

## **ABERDEEN CITY COUNCIL**



# **MANAGING SUBSTANCE MISUSE**

## **POLICY AND PROCEDURE**

**Approved by the Staff Governance Committee (tbc)**

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## **SECTION 1: POLICY STATEMENT**

### **Introduction**

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The Council recognises the need to manage the effects of substance misuse problems in the workplace and will make every effort to ensure that such problems do not adversely affect service delivery and/or the health, safety and welfare of employees and/or the public. Employees must ensure that, whilst at work, they are free of the effects of substances. It is recognised that substance misuse problems may arise which have an effect on an employee's behaviour and/or ability to perform their duties. The Council will make every reasonable effort to help and support employees in such circumstances with encouragement given to seek appropriate treatment that will allow them to return to an acceptable standard of performance and/or behaviour. Likewise, the Council is committed to assisting managers to recognise and effectively deal with substance misuse problems in the workplace. An employee who refuses advice or assistance or discontinues an identified treatment/support programme before its conclusion will normally be subject to the appropriate Council procedure for managing conduct, attendance or work performance where their conduct, attendance or work performance continues to be unacceptable.

### **Scope**

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This policy is concerned with the effects of substance misuse in the workplace and applies to all employees. Others undertaking work for or on behalf of the Council, but not employed by the Council, e.g. agency/casual/relief workers and contractors are required to adhere to the policy guidelines even though not covered by procedural details.

### **Core Principles**

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- The Council will meet its legal obligations under the Health & Safety at Work Act 1974 to ensure the health and safety of its employees and others at work by providing a work environment in which the safety and optimum performance of employees is not adversely affected by the misuse of substances.

- Every reasonable effort will be made to minimise problems arising from the impact of substance misuse on work.
- It is unacceptable to attend for work whilst unfit through substance misuse, and such behaviour will be addressed through the Discipline policy/procedure and may constitute gross misconduct.
- A supportive and constructive approach to managing substance misuse issues will be adopted by the Council while at the same time recognising the need to maintain high service delivery standards.
- All reasonable efforts will be made to support and assist an employee to overcome a substance misuse problem, where the employee acknowledges the problem and demonstrates a willingness to address it.
- Every reasonable effort will be made to address known substance misuse issues promptly, consistently and effectively.
- The confidential nature of any employee's information related to a substance misuse problem will be maintained and will only be disclosed where necessary in the context of any performance, disciplinary or attendance process which may be required.
- Throughout the procedure, special allowance should be made for those employees whose first language is not English or who have difficulty expressing themselves.

## **Other Considerations**

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- It is unacceptable for employees to consume alcohol or illegal substances during working time.
- If an employee is identified as being in possession of an illegal substance in the workplace they will be subject to the Discipline policy/procedure and may be reported to the Police. Any person suspected of supplying illegal substances in the workplace will be reported to the Police and will be subject to the Discipline policy/procedure.

## Definition

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Substance misuse is defined for the purposes of this policy as the intermittent or continual use of substances, legal or otherwise, which causes detriment to the employee's health, social functioning or work performance, and which affects efficiency, productivity, safety, attendance, timekeeping or conduct in the workplace.

For the purpose of this policy, the term 'substance' includes:

- Any illegal substances (as defined in the Misuse of Drugs Act 1971 or the Psychoactive Substances Act 2016);
- Alcohol;
- Prescribed medication;
- Over the counter medication;
- Solvents, i.e. lighter gas refills, aerosols, glues, paint thinners, etc.
- Any plants, chemicals or other substances that have **not** been defined as illegal, and which are used for the purpose of seeking intoxication.

## Prescribed Medication

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Regardless of whether an employee has a substance misuse problem, where drugs are prescribed by a qualified medical practitioner, employees are expected to seek advice from the medical practitioner or pharmacist as to whether these drugs might affect their ability to fully undertake their work duties. If this is the case the employee must notify their manager immediately that they are taking medicine which may cause side effects that impairs their ability to undertake their duties safely and effectively. The manager will not ask the employee what the actual medication is, it is only the effect of the medication that requires to be known about.

Where an employee informs management of any medication prescribed that may affect their ability to carry out their work duties, managers should ensure that measures are put in place so that the employee can continue to work in a safe and effective manner.

Where an incident occurs due to the effects of prescribed medication and the employee has failed to notify their manager of the use of this medication, the employee may be subject to the Discipline policy and procedure.

