

Drug testing in the workplace

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Drug testing in the workplace

The Report of the Independent Inquiry into Drug Testing at Work

Independent Inquiry into Drug Testing at Work

INDEPENDENT INQUIRY INTO
Drug Testing
at Work



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Online documents

Other key documents considered by the Independent Inquiry into Drug Testing at Work (IIDTW) are publicly available online on the DrugScope website at www.drugscope.org.uk

These documents are listed below.

Results of the MORI poll for the Independent Inquiry into Drug Testing at Work

Results of the CBI Survey for the Independent Inquiry into Drug Testing at Work

Ross Coomber (University of Plymouth), Literature review for the Independent Inquiry into Drug Testing at Work

Peter Francis, Natalia Hanley and David Wray (Northumbria University), Literature review for the Independent Inquiry into Drug Testing at Work.

Simon Deakin (University of Cambridge), A discussion of the legal issues raised by drug testing at work

Gillian Ferguson (Matrix Chambers), Report prepared for the Independent Inquiry into Drug Testing at Work

Michael Ford, Legal opinion for the Independent Inquiry into Drug Testing at Work

A.C. Grayling (Birkbeck College), Comment on the ethical position on drug testing at work

Chair's introduction

In 2002, I accepted an invitation to Chair an Inquiry into the issue of drug testing at work. I felt that this was a hugely challenging and timely project. There was a growing awareness of the problems associated with drugs and alcohol. The use of drug testing was expanding in the criminal justice system and sports. There had been a widespread and rapid increase in the use of drug testing at work in the United States over a relatively short period. There was growing anecdotal evidence of an increase in the numbers of organisations promoting drug-testing services to British businesses. I was aware that some people were starting to express concerns that drug testing at work could become an accepted part of life in Britain without proper scrutiny of the evidence or public debate.

Drug testing is a complex issue, which has scientific, legal, ethical, social and economic dimensions. It was clear from the beginning that, if an Inquiry was to get to grips with all the evidence and argument, it would need to be conducted by a group of specialists from many fields of expertise. It has been an enlightening experience to have spent the past 18 months working with leaders from the voluntary and community sector, social policy specialists, clinicians, academics, lawyers, trade unionists and representatives from employers' groups. I would like to thank all of these Commissioners for their contribution. I would particularly like to thank Brian Pomeroy and Simon Deakin who advised me beyond the call of duty.

I am immensely grateful to Yolande Burgin, the Director of the Inquiry, without whom it would not have taken place. She was responsible for setting up and running the Inquiry, gathering evidence, arranging for

hearings and stimulating our policy discussions. We also owe a huge debt to Vanna De Rosas, the Inquiry Co-ordinator, for providing the Secretariat support, and to Marcus Roberts without whom the report would not have been written and published. DrugScope had the idea in the first place and the Joseph Rowntree Foundation provided the funding. Both these organisations have been supportive without being intrusive, ensuring that our work remained independent of outside influence. I would like to thank Frank Warburton and Charlie Lloyd who gave me invaluable personal support in the latter stages of our work, and Roger Howard for all his encouragement and support earlier on. I am also grateful to Harriet Hall for advising me on the regulation of drug testing. Finally, of course, I would like to thank everybody who gave evidence to the Inquiry. We have heard from employers and employees, trade unions and business organisations, insurers and police officers, occupational health physicians and health and safety specialists, natural and social scientists, lawyers, philosophers and experts in every aspect of drug-testing policy.

The Inquiry concludes that it is inappropriate to drug test as a means of policing the private behaviour of employees or improving productivity. While drug testing has a role in safety-critical industries it is no substitute for investment in management training and systems.

It has been a fascinating 18 months. This Inquiry has, I believe, conducted the most detailed investigation of this issue that has ever been undertaken in Britain. I am delighted to be writing the introduction to what I am confident will be an agenda-setting report and a landmark

in the debate about drug testing at work. The evidence that we have considered has often resulted in controversy and debate among the Commissioners, but this is a consensus report with a substantive set of recommendations. We hope it will clarify understanding and stimulate a wider debate about a public policy issue that could have profound implications for everyone living in Britain today.

Ruth Evans
May 2004

Executive summary

The Independent Inquiry on Drug Testing at Work (IIDTW) was chaired by Ruth Evans, former Director of the National Consumer Council, with an independent Director, Yolande Burgin. The Chair, Director and a group of 16 Commissioners have examined written and oral evidence over an 18-month period.

