



# **Policy on the Misuse of Alcohol, Drugs and Other Substances**

**NOTE: POLICY EFFECTIVE FROM 1 SEPTEMBER 2019**



## **POLICY ON THE MISUSE OF ALCOHOL, DRUGS AND OTHER SUBSTANCES**

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# **POLICY ON THE MISUSE OF ALCOHOL, DRUGS AND OTHER SUBSTANCES**

(This policy applies to all council employees and workers)

## **1. POLICY STATEMENT**

- 1.1 The council is committed to ensuring the health, safety and welfare of its employees and others who may be affected by the actions of its employees in the course of employment. To reflect this obligation, the authority operates a 'zero tolerance' approach to alcohol and drug misuse and will take all reasonable steps to protect employees, recipients of council services and members of the public from the associated risks.
- 1.2 This policy provides a framework for dealing with alcohol, drug and other substance misuse that takes account of the disciplinary and health and safety related aspects of managing cases of misuse in the workplace.
- 1.3 While the council regards misuse of alcohol and drugs as primarily a misconduct issue, it also recognises that it can affect not only an employee's ability to work effectively, efficiently and safely, but can also create difficulties and distress in domestic and social life. This policy therefore makes provision for appropriate support mechanisms and professional help to be made available to employees who disclose an alcohol/drug misuse issue.

## **2. DEFINITIONS**

2.1 For the purposes of this policy the following definitions apply:

- Alcohol Misuse: any drinking of alcohol, either intermittent or continual, which interferes with an individual's work capacity/performance, safety, conduct, health or attendance.
- Drug Misuse: use of illegal drugs; or  
  
misuse (whether deliberate or unintentional) of prescribed drugs, over the counter medication, solvents or psychoactive substances which interferes with an individual's work capacity/performance, safety, conduct, health or attendance.

## **3. POLICY AIMS**

3.1 The main aims of the policy are to:

- Promote a zero tolerance approach to alcohol and drug misuse;
- Safeguard the interests of the council, its employees and other parties whom employees who have an alcohol/drugs misuse problem, may come into contact during the course of employment. In particular, the council has a duty of care towards the children, protected adults and other vulnerable groups who are clients of the council;
- Establish clear rules on the use of alcohol and drugs in the workplace and the

disciplinary sanctions that may be applied in given situations;

- Promote early intervention and provide appropriate support and advice to employees who disclose alcohol and/or drug related problems;
- Provide appropriate support and advice to managers on how best to deal with employees who may suffer from alcohol and/or drug related problems;
- Encourage a climate of openness and honesty (within the bounds of strict personal confidentiality and legal requirements) that gives employees and managers confidence to deal with alcohol/drug misuse problems supported by a clear procedure.

#### **4. RESPONSIBILITIES**

##### Employees

##### 4.1 Employees must:

- act with due care for their own safety and that of others who may be affected by something they do or omit to do;
- ensure that their personal consumption of alcohol or use of prescribed or over the counter drugs does not adversely impact on their ability to report for work in a fit and safe condition and to perform their duties safely or competently throughout the working day.
- comply with specific requirements or controls in relation to alcohol or drugs as determined by health and safety workplace risk assessments including alcohol and drug testing.
- not possess, supply or use illegal drugs on council premises, in council vehicles or at any time while performing council business.
- advise their line manager if they are prescribed medication which may make them drowsy, impair their judgement, or otherwise affect their performance.
- disclose to their line manager if they think they have an alcohol/drug misuse problem and seek support and assistance as appropriate.
- advise their line manager of any change in behaviour they observe in a colleague that may indicate alcohol or drug misuse.

