laboratory analysis.

Principles of Laboratory Drug Analysis

SAMPLE RECEPTION

16. On arrival at the laboratory the specimens and their packaging are examined to check that the security seals on the containers are intact, and that there are no other signs of tampering. Further checks establish that the Chain-of-Custody paperwork has been fully completed. Once these sample integrity checks have been done, one of the specimens (the "A" sample) is opened ready for analysis.

DRUG ANALYSIS

17. The analysis of drugs in urine or saliva at the laboratory must be conducted using appropriate high quality scientific techniques. This generally involves an initial immunoassay-screening test followed by a confirmation analysis using mass-spectrometry. This not only confirms the exact identity of any drug present, but also indicates how much is present.

QUALITY STANDARDS

18. Any drug-testing laboratory used by a police force force or nominated by an officer/staff member for the independent testing of a sample, must be specifically accredited for drug-testing work through appropriate national standards (UKAS and BSI).

19. Any drug testing company used by a police force must satisfy the minimum chain of custody requirements set out above.

Overview of Alcohol Testing Procedures

20. Impairment of judgement increases with increasing blood alcohol concentration. Different people can demonstrate very different degrees of impairment with comparable concentrations of alcohol in their bodies. Experimental studies have shown that for most people some degree of impairment can be measured at a blood alcohol concentration of 40 to 50 mg%, and for some individuals first impairment could be detected at a concentration as low as 30 mg%. At these levels, the individual may not be aware of any impairment, but it may nevertheless be present.

21. In line with these experimental observations, a workplace alcohol limit of 29 mg% in blood has been adopted in respect of safety critical areas, where any risk of impairment is unacceptable.

22. An alcohol limit of 29 mg% in blood does not preclude moderate drinking, for example during the evening before a period of duty that commences the following morning. The relationship between alcohol consumption and blood alcohol concentration will depend on many variables, such as the pattern of consumption, the type of beverage consumed, and the individual's body mass, metabolism and gender. Nevertheless, as with guidance given in relation to the 80 mg% blood alcohol limit for driving, broad indications can be provided to help individuals avoid situations in which they might exceed a workplace alcohol limit.

23. An average 70 kg male consuming 2 units of alcohol (e.g., one pint of moderate strength beer, 3.5% v/v) could achieve a theoretical maximum blood alcohol concentration of 30 mg%. (The actual concentration is likely to be lower, as the alcohol is not absorbed instantaneously.) The body eliminates alcohol at about the rate of 15 mg% per hour, thus an average person might expect a blood alcohol concentration of 30 mg% to fall to zero over a period of approximately 2 hours. It must be emphasised that these figures are only illustrations and provide only broad indications of alcohol levels for an average individual.

Back to Contents

Annex 2.

Merseyside Police

SUBSTANCE MISUSE POLICY

Guidance Notes for Managers and Staff

1. Alcohol Misuse
2. Misuse Of Prescribed/Non-Prescribed Drugs
3. Misuse Of Illegal Substances

Introduction

The Occupational Health and Welfare Unit provides guidance and advice on a wide variety of health and welfare matters.

Guidance Notes for Staff and Managers are attached and include contact numbers for internal support and external support.

These Guidance Notes are an integral part of the Substance Misuse Policy.

Contents

RECOGNISING THE PROBLEM

RECOGNISING SOMEONE HAS AN ALCOHOL MISUSE PROBLEM

The signs that someone may have an alcohol problem include: -

- Reduced work performance
- Making persistent mistakes and errors of judgement
- Fatigue, lack of concentration and memory slips
- Failure to meet deadlines and blaming others for failings
- Reluctance to accept responsibility
- Moodiness, irritability, uncharacteristic behaviour, and over sensitivity to criticism
- Becoming a 'loner', deliberately seeking isolation from colleagues
- Unexplained injuries and accidents
- Unexplained absences during the working day
- Poor timekeeping
- Frequent absences from work explained as minor illnesses
- Physical signs including trembling hands, facial flushes, bleary eyes, lowering of personal standards of cleanliness, hygiene and dress
- Reduced safety awareness shown by careless handling of mechanical and other equipment
- Regularly borrowing small amounts of money from colleagues
- Changes in drinking habits, such as drinking earlier in the morning
- The smell of drink on their breath at unusual times of the day, or the excessive use of mouthwash

Although these characteristics may be found in people with an alcohol misuse problem, they may be caused by other factors such as stress and mental ill health. You should not assume they occur only through alcohol misuse. Normally a problem drinker will try to cover up his or her symptoms to avoid admitting to the problem.