Chapter 1 The background and context

The basics

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 arguments *for* drug testing at work are that there are benefits for safety, efficiency, an organisation’s reputation and employee welfare. The arguments are strongest with respect to safety-critical occupations, where drug-induced intoxication can increase the risk of accident.

The arguments *against* drug testing are that it does not have the benefits that are claimed for it, is excessively invasive, may damage relations between employers and employees, and could hamper the recruitment and retention of good staff.

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 the form 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. Legally available drugs can produce a positive test for illicit substances (e.g. codeine – which is available in over-the-counter painkillers – for opiates). Drug testing is not infallible. But the science is 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

Until recently, there has been little legal constraint on the use of drug testing by employers. But the situation is changing.

It is still unlikely that an employer would face a legal challenge for refusing to employ an applicant who tested positive for drugs or refused a test. Similarly, an employment tribunal would be unlikely to take the view that an existing employee who had been sacked in these circumstances was ‘unfairly dismissed’.

Provisions included in health and safety laws may encourage employers in safety-critical industries to drug test. Under Section 8 of the Misuse of Drugs Act 1971, an employer who knowingly permits drugs to be used in the workplace could be vulnerable to prosecution.

An employer could also be liable to prosecution under anti-discrimination laws for targeting drug testing at a particular group or for implementing drug testing in a discriminatory way.

Two recent Acts place even tighter limits on the scope for drug testing at work, although their interpretation is a matter of uncertainty.

The Human Rights Act 1998 incorporated the European Convention on Human Rights into domestic law. Article 8 states that ‘everyone has the right to respect for his private and family life, his home and his correspondence’. The right to private life could have implications for the legality of drug testing at work. Article 3 protects the individual from cruel and degrading treatment, but this article is unlikely to be triggered in any but the most exceptional circumstances.

The Data Protection Act 1998 places limits on the processing of personal data. Recent guidance from the Information Commissioner – responsible for implementation of data protection laws – states that ‘other than in most safety critical areas, regular drug testing is unlikely to be justified unless there is a reasonable suspicion of drug use that has an impact on safety’.

New laws are limiting the room for managerial manoeuvre on drug testing, but it is not yet clear how the courts will interpret the relevant human rights instruments or the data protection legislation.

The ethics

Drug testing at work may be difficult to reconcile with fundamental social and political values.

There is a presumption in liberal-democratic societies against invasion of private life unless this is necessary to protect others from harm. While drug use is illegal, it would be a departure from social norms to empower employers to *actively* investigate whether staff are acting illegally outside work.

Employees have a responsibility to turn up in a fit state to work, but employers cannot

expect people to live in such a way as to be maximally productive at work. Performance, after all, can be affected by a whole range of factors that are not the legitimate concern of employers, including late nights and child-care responsibilities, stress, fatigue, anxiety and bereavement.

The social issues

The use of illicit drugs is increasingly widespread in modern Britain. Employers need to take this into account in developing their policies.

There is anecdotal evidence to suggest that the demands of some work environments can contribute to drug and alcohol problems. Employment policies need to address the causes of drug and alcohol use – for example, by promoting a sensible work–life balance.

If people are excluded from work as a result of their drug and alcohol use, this will result in loss of income, difficulty in obtaining future employment and significant costs in social benefits.

Chapter 2 The evidence: trends and trajectories

Extent of drug testing in Britain

The use of drug testing by employers is increasing in the UK.

A survey of businesses by the Chartered Management Institute in 2003 found 16 per cent were randomly testing and 14 per cent were screening as part of their recruitment processes.

A MORI poll was conducted on behalf of the IIDTW in 2003. Over 200 companies were surveyed, of which 4 per cent conducted drug tests and 9 per cent said they were likely to

introduce tests in the next year. Seventy-eight per cent said they would be more likely to test if they believed that drug or alcohol use was affecting performance or productivity.

The CBI also distributed a questionnaire to its Health and Safety Panel on behalf of the IIDTW. There were 50 responses from approximately 100 members. Nearly one-third (30 per cent) of companies tested their staff for drugs and alcohol. A further 12 per cent intended to introduce drug testing in the near future (but only one company was planning to alcohol test).