##### Line Managers

##### 4.2 Managers are expected to:

- Manage health and safety in their area of responsibility to ensure safe and healthy conditions and a workplace free from the risks caused by alcohol and substance misuse;
- Ensure that employees understand the policy, their responsibilities and the potential

consequences for their employment of the misuse of alcohol, drugs and other substances;

- Monitor the performance, behaviour and attendance of employees as part of the normal supervisory relationship and in doing so, be alert to the signs of alcohol and drug misuse and any adverse effects it may be having on their performance, attendance and health;
- Conduct appropriate risk assessments in circumstances where employees declare that they are using medically prescribed drugs which may make them drowsy, impair their judgement or otherwise affect their performance, particularly where their normal duties involve driving council vehicles or using machinery;
- Refer individuals for drug and alcohol testing where there is reason to suspect that they are under the influence of alcohol or drugs at work;
- Ensure that employees are aware of the support that is available to them should they have a problem;
- Intervene at an early stage where changes in performance, behaviour, sickness levels or attendance patterns are identified to establish whether alcohol and/or drug misuse is an underlying cause;
- Manage any inappropriate conduct by employees associated with alcohol or drug misuse invoking the council's disciplinary procedure as appropriate;
- Strictly preserve an employee's right to confidentiality wherever possible;

## **5. MANAGING ALCOHOL AND DRUG MISUSE**

5.1 The possession, supply or production of illegal drugs is a criminal offence. Consequently the possession of, or use of illegal drugs or other drug related activities on council premises, in council vehicles or while on council business will be treated as gross misconduct and may result in dismissal as outlined in the council's Disciplinary Code.

Off-duty incidents involving the possession, use or supply of drugs may be considered by the council as a disciplinary offence if the criminal element related to the incident is deemed to fundamentally affect the employee's suitability for the post they hold with the council.

5.2 Problems associated with alcohol and/or drug misuse normally fall into one of the following two categories:

- an excessive indulgence in the misuse of alcohol and/or drugs on occasion, that may impact on an employee's work but which is not related to a physical dependency; or,
- a confirmed habitual misuse of alcohol and/or drugs related to a physical dependency that continually or repeatedly interferes with the employee's work capability, health, conduct and/or attendance at work.

- 5.3 Both of the above types of behaviour may be regarded as a conduct issue to be dealt with under the council's Disciplinary Procedure. However, in managing the conduct of an employee with a confirmed alcohol or drug dependency issue, the line manager should consider the support required to assist the employee to manage their health issue.
- 5.4 Where alcohol/drug misuse affects an individual's attendance at work, the absence will be dealt with under the council's Supporting Attendance Policy and Procedure. The Supporting Attendance Procedure may where appropriate be applied in parallel with the Disciplinary Procedure.
- 5.5 In the case of alcohol or drug related misconduct, the normal disciplinary process will be followed and a decision taken at the disciplinary hearing on the appropriate action, if any, to be taken. Where a suspected alcohol or drug dependency is presented as a mitigating factor, the proposed disciplinary action will be suspended pending a referral to the council's Occupational Health Adviser or an agreed external agency for confirmation that a dependency issue does indeed exist.
- 5.6 If the existence of a dependency problem is confirmed, the disciplinary process may be further suspended on condition that the employee successfully completes any recommended recovery programme and that a significant improvement in conduct/behaviour is demonstrated over a defined monitoring period. Where the employee successfully completes any recommended recovery programme and there are no further instances of unacceptable behaviour, the proposed disciplinary action will be withdrawn or a lesser disciplinary sanction than that originally determined may be applied.
- 5.7 If a dependency problem is not confirmed, or if an employee does not complete any recommended recovery programme, the disciplinary action originally proposed will be confirmed and implemented.

## **6. SUPPORTING EMPLOYEES WITH ALCOHOL OR DRUG DEPENDENCY ISSUES**

- 6.1 Where an alcohol or drug dependency problem is confirmed by the Occupational Health Adviser, appropriate time off with pay will be granted to employees to attend the relevant agency to undergo a recovery programme.

### Recovery Programmes

- 6.2 On receipt of confirmation of an alcohol or drug dependency problem, a Recovery Programme will be put in place. The line manager will arrange to meet with the employee to discuss:
- the proposed recovery treatment
  - the estimated duration of any treatment
  - the impact on the employees working arrangements during the recovery programme
  - the availability of support agencies
  - the council's expectations in terms of the employee's cooperation and commitment to any recommended recovery programme.
- 6.3 The employee will be asked to sign up to a Recovery Programme Agreement and to consent to the Occupational Health Adviser obtaining regular reports from the relevant

support agency and reporting progress to Human Resources. A condition of the programme will be that employees agree to attend all appointments necessary to assist with their recovery as recommended by the Occupational Health Adviser or the relevant support agency.