RECOGNISING THAT SOMEONE MAY BE USING OR MISUSING PRESCRIBED OR NON-PRESCRIBED DRUGS

Many of the signs and changes of behaviour may be similar to those described above for alcohol misuse. Additional signs are described below.

Opiates

"Legal" opiates include codeine (contained in a number of prescribed and non-prescribed medications), morphine and methadone. Signs can last for a number of hours, longer (i.e., 24 hours) with methadone and may include:

- Very small pupils, a dry mouth, facial itching
- Slow speech and reflexes, sleepiness
- Possible euphoria

Stimulant

These could include amphetamines and possible signs could be:

- Dilated pupils and eyelid tremors
- Restlessness, anxiety and difficulty keeping quiet, irritability
- Euphoria

Depressants

Could include alcohol and medicinal drugs used for anxiety and sleeplessness:

- Watery eyes with normal-sized pupils
- Drowsiness
- Slurred speech
- Sluggish reactions
- Poor co-ordination

RECOGNISING THAT SOMEONE MAY BE MISUSING ILLEGAL SUBSTANCES

For each type of substance abuse a list of potential abnormal observations is given.

Cannabis
- Distinctive smell
- Reddened eyes, possibly dilated pupils
- Poor co-ordination, balance, perception of time and distance, attention span
- Relaxed inhibitions

Opiates
See above. Illegal opiates include Heroin and Opium

Stimulants
See above. One common illegal central nervous system stimulant is Cocaine.

Hallucinogens

These include LSD, Ecstasy and Magic Mushrooms (although Cannabis users may also experience hallucinations and Ecstasy is also a stimulant)

- Hallucinations or paranoia
- Synthesthesia (transposition of sensory inputs e.g., sounds as sight)
- Dazed appearance, Nausea and sweating, “Goose bumps”
- Poor balance
- Distorted time and distance perception

Observed signs and symptoms can start within 20-60 minutes and can last 3-12 hours.

Inhalants

These include petrol, glue, solvents, aerosols and paint.
- Smell.
- Residue around face
- Dizziness or light-headedness
- Bloodshot, watery eyes
- Flushed sweaty appearance
- Possible intense headache
- Confusion
- Slow slurred speech: inability to communicate
- Distorted time and distance perception

Anabolic Steroids

Unlike the previous examples, the signs listed below are ***not*** of limited duration.

- More rapid weight (muscle) gain than usual
- Increased greasiness of skin or hair; increased spots or acne.
- Sudden mood changes
- Increase in aggressive behaviour

CAUSES OF ABUSE

Medical opinion views alcohol as a drug upon which a person who drinks excessively may become socially, psychologically and physically dependent. Equally a number of prescribed or non-prescribed drugs can have an addictive effect. This is heightened by the habituation to the drug where doses no longer have the medicinal effect (such as relief of pain) that they used to have.

There is no one cause of alcohol or drug misuse. It is often the result of a combination of a person's character and external pressures, physical and emotional.

Misuse may also take a number of different forms depending upon the person, the environment and the stage the problem has reached.

EFFECTS OF ABUSE

Effects of Alcohol Misuse

Excessive drinking over a long period is a serious health risk, which unless it is identified and treated, can result in mental and physical deterioration.

Some of the effects of alcohol misuse are: -

Physical health risks – including heart, liver and kidney disease as well as increasing the risk of certain cancers.

Physical Dependence - resulting from the body getting used to the presence of alcohol.

Psychological dependence - where individuals think they need to carry on using alcohol to cope with life or to give life a 'buzz'. This may lead to:

Serious mental health problems - such as anxiety, paranoia, psychosis or hallucinations.

Effects of Drug Misuse

Some of these are well known, some less so. For example, cannabis is a carcinogen (something which causes cancer) with an effect seven times as strong as tobacco. Its consumption can be a cause (as can the long-term abuse of alcohol) of profound memory loss.

Stimulants such as cocaine, amphetamines and ecstasy increase energy temporarily by effectively drawing on "energy banks" which then become severely depleted. The Monday-Friday worker, for example, who uses ecstasy at the weekend, may well be listless and perform poorly on a Monday, improving during the week but perhaps tailing off on Friday.
The challenge faced by managers who perceive any signs or symptoms which might indicate long-term or short-term abuse of alcohol, prescribed drugs, non-prescribed drugs or illegal substances

is that there is no certainty, only a suspicion. It is suggested that when managers discuss their concerns with staff they concentrate on observed behaviours or on signs and symptoms, which are clearly observable.

