

## Drug Testing in the Workplace

### Summary Conclusions of the Independent Inquiry into Drug Testing at Work

This next article pertains to workplace drug testing in the United Kingdom. The article is a summary of a full report conducted by an independent panel in the United Kingdom. The report's conclusions differ from the arguments in favor of drug testing that were outlined by DiThomas in the previous article. Collectively, the two articles summarize the key aspects of the debate over workplace drug testing.

What role, if any, does drug and alcohol testing have in the workplace in modern Britain? In what circumstances, if any, should an employer discipline or dismiss staff for using drugs and alcohol? Does business have a legitimate involvement in what people do in their own time? The report from the Independent Inquiry on Drug Testing at Work (IIDTW) sets out and considers the arguments on drug testing at work, and concludes with a set of detailed recommendations. Over an 18-month period, the IIDTW considered written and oral evidence from employers and employees, providers of drug testing services, trade unions and business organisations, insurers and police officers, occupational health physicians and health and safety specialists, natural and social scientists, lawyers, philosophers and other experts in drug testing policy. This was an independent inquiry, facilitated by DrugScope and funded by the Joseph Rowntree Foundation and the Network of European Foundations.

#### Key Findings

- The evidence on the links between drug use and accidents at work, absenteeism, low productivity and poor performance was inconclusive. Most employers who had drug tested employees told the IIDTW that levels of positive results were very low.
- There is a lack of evidence for a strong link between drug use and accidents in safety-critical industries, such as transport, engineering, quarrying and mining. Clearly, however, drug- and alcohol-induced intoxication will be a source of risk in such environments.
- However, other factors may have a greater impact on safety, productivity and performance, including bad working conditions, sleeping and health problems, excessive workloads and work-related stress.

- Evidence considered by the IIDTW suggests that alcohol is probably a greater cause for concern in the workplace than illicit drugs.
- There is no clear evidence that drug testing at work has a significant deterrent effect.
- Drug testing is not a measure of current intoxication and will reveal information about drug use that can have no impact on safety, productivity or performance. Someone may test positive after taking a drug days, weeks or months before.
- People are not generally required to organise their lives to maximise their productivity at work, and employers do not have a direct law enforcement function. Empowering employers to investigate private behaviour actively—in the absence of legitimate safety or performance concerns—is in conflict with liberal-democratic values.
- The IIDTW found that the legal position on drug testing at work is confused. Employers could be open to legal challenge if they invade the privacy of employees unnecessarily, particularly under the Human Rights Act 1998 and the Data Protection Act 1998.
- Drug testing services in the UK are being provided by a very disparate group of companies and individuals. Many of them are very responsible. But the picture is mixed, with evidence that some of these companies may be making what appear to be inflated claims about the extent and impact of alcohol and drug problems in the workplace and the effectiveness of their own products.
- Remarkably little is known about the extent of drug testing at work in the UK. Perhaps the most reliable information comes from a small survey conducted by the IIDTW which found that 4 percent of employers who responded were conducting drug tests, and a further 9 percent were “likely” to introduce drug tests in the next year.
- Many employers and experts who gave evidence to the IIDTW highlighted the costs of drug testing at work. These include not only financial costs but also the potentially divisive nature of testing and the costs of

excluding otherwise responsible and capable people from employment.

### Key Recommendations

- Employers have a legitimate interest in drug and alcohol use amongst their employees in a restricted set of circumstances only. These circumstances are:
  - i. where employees are engaging in illegal activities in the workplace;
  - ii. where employees are actually intoxicated in work hours;
  - iii. where drug or alcohol use is (otherwise) having a demonstrable impact on employees’ performance that goes beyond a threshold of acceptability;
  - iv. where the nature of the work is such that any responsible employer would be expected to take all reasonable steps to minimise the risk of accident; and
  - v. where the nature of the work is such that the public is entitled to expect a higher than average standard of behaviour from employees and/or there is a risk of vulnerability to corruption (for example, in the police or prison service).
- There is a need for continued research, monitoring and analysis of the impact and development of drug testing at work.
- The system of accreditation for providers of drug testing services is unsatisfactory. Laboratories that are not currently accredited should be given three years either to bring themselves up to the standards for accreditation of the UK Accreditation Service (UKAS) or form an equivalent self-regulatory system. If they fail to do so, then a legal requirement should be introduced.
- The government should produce clear and definitive guidance on drug testing at work, and particularly on the legal issues.
- If staff have drug or alcohol problems then this is a health and welfare issue as well as a disciplinary matter and should not be an automatic trigger for dismissal. Wherever possible, employees in safety-critical functions

should be redeployed in other roles and provided with help and support.