- 6.4 Further information on support available in West Lothian for adults with problematic substance use or support for people affected by another person's problematic substance use can be found at:

<http://www.nhslothian.scot.nhs.uk/HealthInformation/RecoveryInLothian/Documents/WL-ServicesDirectory.pdf>

#### Relapse

- 6.5 The council recognises the possibility of relapse in cases of alcohol or drug dependency. If this occurs, during or following a recovery programme, the same support procedures may be offered to the employee at the discretion of his/her line manager and depending on the circumstances of the case. If at any time however, an employee appears incapable of dealing with an addiction related problem, it may be appropriate to deal with the matter under the council's Disciplinary Procedures on the grounds of capability and/or conduct.

#### Redeployment

- 6.6 Depending on the nature of an employee's job, temporary redeployment to a different work location or deployment to alternative duties may be an appropriate consideration in order to protect the employee, other employees and/or members of the public. Any such decision should be based on the manager's assessment of the risk involved in consultation with the council's Health and Safety Team. In these circumstances, an employee will continue to receive their normal pay for a period of up to 3 months subject to their co-operation with any agreed treatment/counselling programme. If, after 3 months, an employee is unable to return to their substantive post, they will be paid in accordance with the terms and conditions of the position to which they have temporarily been redeployed.
- 6.7 Following a period of temporary redeployment, an employee will have the right to return to their substantive post, unless an assessment by the council's Occupational Health Adviser indicates that:
- there is a potential risk to the employee's continued health;
  - there is a potential risk to the welfare and safety of other employees; or
  - the employee is not yet ready to undertake the full range of duties and responsibilities of their substantive post.
- 6.8 In the event that the employee is unfit to return to their substantive post, the employee will be placed on the council wide Redeployment List and a search for suitable alternative employment will be undertaken in accordance with the process outlined in the council's Policy for Supporting Attendance at Work.

## **7. ALCOHOL AND DRUG TESTING**

- 7.1 The council will conduct an annual programme of random alcohol and drug testing in addition to the use of 'with cause' testing where appropriate.

### **Random Testing**

- 7.2 Random testing will apply in respect of employees who have been identified as occupying 'safety critical' roles. For the purposes of this policy, the Health & Safety Executive (HSE) definition of 'safety critical' is adopted;

*'Where the ill – health of an individual may compromise their ability to undertake a task defined as safety critical, thereby posing significant risk to the health and safety of others'*

- 7.3 Post identified as 'safety critical' include those which involve the use of heavy machinery or an occupational requirement to drive Heavy Goods Vehicles (HGVs) or Passenger Carrying Vehicles (PCVs). In addition posts which, although not requiring a PCV license, involve the transportation of council clients have been identified as 'safety critical'. Such posts will include Mini Bus drivers who transport pupils in Education Services and Social Policy staff transporting vulnerable clients.
- 7.4 An annual programme of testing will be carried out amongst a randomly selected sample of 5% of the safety critical test group. The council will not influence the selection of the sample. In other words, the council may specify the test group but once the council has provided details of those in the random group, there is no further influence over who is tested and when they are tested;

### **With Cause Testing**

- 7.5 In addition to the council's Random Testing Programme, any employee may be asked to consent to undertaking an alcohol and drugs test, where a manager has reasonable cause to suspect that an employee is under the influence of alcohol or drugs while at work.

- 7.6 Reasonable cause might include:

- Observation of reduced work performance, personality changes, physical signs such as smelling of alcohol or of other drugs. A Manager's Checklist of indicators that could be symptomatic of impaired fitness for work through alcohol or other substances is provided in the Appendix to this policy.
- An incident or accident in the workplace where a manager has reason to suspect that an employee involved has been under the influence of alcohol or drugs.
- A complaint or whistleblowing disclosure alleging that an employee or group of employees have been under the influence of alcohol or drugs at work.