Overall numbers might seem comparatively low on the MORI findings, but this is misleading. Even if only 4 per cent of businesses are drug testing, this affects hundreds of thousands of employees. If the 9 per cent of businesses that told MORI that they were likely to introduce drug testing in the next year were to do so, this would treble the proportion of UK businesses testing over a 12-month period.

Pressures for expansion

The IIDTW concludes that a major expansion of drug testing at work, while far from inevitable, is a genuine possibility. The North American experience shows how rapidly drug testing at work can expand. There is evidence that increasing numbers of British employers are identifying drug and alcohol use as a problem for them, including many companies outside of the safety-critical sector. There are commercial incentives for expansion for organisations offering drug and alcohol services. Over the past 15 years, drug testing has grown into a multi-billion-dollar industry in the United States.

Chapter 3 The evidence: costs and benefits

Drug testing and safety-critical environments

Overall, the IIDTW was able to find no conclusive evidence for a link between drug use and workplace accidents, except for alcohol. A literature review conducted by the Health and Safety Executive reports that 'five studies have found some association between drug use and work place accidents, whereas seven others have found little or no evidence'.

The evidence is inconclusive.

Aside from this the IIDTW makes four key points about drug use and safety at work.

First, it is unacceptable for employees in safety-critical roles to be intoxicated at work. There are also legitimate grounds for concern about drug and alcohol use in other professions where there are issues of public confidence, and a reasonable expectation of high levels of probity, such as the police and prison services.

Second, safety concerns do not neatly map onto wider perceptions of the relative harmfulness, legality or acceptability of different substances (for example, alcohol may be a greater safety threat than cannabis or cocaine).

Third, intoxication will be a risk factor in safety-critical environments, but it is not the only source of risk, and should not receive disproportionate attention and investment (other risk factors include noise, dirty equipment and machinery, conflicts at work and sleeping problems).

Fourth, while drug testing may have a role in some industries, it is no substitute for good management and, where reliable – and otherwise acceptable – methods are available, it will generally be preferable to test staff in

safety-critical occupations directly for *impairment* (fitness for work) rather than to conduct *drug* tests.

The message from industry

The IIDTW heard evidence from nuclear generation, coal mining, quarrying, electricity supply and distribution, water supply and distribution, the underground railway system, aerospace, engineering, bus and coach operators, caterers, telecommunications, the entertainment industry and financial services.

Four key messages emerged from the oral evidence to the IIDTW from organisations working in safety-critical industries.

First, the majority of employers who gave evidence did not believe that drug misuse was a serious or widespread problem for them.

Second, employers in safety-critical industries stressed the importance of implementing drug testing in a fair and transparent way.

Third, employers said that, even in safety-critical environments, drug testing could be divisive and counterproductive if it was clumsily handled.

Fourth, a number of employers emphasised the need for welfare and support services for staff with alcohol and drug problems.

Drug testing, productivity and performance

Employers have a legitimate interest in staff performance. But a range of questions arise about the extent to which employers should be involved in regulating the private lives of employees. The research evidence is not supportive of drug testing as a means of enhancing performance.

- *Absenteeism*: there is some evidence that a weak relationship exists between drug use and absenteeism, but it is inconclusive.
- *Turnover*: there is some evidence that illicit drug users are more likely to leave a job or to be dismissed, but it is inconclusive.
- *Performance and productivity*: the evidence concerning the relationship between drug use and performance has been variously described as ‘conflicting’, ‘insufficient’ and ‘inconclusive’. The common assumption that drug and alcohol use has a major impact on productivity and performance at work is not conclusively supported by the evidence.
- *Reputation*: the impact of drug use among employees on a company’s reputation is almost impossible to assess.

The evidence does not provide much support for alarmist claims about the impact of drug use on absenteeism, turnover, productivity or reputation. Nor has it been demonstrated that drug testing has a significant deterrent effect, or is the most appropriate way of identifying and engaging with staff whose drug use is affecting their work.

The costs of drug testing

There is a lack of reliable data on the cost-effectiveness of drug testing. There are three principal costs.

First, there are the financial costs of drug testing.

Second, there is the impact on staff morale and workplace relationships. A number of businesses told the IIDTW that drug testing had damaged relations with employees.

Third, there are recruitment and human resource costs. The exclusion of illicit drug users from jobs may constitute a substantial cost for organisations. Most recreational drug users are otherwise responsible people who do not have serious drug problems and have scarce skills to offer to employers.