- Drug and alcohol policy should not be something that is imposed on employees by managers. Drug testing should only ever be introduced following proper consultation with staff and their representatives and should be even-handed.
- For the majority of businesses, investment in management training and systems is likely to have more impact on safety, performance and productivity than the introduction of drug testing at work. There is a wealth of evidence that good and open management is the most effective method of improving workplace performance and tackling drug and alcohol problems amongst staff.

### The Inquiry

The IIDTW was set up in 2002 and has since considered written and oral evidence over an 18-month period. It was facilitated by DrugScope and supported by the Joseph Rowntree Foundation and the Network of European Foundations. It arose out of concerns about the lack of any independent assessment of the arguments for and against—and the lack of reliable evidence about—drug testing at work, and at a time when there was concern that this practice was growing in the UK.

The IIDTW conducted its inquiry under the supervision of an independent chair in Ruth Evans—formerly Director of the National Consumer Council and Chair of the Independent Inquiry into Paediatric Cardiac Services at the Royal Brompton and Harefield Hospitals—and an independent director, Yolande Burgin. The evidence was considered by the Chair and Director along with 16 distinguished commissioners, including leaders from the voluntary and community sector, social policy specialists, clinicians, academics, lawyers, trade unionists and representatives from employers groups.

### Background

The term “drug testing” refers to the analysis of biological material to detect drugs or their metabolites in the body. Urine tests are most common in the UK, but saliva, sweat and hair can be tested. For

alcohol, breath tests are most common. Drug testing at work takes a variety of forms, including pre-employment testing, random testing of employees and post-accident testing.

The use of drug testing has expanded in the criminal justice system and in sports, and there has been recent public and media discussion of the potential for expanding drug testing in both the police service and schools. Work-related drug testing is more widespread in the UK than ever before, and could increase significantly in the future, partly as a consequence of the marketing of drug testing services to employers.

The issue of drug testing is complex and has scientific, ethical, economic, legal and social dimensions.

However, the questions that it raises are not simply technical ones for the relevant experts. They include questions about the rapidly changing nature of work and leisure in the modern world; the balance between the interests of employers and the individual privacy of employees; and the relationship between substance misuse and workplace stress. The expansion of drug testing at work could have a profound impact on all employees and potential employees in modern Britain, and there is a danger that this practice could become increasingly routine in the absence of a full and proper public debate.

### The Science

Drug tests can detect if a drug has been used in a given time period, but, generally, do not directly measure the effects of drugs and alcohol in terms of intoxication or impairment. They may reveal that drugs were used weeks or months previously, and cannot distinguish one-off users from people with serious dependency problems. There is a problem of “false positives,” with some legally available drugs capable of producing a positive test for illicit substances. Drug testing is not infallible. But the science is already sufficiently sophisticated to enable employers to find out a great deal of information about drug use among staff and prospective staff. Tests may also reveal other information, such as the use of prescription drugs to treat medical conditions.

### The Law

The legal position on drug testing at work is confused. There is no direct legislation and

important legal questions hinge on interpretation of a range of provisions in health and safety, employment, human rights and data protection law. The main principles behind the current legal and self-regulatory provisions appear to be as follows:

- that people are entitled to a private life;
- that employers are required to look to the safety of the public;
- that people are entitled to dignity;
- that people are entitled to proper quality standards for evidence used against them in court or disciplinary proceedings.

These are emerging issues for jurisprudence and there has, to date, been little case law on drug testing arising from the Human Rights Act 1998 and the Data Protection Act 1998. Some of the issues have been clarified to some degree with the publication by the Information Commissioner of the consultation draft of Part 4 of the Employment Practices Data Protection Code in November 2003 (Information Commissioner, 2003). The Information Commissioner is responsible for the implementation of the Data Protection Act. According to the Commissioner's draft Code, the legitimacy of drug testing will depend on showing that there are health and safety concerns and on providing evidence of real (not assumed) impairment of performance.