- 7.7 The line manager should in the first instance, meet with the employee in a private setting and convey his/her concerns with a view to establishing whether there is a reasonable explanation for the employee's behaviour. Wherever possible it is recommended that another member of management/supervisory staff is present during this discussion to help validate the manager's suspicion that the employee is

under the influence of alcohol or drugs. The employee may be accompanied by a Trade Union Representative or work colleague if available at that time.

- 7.8 Managers should seek immediate advice from Human Resources who will arrange for an alcohol and drugs test to be carried out if that is deemed to be necessary. In exceptional circumstances, where workplace support is not immediately available, managers must seek advice directly from the specialist testing provider.
- 7.9 Testing will not be necessary where an employee admits to being under the influence of alcohol or drugs and in these circumstances, the matter will be dealt in accordance with Section 5 of this policy.
- 7.10 A technician will normally attend the workplace within 2 hours of being requested to undertake the test.
- 7.11 The administering Technician will advise the manager of the initial results immediately following the test. Further laboratory tests will provide, through the Occupational Health Adviser, additional information and confirmation of the initial results within 48 hours.
- 7.12 The line manager should arrange to discuss the results with the employee in the presence of a Human Resources Adviser. A Trade Union Representative or work colleague may accompany the employee. Where there is a positive result for which the employee cannot offer a reasonable explanation, the matter will be dealt with in accordance with the council's Disciplinary Procedure. A reasonable explanation could be that the employee has been taking medically prescribed drugs but has underestimated any potential side effects.
- 7.13 If the testing process indicates that the employee may have an alcohol or drug dependency related problem the matter will be managed in accordance with section 6 of this policy.

### **Principles of Testing**

- 7.14 The administering and management of drug and alcohol testing will be underpinned by the following key principles:
- Written consent will be sought on each occasion before an employee is asked to submit to a drug or alcohol test;
  - Employees will be advised of the drugs they are being tested for in accordance with the best practice guidance issued by the Information Commissioner's Office, Employment Practices and Data Protection Code;
  - Drug and alcohol test results constitute sensitive personal data and must therefore be handled in accordance with data protection requirements. In addition any action taken or support provided to employees is strictly confidential in accordance with the requirements of the General Data Protection Regulations (GDPR);
  - Testing will be conducted by an independent service provider who will be responsible for ensuring a tamper proof process, the provision of accurate and

reliable results and for carrying out tests with the least possible intrusion to employees' privacy;

### **Failure to Consent to Testing**

- 7.15 An employee who refuses to give consent to testing will be considered to have wilfully failed to comply with council policy and will be subject to disciplinary action.
- 7.16 Where consent is withheld for 'with cause' testing, the circumstances surrounding the decision to invoke the testing process such as observed behaviour, a workplace accident/incident or whistle-blowing complaint will be investigated without the benefit of test results and any disciplinary action will be taken on the basis of reasonable suspicion of wrongdoing.

### **Action in the Event of Positive Test Result**

- 7.17 The action to be taken following a positive test result will depend on the circumstances which will be investigated as part of a disciplinary investigation. It is proposed that a flexible approach which takes account of a range of factors is adopted, providing the ability to apply a stricter sanction where the risk/implications justify a more robust disciplinary response. Therefore, all cases will be considered on their merits taking into account level of risk/potential implications for harm to other parties (including fellow employees, clients and general public), reputational damage and repeated incidences.
- 7.18 Where appropriate the employee will be offered help and support for drug or alcohol dependency but it may also be necessary for disciplinary action to be taken up to and including dismissal depending on the particular circumstances.

### **Declaration of Drug or Alcohol Dependency**

- 7.19 A declaration of drug or alcohol dependency will not prevent or stall a disciplinary investigation or potential disciplinary action, if the declaration is made:
- after being selected for random testing;
  - after being advised of the requirement for 'with cause' testing; or
  - after a positive test result
- 7.20 Where such a declaration is made however, the employee will be referred to the council's Occupational Health Adviser or an agreed external agency for confirmation that a dependency issue does exist. Where a dependency issue is confirmed, the employee will be supported in their recovery programme in accordance with section 6 of this policy.
- 7.21 A declaration of drug or alcohol dependency that is not prompted by testing arrangements or misconduct will not result in disciplinary action. The employee will be referred to the council's Occupational Health Adviser or an agreed external agency and supported in their recovery programme in accordance with section 6 of this policy.
- 7.22 Drug and/or alcohol testing could additionally be used as part of an agreed recovery programme to support an employee in remaining drug and/or alcohol free.