RESPONSIBILITIES OF SUPERVISORS AND MANAGERS

Misuse of Alcohol, Prescribed Drugs or Non-Prescribed Drugs

Supervisors and Managers have a general responsibility for ensuring the well being of their staff as well as for monitoring performance and behaviour at work. You should ensure that your staff are aware of this policy. If you consider a member of staff has a problem involving alcohol, or prescribed/ non-prescribed drugs, you should make your concerns known to them as soon as possible (see notes below on conducting an interview). Where you notice physical or personality changes consistent with illegal substances or steroids then this should be reported to both the Professional Standards Department and the OHU.

When a person admits having a problem involving alcohol, or prescribed/ non-prescribed drugs, please advise the individual about the help that is available and encourage its use. At this stage you should also advise the person that if such help is declined, there might be consequences, which could include Unsatisfactory Performance or Misconduct proceedings. Should an individual who has responded to help relapse, then a further opportunity to receive help may be offered. Each case will be considered on its merits.

When, during an interview, the individual agrees to a referral to the Occupational Health and Welfare Unit, the manager should arrange an urgent appointment with an Occupational Health Nurse Adviser or Welfare Officer. This should be followed up by a report detailing the background of the case, a copy of which will be given to the individual concerned. It is the responsibility of the referring manager to ensure that the individual understands the reason for the referral.

Managers should accept advice from the Occupational Health Unit, which places temporary restrictions on duties. These temporary restrictions need to be realistic, commensurate with the capabilities of the individual and the needs of the organisation. There should be an agreed timescale within which we would look to return the member of staff to full duties.

When an Officer or Police Staff Member does not acknowledge the existence of a problem involving alcohol, or prescribed/ non-prescribed drugs, and displays unsatisfactory conduct or work performance; Misconduct proceedings should be considered. Advice must be sought from the Professional Standards Department.

Misuse of Illegal Substances

If you consider that a member of staff is misusing illegal substances, there will normally be a breach of the criminal law and there is certainly a breach of discipline. Your duty is to report what you know to the Professional Standards Department.

When an Officer or Police Staff Member admits using illegal substances you should advise the individual that the matter will be reported and that the voluntary nature of the admission will result in their being dealt with in accordance with the policy.

INDIVIDUAL RESPONSIBILITIES FOR ALL STAFF

Misuse of Alcohol, Prescribed Drugs or Non-Prescribed Drugs

When reporting for work, all staff have a duty to ensure that their performance is not impaired as a consequence of the consumption of alcohol or prescribed/ non-prescribed drugs.

The Health and Safety at Work Act 1974 makes it the duty of every member of staff to take reasonable care of the health and safety of themselves and any other person who may be affected by their acts or omissions at work.

If it is believed a colleague has a misuse problem, they should be encouraged to seek help. If a concern persists, it should be discussed with the relevant Supervisor or Manager.

Any staff member, who has a misuse problem involving alcohol, or prescribed/ non-prescribed drugs, will be assisted by the Force to help them overcome it. This will be done by:

- Encouraging the admission of the problem
  and
- Providing help and advice

If a staff member has voluntarily sought help, the condition will be regarded initially as a medical one. If necessary, appropriate arrangements will be made so that the staff member can get treatment and the matter will be dealt with as confidentially as is practicable. This may still mean extending such confidentiality to such line managers and/or senior managers as is appropriate.

Help may be sought from a manager, GP, a specialist agency or the Occupational Health and Welfare Unit. Wherever help is sought, it is expected that

- Responsibility is accepted for the condition.
- There is a response to advice and co-operate in treatment.
  and
- Work performance is restored to a satisfactory level.

Recourse to Misconduct and/or Unsatisfactory Performance procedures will normally be considered if this help, guidance and treatment has been unsuccessful, the problems remain unresolved and unacceptable behaviour or lack of efficiency warrant such proceedings. In some cases, the seriousness of the behaviour may warrant immediate action.

REFERRALS/TREATMENT

May include medical assessment, counselling, treatment action plans, follow up procedures.

Support programmes may be provided by Merseyside Police, the N.H.S., specialist clinics etc. The aim of such procedures is to achieve a sustained break from dependency.

ADVICE IS AVAILABLE FROM: -

The Health and Wellbeing - (Extension 78246)
The Nurse can provide advice and guidance on the effects of substance misuse and the use of prescribed/ non-prescribed drugs. They can also provide counselling and referral to external agencies. Alternatively, there is an email address to self-refer.

OHU.Referral.@merseyside.pnn.police.uk

Professional Standards Department – Contact details on iforce

Can provide advice on the most appropriate course of action in individual cases.

Staff Associations and Trade Unions

Initially, individuals may prefer to contact these organisations for advice.