### Trends and Trajectories

A MORI poll was conducted on behalf of the IIDTW in 2003. Over 200 companies were surveyed, of which 4 percent conducted drug tests and a further 9 percent said that they were likely to introduce tests in the next year. In addition, 78 percent said that they would be more likely to test if they believed that drug or alcohol use was affecting performance or productivity. Overall numbers might seem comparatively low on the MORI findings, but this is highly misleading. If 4 percent of businesses are drug testing this will affect hundreds of thousands of employees. If the 9 percent of businesses who told MORI that they were likely to introduce testing in the next year do so, then this trebles the proportion of UK businesses testing over a 12-month period.

The IIDTW was not able to establish the extent of drug testing at work or the overall trends to its own satisfaction, with other surveys producing different figures to the MORI poll, largely reflecting the differences in their respective samples.

A major expansion of drug testing at work, while far from inevitable, is now a genuine possibility. The North American experience shows how rapidly drug testing at work can expand, with testing in the US developing into a multi-billion dollar industry since the 1980s. There is evidence that increasing numbers of British employers are identifying drug and alcohol use as a problem for them. There is a lack of evidence to suggest that drug and alcohol use is in fact having a serious and widespread effect on the workplace in modern Britain. There is a need for continued monitoring of trends and trajectories.

### Health and Safety

Overall, the IIDTW was unable to find conclusive evidence for a link between drug use and accidents at work, except for alcohol. A literature review by the Health and Safety Executive reports that "five studies have found some association between drug use and work place accidents, whereas seven others found little or no evidence" (Beswick et al. 2002). The relationship between drug use and workplace accident is far from clear-cut. Nor is there conclusive evidence that drug testing is a deterrent to drug and alcohol consumption or that it reduces accident rates.

The IIDTW was satisfied, however, that drug and alcohol testing can have an important role in safety-critical environments. First, it is apparent from what we know about the psychological effects of various drugs, that intoxication impairs performance and it is a reasonable supposition that testing can deter and detect drug use in some circumstances. Second, even if the deterrent effect is fairly marginal, the IIDTW was made acutely aware that in some occupations a single mistake could have disastrous consequences in terms of injury and death. Third, the IIDTW was advised that it is difficult—if not impossible—to prove a deterrent effect anyway. And, finally, while some of the evidence presented to the IIDTW suggested

that drug testing in safety-critical industries is more about maintaining public confidence than having a demonstrable impact on behaviour, the confidence of the public is an entirely valid consideration in its own right.

### Performance Issues

Organisations cannot require staff or prospective staff to organise their lives in such a way that they maximise their productivity at work. Sociable drinking, late nights and childcare responsibilities, for example, can all impact on performance at work. The private activities of employees are a legitimate concern only if they impact on performance to a degree that exceeds a certain threshold for acceptable performance.

Employers have an interest in staff performance, but there is little or no conclusive evidence on the effectiveness or otherwise of drug and alcohol testing as a means of enhancing performance. Even if drug testing is beneficial in terms of performance, the benefits will need to be weighed against costs, including the impact on staff morale and workplace relationships and the potential recruitment and human resource cost of excluding illicit drug users from jobs that they are otherwise well-qualified to perform.

### Employment and the Criminal Law

Employers will rightly be concerned if they find that staff are breaking the law by using or supplying drugs at work, and could face criminal proceedings for turning a blind eye. But employers do not have a law enforcement role in our society. Nobody would suggest that employers should be given powers to look at the bank accounts of job applicants or acquire stop and search powers to investigate their staff. For similar reasons, employers should not be granted drug testing powers simply as a means of investigating the private activities of employees.

The possible illegality of otherwise private activities is a legitimate concern in some occupations where the public is entitled to expect exemplary standards of probity and honesty, particularly with respect to professionals directly involved in administering the criminal law, such as police and prison officers.

### Conclusion

Drug testing can have an important role in safety-critical and other occupations where the public is entitled to expect the highest standards of safety and probity. Aside from this, there is no justification for drug testing simply as a way of policing the private behaviour of the workforce, nor is it an appropriate tool for dealing with most performance issues. Even where drug testing does have a role it should be approached with caution, and implemented in a fair, transparent and inclusive way. The IIDTW concludes that good all-round management is the most effective method for achieving higher productivity, enhanced safety, low absentee rates, low staff turnover and a reliable and responsible workforce. For most businesses, investment in management training and systems will have more impact on safety, performance and productivity than drug testing at work.

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