## **8. CONFIDENTIALITY**

- 8.1 In all situations where an employee has undertaken alcohol/drug testing or has a potential or confirmed alcohol/drug misuse problem, confidentiality will be strictly preserved and only necessary information shared with those managing the situation. However, the council is obliged under the Misuse of Drugs Act 1971 to inform the police where illegal drugs are found on council premises.

## **9. CONSUMPTION OF ALCOHOL AND DRUGS DURING WORKING HOURS**

- 9.1 The consumption of alcohol or drugs as defined in this policy is prohibited on council premises during working hours. This excludes prescribed and/or over the counter medication taken for a genuine medical reason and in accordance with directions for use subject to the need to observe health and safety rules.
- 9.2 In terms of the consumption of alcohol on council premises during working hours, an exception may be made where specific events are formally approved by the council, Chief Executive, Depute Chief Executive, or Head of Service at which the consumption of alcohol is expressly permitted in the particular circumstances. In these circumstances, employees are required to adhere to the standards of behaviour as set out in this policy, in the council's Health and Safety Policy and as contained in any other relevant workplace rules.
- 9.3 Employees have a responsibility to ensure that any consumption of alcohol before starting work or during lunch-breaks does not:
- breach any specific requirements or controls regarding alcohol or drugs as determined as a result of workplace risk assessments
  - impair their ability to work safely and effectively or to deal with customers or clients to the required standards.
- 9.4 The council reserves the right to impose a ban on the consumption of alcohol during the working day for certain categories of employee on safety, legal and/or operational grounds.

## **10. EQUALITY ACT 2010**

- 10.1 Alcohol and drug misuse does not fall within the scope of the Equality Act 2010 (the Act). However, medical conditions resulting from or at the root cause of alcohol or drug misuse may be covered by the Act. In these circumstances, consideration must be given as to whether there is a requirement to make reasonable adjustments to support an employee with alcohol and/or drug dependency issues. The council's Occupational Health Service can provide assistance in determining whether or not an employee is a disabled person in terms of the Act.

## **11. HEALTH EDUCATION**

- 11.1 The council will provide, when appropriate, relevant training as well as health education programmes aimed at making employees aware of the issues relating to addiction and encouraging employees to avoid alcohol and/or drug misuse.
- 11.2 The Employee Health and Wellbeing Framework requires services to have Employee Wellbeing Action Plans to support employees to achieve and maintain healthy working lives. This includes both general and specific actions relating to health promotion and health and safety.

## **12. LINKS TO OTHER POLICIES**

- 12.1 This policy should be read in conjunction with the council's Disciplinary Code, Corporate Health and Safety Policy, Policy for Supporting Attendance at Work and Guidance for Teaching Staff Attending School Events.

## **13. POLICY REVIEW**

- 13.1 The council, in consultation with the recognised trade unions, will review this policy every 5 years or earlier as necessary.

## POLICY ON THE MISUSE OF ALCOHOL, DRUGS AND OTHER SUBSTANCES

### OBSERVATION CHECKLIST

The list below can be used to record any observations at a specific time which may be linked to alcohol or drug use. However, it should be noted that these observations could be symptoms of other issues and should not automatically be construed as alcohol or drug use.