The Inquiry identified some less obvious costs. For example, it heard some evidence that testing could prevent staff in safety-critical industries from reporting minor incidents, increasing the risk of serious accident later.

Chapter 4 Conclusions and recommendations

Drug testing at work is a complex topic and often defies common assumptions and preconceptions. Some of the conclusions and recommendations of the IIDTW are summarised below.

- 1 It is important to keep matters in perspective. Overall, the evidence does not suggest that drug and alcohol use is having a serious and widespread impact on the workplace. The IIDTW recommends that further research is undertaken on the impact of drug and alcohol use on performance and safety at work.
- 2 The IIDTW concludes that employers have a legitimate interest in drug and alcohol use among their employees in a restricted set of circumstances only. These circumstances are where:
 - employees are engaging in illegal activities in the workplace
 - employees are actually intoxicated in work hours

- drug or alcohol use is (otherwise) having a demonstrable impact on employees' performance that goes beyond a threshold of acceptability
 - 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
 - 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 corruption (for example, in the police or prison service).
- 3 The IIDTW concludes that employers have no *direct* interest in the private behaviour of employees and prospective employees, and that investigation of an employee's private life simply *for its own sake* is an invasion of personal liberty.
 - 4 The legality of different drugs is not directly relevant to their impact in the workplace, as the recently published draft code from the Information Commissioner (who oversees the implementation of the Data Protection Act 1998) states, drug testing should only ever be used to 'detect impairment at work rather than illegal use of substances in a worker's private life'.
 - 5 The IIDTW does not accept the argument that drug testing is a private, contractual matter between employers and employees. Not only is there an inequality in bargaining positions, but a significant expansion in drug testing could have profound economic and social implications for society at large.

- 6 The IIDTW believes that the legal position on drug testing at work is somewhat confusing, largely because there is no direct legislation and important legal questions hinge on interpretation of a whole range of legal provisions in health and safety, employment, human rights and data protection law. The IIDTW calls on the Government to produce clear and definitive guidance on the legal and other issues around drug testing, and to finance a major communication initiative to ensure that this information is available to all employers and employees.
 - 7 The present accreditation mechanism covers only a small part of the drug-testing industry, with many companies not subject to accreditation. The results of drug tests can have a profound impact on the rights of individuals. Substandard laboratories and procedures are not acceptable. The IIDTW concludes that a more rigorous system of accreditation is needed. If an effective system of self-regulation is not developed by the industry within the next three years, the Government should act to introduce a legal requirement to ensure that all companies providing drug-testing services are operating to the very highest standards.
 - 8 The IIDTW believes that there is a useful role for drug testing in safety-critical industries. However, direct testing of impairment is better suited to health and safety purposes than drug testing, which is an indirect and unreliable measure of impairment. With the development of more effective forms of impairment testing, the case for drug testing in safety-critical industries would become much weaker.
 - 9 The key to the successful implementation of a drug and alcohol policy is that it is conceived as a component of health and welfare policy and not – at least, not primarily – as a disciplinary matter. A drug and alcohol policy will be effective only if it is negotiated with and accepted by staff across the organisation. The IIDTW concludes that drug testing at work should not be introduced in the absence of proper consultation and involvement of trade unions and/or other staff representatives.
 - 10 The IIDTW found that drug testing, while it can have a useful role in some industries, is no substitute for good management practice.
- One of the strongest themes to emerge from the evidence heard by the IIDTW over an 18-month period is 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 the majority of businesses, investment in management training and systems is likely to have a more beneficial impact on safety, performance and productivity than the introduction of drug testing at work.

**REPORT OF THE INDEPENDENT INQUIRY
INTO DRUG TESTING AT WORK**

Introduction

Are there reliable ways of testing people for drugs use? Is it appropriate for employers to test staff for drugs or alcohol? If so, in what circumstances? Should applicants be turned down for jobs on the basis of a positive test? What is the law relating to drug testing? What is the extent of drug testing in the UK at present, and how is that projected to change? Do British industries have sufficiently rigorous alcohol and drug policies to ensure that the public is not exposed to an unacceptable level of risk? What is testing expected to accomplish? Is it successful in that aim? In what circumstances, if any, should an employer discipline or dismiss staff for using drugs and alcohol? Does business have a legitimate interest in what people do in their own time? Where staff develop substance misuse problems, do employers have a responsibility to offer help? What is the law?

