

# White Paper Conference: 10 Thorny Questions

Blackadders



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## Alcohol and Drugs

**What are your obligations over alcohol and drug addiction as part of a capability or disciplinary process, when the addiction may be masking an underlying disability?**

## Lessons from Mad Med \*spoiler alert\*

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- Freddie was an alcoholic
- He urinated in his pants at work
- He passed out



- He got sacked... during a drinking session

# General Obligations on Employers

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- Health and Safety at Work Act 1974
- Management of Health and Safety at Work Regulations 1999
- Misuse of Drugs Act 1971
- The Transport and Works Act 1992
- The Road Traffic Act 1988



## Have a Policy

- This policy is designed to help protect workers from the dangers of drug and other substance misuse and to encourage those with a drugs problem to seek help;
- the rules on the use of drugs and other substances at work;
- a statement that the organisation recognises that a drugs problem may be an illness to be treated in the same way as any other illness;
- description of support available to employees with drug problems, and a statement encouraging employees with drug problems to seek help voluntarily



## Have a Policy cont'

*It is the Company's intention to deal constructively and sympathetically with an employee's alcohol or drug related problems, such as alcohol or drug dependency. When an employee voluntarily makes the Company aware of an alcohol or drug problem, the HR Team, will be able to provide advice and guidance on how to seek suitable treatment. The primary objective of any discussions will be to assist the employee with the problem in as compassionate and constructive a way as possible. Any discussions of the nature of an employee's alcohol or drug problem and the record of any treatment will be strictly confidential unless the employee agrees otherwise.*

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### Employers should be alive to warning signs

- sudden mood changes;
- unusual irritability or aggression;
- confusion;
- unusual changes in concentration and energy;
- impaired job performance;
- being late for work;
- taking more time off sick;
- worsening relationships with colleagues or customers; and
- dishonesty and theft.



## Disability

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Equality Act 2010 (Disability) Regs 2010, Reg 3(1)



- Substance addiction not recognised as a qualifying disability
- Disability caused by addiction still protected
- In addition, addiction might be a consequence of underlying disability such as depression

# Wood v Durham County Council UKEAT/0099/18

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- Depression, PTSD and dissociative amnesia
- Employee dismissed for theft outside work
- Wood argued his disabilities left him prone to forgetfulness – forgot to pay for the items
- EAT found Wood had a tendency to steal rather than tendency to forget
- Tendency to steal an excluded condition
- Wood not discriminated against
- Fine line in cases where manifestation of impairment = excluded condition.



# McElroy v Cambridge Community Services NHS Trust ET/3400622/14

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- Smelling of booze
- “Unfit for duty through the effect of drink”
- “Incapable of functioning effectively at work” = Gross Misconduct
- No concerns about his behaviour, just the smell of alcohol
- Unfair dismissal – no reasonable employer would have concluded unfit for duty without any evidence of same



# Glassford v Royal Mail Group Ltd

## UKEATS/0012/18/JW

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- Postie with 27 years service
- After 3rd instance of being unable to carry out duties owing to drink, he was given 2 year suspended dismissal
- Denied having a problem
- Employer gave him several opportunities to get help
- During 2 year suspension period, failed to show for work due to being drunk
- Fair dismissal – employee said he had a problem during appeal – too late.



# McGraw v London Ambulance Service NHS Trust ET Case No.3301865/11

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- Paramedic with history of laughing gas abuse;
- During an absence for depression/anxiety he visited the workplace intoxicated;
- Dismissed;
- S.15 claim failed as no causal link between his depression and his actions.



# Take away tips

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- **Have clear policies and avoid wooly language on misconduct definitions;**
- **If the employee seeks help – give them help;**
- **Take your time and seek a medical opinion if you have concerns;**
- **Don't assume that just because someone asks for help at the end of a process, this can be ignored.**



# Questions?

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