## **Organisational Responsibilities**

As a responsible employer, the Council is aware of its responsibility for the health, safety and welfare of employees and recognises that their wellbeing is important to performance. In view of this it is important that the responsibilities for the management of substance misuse within the workplace are explicit and clearly defined as follows:-

### **Managers**

Line managers and supervisors are responsible, so far as is reasonably practicable, for ensuring the health, safety and welfare at work of all directly reporting employees in their respective service. These responsibilities are detailed in the corporate health and safety policy. In relation to substance misuse these responsibilities also include:

- Actively seeking to maintain a good level of communication with all employees;
- Dealing with those who may have a problem with substance misuse empathetically;
- Ensuring that information relating to an employee's substance misuse and in relation to the application of this policy is treated confidentially;
- Encouraging employees to seek counselling and supporting employees in attending counselling by granting appropriate time off;
- Being aware of the signs of substance misuse (see the accompanying guidance notes to this policy) and the facilities available for employees who may have a problem;
- Taking an objective and non-judgmental approach when meeting with employees;
- Informing the appropriate authorities of suspected illegal drug use or any activity or behaviour over which there are concerns as to its legality.

### **Employees**

All employees have a duty to:

- Co-operate with managers and other employees in dealing with substance misuse issues;

- Declare at an early stage any substance misuse problem when being managed under any of the Council's procedures for managing work performance, conduct or attendance;
- Co-operate with any support and assistance provided by the organisation to address substance misuse;
- Be responsible for their own behaviour and ensure that, whilst at work, their performance and/or behaviour is not detrimentally affected due to the effects of substances;
- Inform a manager/supervisor, in confidence, if they have been prescribed medication or are taking 'over the counter' drugs which may affect their ability to carry out their work in a safe manner;
- Be aware of the symptoms of substance misuse and raise any concerns for an individual with their line manager;
- Attend the occupational health service when required to do so by the Council;
- Not possess, store, buy or sell controlled drugs on the premises or bring the organisation into disrepute by engaging in such activities outside work;
- Familiarise themselves with this policy and comply with its provisions.

## ***SECTION 2: MANAGING SUBSTANCE MISUSE PROCEDURE***

A substance misuse problem can come to light in various ways, either by line manager identification, as a result of a formal disciplinary, capability or attendance process, or through the employee raising the matter themselves. A substance misuse problem will be addressed as either a 'management referral', a 'disciplinary referral' or as a 'voluntary referral', depending on how it is identified, with full details of the referral processes and how matters are dealt with contained in the accompanying guidance notes.

### **1. Management Referral**

Where an employee's work performance, attendance or behaviour is regarded as unsatisfactory by their manager and the manager's belief is that substance misuse may be the cause or a contributing factor, the manager will raise their concerns with the individual and, if deemed appropriate, refer the employee to the occupational health service for assessment. On receipt of an occupational health report, the

manager will meet with the employee to discuss the report and then decide on how the matter will be addressed.

If no underlying problem is identified through a management referral, or if a problem is identified and the employee does not comply with or accept identified treatment/support, the appropriate Council procedure will be instigated i.e. Performance or Attendance.

## **2. Disciplinary Referral**

If, during the course of a discipline case, the employee indicates that the underlying cause of their conduct/behaviour is related to substance misuse, the manager undertaking the discipline case will adjourn the disciplinary proceedings (except in the case of alleged gross misconduct or where it is not reasonable to accept that the employee's unacceptable conduct was directly caused by their substance misuse) to allow for referral of the employee to the occupational health service for assessment. The disciplinary process should recommence following receipt of the occupational health report.

If no underlying problem is identified through a disciplinary referral, or if a problem is identified and the employee does not accept support, then substance misuse will not be considered as a mitigating factor in a discipline case. Otherwise, it will be considered as mitigation if relevant to the case and where the employee agrees to accept identified treatment/support for their substance misuse problem.

## **3. Voluntary Referral**

An employee with a substance misuse problem which has not been identified by their manager and which has not yet had an adverse effect on their performance or behaviour at work is encouraged to voluntarily seek help and assistance in overcoming their problem. The employee can either contact the Council's confidential employee counselling service or can approach their line manager, a more senior manager or their trade union representative, who will be able to offer assistance and guidance with regard to their problem. Where brought to management attention, a referral to the Council's Occupational Health service may be considered where appropriate.



## **Supporting Provisions**

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### **Management or Disciplinary Referral**

If a problem is identified through the management or disciplinary route the employee will be offered the following support and will be required to sign an agreement outlining the commitment expected of them and the consequences of failing to adhere to the treatment or support programme.

- Access to the confidential counselling service provided by the Council.
- Where treatment involves a full-time absence from work, the employee will be regarded as being on sick leave and will be subject to the normal conditions governing such leave.
- Where the employee requires time off to attend treatment or a support programme during working hours, reasonable paid time off will be granted provided there is full co-operation from the employee in respect of attendance and responsiveness to the programme.
- The employee will, where possible, remain in their post during their period of support/rehabilitation. However, if they are unfit to fulfil their duties, there is an issue relating to health and safety or if their duties conflict with the long-term resolution of their substance misuse problem, efforts will be made to identify suitable alternative duties in the interim.

Following treatment, reasonable efforts will be made to ensure that the employee is able to continue in their substantive post.