These are important questions that raise complex issues. But they have received surprisingly little detailed attention or independent analysis in the UK. The aim of this report from the Independent Inquiry on Drug Testing at Work (IIDTW) is to fill this gap. It provides a detailed and impartial review of the arguments around drug testing at work and seeks to put the whole issue into perspective at a time when private drug-testing companies are looking to expand.

The IIDTW's report is concerned with both illicit drugs *and* alcohol, and, unless otherwise stated, the term 'drug testing' should be taken to encompass alcohol testing too.

An important issue

The issue of drug testing at work is beginning to gain a much higher profile. The growing

political concern was evinced by the publication of a report from the All-Party Parliamentary Drug Misuse Group (APDMG), *Drug Testing on Trial*, in July 2003. This report concluded that 'at present there is no real consensus or clarity about what the aim of drug testing in the workplace is or should be'. The APDMG concluded by welcoming the work of the IIDTW, commenting on the need for an 'in-depth review of this whole issue'.

There are a number of reasons for the rise in political and public interest in drug testing in the workplace.

First, there is growing public and political awareness of the extent of drug and alcohol use in contemporary Britain. The *British Crime Survey 2002–03* found that 12 per cent of 16 to 29 year olds had used illicit drugs in the previous year and that 3 per cent had used Class A drugs. The figures were substantially higher for people in their late teens and early twenties; 50 per cent of 16 to 29 year olds had used drugs at some time, over a quarter (28 per cent) of 16 to 24 year olds had used an illicit drug in the last year and 8 per cent said that they had used Class A substances in the last year (Condon and Smith, 2003). A Home Office study, published in December 2003, found that 79 per cent of young club-goers had used drugs at some time (Deehan and Saville, 2003). Another recent Home Office research report concludes, on the basis of an analysis of the findings of the *Youth Lifestyles Survey*, that over a third (39 per cent) of 18 to 24 year olds can be classified as binge drinkers.¹

Second, while the public debate about drug and alcohol misuse has tended to focus on the link with crime, disorder and anti-social behaviour, it is a reasonable extrapolation from

what we know about the prevalence of drug misuse and problem drinking that it will affect significant numbers of people at work – as well as many others who are in training and education or are available for work. Drugs impact on the lives of the socially included as well as the socially excluded. For example, a recent research study by Howard Parker and colleagues at Manchester University concludes that there is increasing use of Class A substances among ‘primarily educated, employed young citizens with otherwise conforming profiles ... [who] ... see their substance misuse as de-stressing, chilling out activity, whereby intoxicated weekends and going out to “get out of it” is the antidote to the working week’.²

Third, it is generally assumed that the use of psycho-active substances could, in some circumstances, affect the productivity and performance of people at work, and, in some industries, could result in accidents and mortalities. A number of striking claims have recently been made about the costs of alcohol and drug use at work. A report from the National Treatment Agency claims that the cost to industry from illegal drug use is £800 million each year. And the Government’s *Alcohol Harm Reduction Strategy for England* (Prime Minister’s Strategy Unit, 2004) says that ‘alcohol misuse among employees costs up to £6.4 billion in lost productivity through increased absenteeism, unemployment and premature death’. Such claims may appear to strengthen the case for drug testing at work. But it is unclear how some of these figures are arrived at, how reliable they are and what difference, if any, drug and alcohol testing would make.

Fourth, there is greater public awareness and concern about drug testing, as its use in other

areas of social life has expanded in recent years – particularly in sport, but also within the criminal justice system.³ There have been proposals to introduce drug testing in the police force.⁴ More recently, the level of public and political interest in, and concern about, drug testing was shown by the response to the Prime Minister, Tony Blair’s, comments in an interview with the *News of the World* in February 2004, in which he appeared to offer some encouragement to the use of drug testing in schools. Before this, the expansion of drug testing by police, prisons and other criminal justice agencies had already begun to raise important public policy questions, which are equally relevant to the issue of drug testing at work. For example, questions about the balance between public interest and individual rights, the responsibility to provide support and treatment, the relation between drug and alcohol use and drug and alcohol dependency, and the deterrent effect of drug-testing regimes. Some similar issues were raised by recent cases involving high-profile sports people, including the tennis player Greg Rusedski and the footballer Rio Ferdinand. These cases have also raised public awareness of the technical issues about the reliability of drug tests, which would be of much wider concern if the use of drug tests by employers was significantly extended.