<b>EMPLOYEE DETAILS</b>	
Name:	
Post:	
Service Area:	
Work Location:	

<b>OBSERVATION DETAILS:</b>	
Date:	
Time:	
Location:	
Trigger:	

<b>CHECKLIST: (circle any descriptions that apply)</b>			
<b>WALKING</b>	Stumbling	Staggering	Falling
	Holding On	Clumsy	Swaying
	Unsteady	Unable to walk	Uncoordinated
<b>STANDING</b>	Swaying	Rigid	Unable to stand
	Feet Wide Apart	Staggering	
<b>SPEECH</b>	Shouting	Silent	Whispering
	Slow	Mute	Slurred
	Silly	Talkative	Nonsensical
	Loud	Rambling	Cursing
<b>FACE</b>	Flushed	Pale	Sweaty
<b>APPEARANCE/ CLOTHING</b>	Unruly	Messy	Dirty
	Partially Dressed	Dishevelled	Unkempt
	Stained Clothing	Neat	Body Odour
<b>BREATH</b>	Smell of Alcohol	Smell of Marijuana/other substance	
<b>DEMEANOUR</b>	Cooperative	Polite	Calm
	Crying	Silent	Excited

	Fighting	Belligerent	Hostile
	Distracted	Moody	Depressed
	Agitated	Anxious	Restless
	Lethargic	Withdrawn	Irritable
	Sleepy	Sarcastic	Unresponsive
<b>ACTIONS</b>	Uncommunicative	Fighting	Threatening
	Calm	Drowsy	Blank
	Swearing	Hyperactive	Hostile
	Erratic	Paranoid	Fidgety
<b>EYES</b>	Bloodshot	Watery	Glassy
	Droopy	Closed	Blank
	Constricted Pupils	Dilated Pupils	Teary
<b>MOVEMENTS</b>	Fumbling	Jerky	Slow
	Normal	Nervous	Hyperactive
	Tremors	Shakes	
<b>EATING/CHEWING</b>	Gum	Sweets	Mints
	Mouthwash	Breath Spray	
<b>OTHER OBSERVATIONS</b>			

MANAGER SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

OTHER OBSERVER(S): \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**POSTS DESIGNATED AS SAFETY CRITICAL POSTS FOR RANDOM DRUG TESTING PURPOSES**

**OPERATIONAL SERVICES**

<b>Functional Area</b>	<b>Post Type</b>	<b>HGV Driving</b>	<b>PCV Driving</b>	<b>Operating Heavy Machinery</b>
Fleet & Community Transport	Drivers		✓	
Roads & Transportation	Road Operatives Electricians			✓ ✓
NETs, Land and Countryside	Grounds Maintenance Operatives Street Cleansing Staff Arborist Team Cemeteries Country Parks Operatives			✓ ✓ ✓ ✓ ✓
Recycling & Waste	Mechanics Refuse Collection Staff Recycling Centre Staff Disposal Staff	✓		✓ ✓ ✓ ✓

**HOUSING, CUSTOMER & BUILDING SERVICES**

<b>Functional Area</b>	<b>Post Type</b>	<b>HGV Driving</b>	<b>PCV Driving</b>	<b>Operating Heavy Machinery</b>
Building Services	Driver/Labourer Stores Operative Joiner Roofer Rough Caster Builder Plumber (including gas fitter) Electrician			✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓

**OTHER POSTS DESIGNATED AS SAFETY CRITICAL**

<b>Functional Area</b>	<b>Post Type</b>	<b>Safety Critical Function</b>
Education Services	Drivers of School Mini Buses	Transportation of Pupils
Social Policy	Social Worker Family Support Worker Early Years practitioner Children's Residential Worker Children's residential Assistant Unit Managers Community Care Assistant Community Care Co-ordinators Adult day care centre officers level 2 Adult day care centre support workers Community Inclusion team key workers and support workers Learning Disability residential social care worker Learning Disability residential care worker DASAT woman's worker DASAT children's worker Inclusion and Aftercare key worker Criminal Justice Assistants Unpaid Work Order Supervisors Unpaid Work Order Officer Youth Strategy Worker	Transportation of Vulnerable Clients

## POLICY ON THE MISUSE OF ALCOHOL, DRUGS AND OTHER SUBSTANCES

### INDICATIVE IMPLEMENTATION TIMELINE

<b>Action/Activity</b>	<b>Completed By Date</b>
Council Executive Approval	23 April 2019
Workforce Communication & Awareness Programme	30 June 2019
Drug Testing Product Procurement	31 July 2019
Managers Training/Tester Training	31 August 2019
Implementation of Alcohol & Drug Testing	1 September 2019