- Where the employee is unable to continue in their substantive post, but could be considered for suitable alternative work, reasonable efforts should be made to identify an alternative post. If a suitable alternative post is not available and all reasonable efforts to rehabilitate the employee have proved unsuccessful with their standard of work performance, attendance or behaviour remaining a concern the matter may move to a Capability Hearing.

### **Voluntary Referral**

If a problem is voluntarily identified by the employee to their line management out with any performance, disciplinary or attendance process they may be offered the following support:-

- Referral to the Occupational Health service for assessment.
- Access to the confidential counselling service provided by the Council
- Where treatment involves a full-time absence from work, the employee will be regarded as being on sick leave and will be subject to the normal conditions governing such leave.
- Where the employee requires time off to attend a treatment/support programme during working hours, reasonable paid time off may be granted.
- The employee will, where possible, remain in their post during their period of support/rehabilitation. However, if they are temporarily unfit to fulfil their duties or there is an issue relating to health and safety, efforts will be made to identify suitable alternative duties in the interim until they are able to return to their substantive duties.
- During and following treatment, all reasonable efforts will be made to help ensure that the employee is able to continue in their substantive post.

Sources of information for support and help out with the workplace are contained within the guidance notes accompanying this policy. It should be noted that these services can be accessed by any employee and not just those who are being monitored under this policy, with referral to the Occupational Health service being a management decision.

### **Relapse**

- Individuals who have problems with substance misuse may relapse. Where this occurs, in the first instance, consideration should be given to a further referral to Occupational Health for assessment and advice, with the intention to then continue with support under this policy. However, where there is a further

instance(s) of relapse, employees should be managed under the relevant policy or through the capability process, if and where appropriate.

- With relapse most likely to occur in the initial months of a period of rehabilitation, where an employee has been relapse free for a period of 12 months or more from their initial assessment by Occupational Health, the substance misuse issue should be regarded as resolved. If after this 12-month period an employee relapses into substance misuse, for the purposes of their employment this should be regarded as an entirely new episode with the same supporting provisions applying as an entirely new referral.

## **Disciplinary Action**

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- In cases of one off incidents where there is no evidence of underlying substance misuse problems the normal disciplinary process will be followed.
- If a substance misuse problem is identified following a disciplinary referral, this will be considered as a possible mitigating factor in a discipline case, where it is relevant to the case and where the employee agrees to accept identified treatment/support for their substance misuse problem.
- Any disciplinary issues should be dealt with following receipt of the occupational health report through applying the Discipline policy/procedure.
- If no underlying problem is identified following a disciplinary referral and/or the employee does not agree to accept identified treatment/support for their substance misuse problem, then substance misuse will not be considered as a mitigating factor in a discipline case.

In cases of alleged gross misconduct, the disciplinary process will continue regardless of whether the employee's apparent actions may be attributed to substance misuse. Also, the disciplinary process will continue as normal if it is not reasonable to accept that the employee's conduct was directly caused by their substance misuse. In each of these situations the employee's misuse problem needs to be dealt with as a separate matter with the offer of assistance and support still made.

## **Action Other than Disciplinary**

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If the employee's performance continues to cause concern or if the employee fails to achieve acceptable levels of attendance following the conclusion of a treatment or support programme the Performance or Attendance policy/procedure will be instigated.

## **Capability**

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Where the employee is unable to return to their substantive post and a suitable alternative post is not available, a Capability Hearing will be arranged.

Management guidance notes detail the process that should be followed at the hearing.

The employee has the right of appeal against a dismissal decision within 10 days of receipt of written notification.

## **Testing**

The Council may test an employee for substance misuse in the following circumstances:-

- 'With cause', where there is a reasonable suspicion by a manager concerning an employee's possible inappropriate use of substances which is having an adverse effect on their work or has the potential to put themselves, work colleagues, service users or others at risk in terms of health and safety. See accompanying guidance for details on recognising potential substance misuse.
- 'Post incident', if it is suspected that substance misuse was a contributory factor to an accident or an incident.
- As part of a support programme. After the initial test the employee may be subject to up to two further random tests within a twelve-month period. If these tests show no evidence of use/misuse then the employee will continue to be managed as appropriate. If there is evidence of continued use/misuse, then the employee will be managed under the appropriate Council procedure.

Drugs tested for are as follows;

Alcohol, Amphetamines (including Ecstasy), Barbiturates, Benzodiazepines, Buprenorphine, Cannabis, Cocaine, LSD, Methadone, Methaqualone, Opiates, Phencyclidine and Propoxyphene.

The sample is also checked for creatinine levels which indicate if a sample is too dilute to give an accurate result.

Testing will be carried out only by the Council's occupational health provider. Employees are expected to co-operate if they are requested to undergo a test.

### ***SECTION 3: REVIEW OF THE POLICY***

People and Organisation will review this policy every 3 years. It will, nevertheless, be subject to continual review and amendment in light of experience of its operation, employment best practice and statutory requirements. Changes will only be made following normal consultation arrangements.