Fifth, there is concern about the increasingly sophisticated marketing of drug testing by commercial organisations. The technology of drug testing is not well understood. The companies that produce this equipment and conduct tests have a business interest in promoting testing to employers and opening up new markets. But it is important that an independent assessment of the value and limits of drug testing in the work place is available to

inform wider discussion of an issue that touches on serious matters.

Sixth, there has been anecdotal evidence for an increase of drug testing in some high-profile firms, particularly in the financial sector, where there are no obvious health or safety justifications for testing. In the past, other than in the rail industry, routine drug testing was introduced into the UK by North American firms insisting that their subsidiaries, or those doing business with them, institute drug testing. Since the mid-1980s, drug testing in the United States has grown exponentially into a multi-billion-dollar industry, thus showing how rapidly a pervasive drug-testing culture can take root.

A complex issue

The issue of drug testing at work raises a wide range of important questions. In a crowded and confused legislative framework where case law is mixed, there has been no strong guidance to date. This is a complex, multi-faceted issue with a number of aspects that cut across traditional disciplinary and organisational boundaries – for example, it has scientific, legal, ethical and economic dimensions, and it is an area of concern for a number of government departments, notably the Home Office, Department of Health and Department of Trade and Industry. That is why the APDMG's report stressed the need for an 'in-depth review'.

Five key dimensions are examined in this report.

- 1 *The science*: how do the various forms of drug testing work? What can they detect and what can't they detect? How reliable are the results?
- 2 *The ethics*: how is the balance to be struck between promoting the public good and respecting individual rights? Where do the legitimate interests of employers end and the private lives of individuals begin? What responsibilities do employers have, if any, to promote the health and welfare of the people who work for them? Do employers have a role in policing the activities of their staff outside work time, and especially where they are acting illegally? What about the responsibility of employees to be in a fit and proper state to work? How do these questions relate to other impairment-producing factors such as stress, fatigue, anxiety and bereavement?
- 3 *The law*: what is the current legal position on drug testing? What are the legal requirements on employers in storing and processing test results? Are there any circumstances in which an employee who was dismissed following a drugs test could claim that this constituted 'unfair dismissal'? What forms of consent are required and what are the implications for the drafting of contracts of employment? What about human rights? What about data protection?
- 4 *The social dimension*: is it the role of employers to address drug use in society? To what extent, if any, can the demands of the modern workplace contribute to drug and alcohol problems? What, if anything, should employers do about informing and educating their workforce about drugs and alcohol? What, if anything, is the role of the employer in minimising social exclusion?

- 5 *The business case:* is drug testing worth the investment? Is drug testing an effective tool in performance management and measurement? Does it help to reduce absenteeism? Does it affect accidents at work? What are the human resource costs to businesses of refusing employment to promising candidates who fail drug tests? What is the effect on workplace performance? What is the effect on relationships at work? What are the costs of dismissing staff for drug or alcohol use? Is it cost-effective for businesses to help staff with problems to access treatment and support services? Is there evidence that testing deters drug use?

The answers to these questions will not always be clear and unambiguous. The term 'drug testing at work' does not refer to a single homogeneous issue, but designates a range of different practices that vary depending on:

- the form of drug testing
- the point at which drug testing takes place
- the rationale for drug testing
- which drugs are being tested for
- who is being tested
- the type of work that is involved.

The purpose and scope of the Inquiry

Background

The IIDTW is the first Inquiry of its kind in the UK. Its remit is to address the spectrum of complex and far-reaching issues surrounding drug testing in the workplace. The lack of

detailed analysis of this subject – and concerns about the pace of technological change and its commercial exploitation – prompted the formation of the Inquiry in 2002. It was facilitated by DrugScope and funded by the Joseph Rowntree Foundation and the Network of European Foundations (NEF). Throughout its work, the IIDTW has rigorously examined these controversial issues, while maintaining its independence from all interest groups, including the facilitator and funders. It has striven to remain wholly impartial throughout its inquiry.

Aims

The aims of the Inquiry were to examine:

- the nature and extent of workplace drug testing
- the science of testing
- the consequences and implications of drug testing in the workplace
- the legal and statutory framework, and
- to reach conclusions and make recommendations.

Underlying this whole prospectus was a fundamental concern about the lack of good practice, evidence or professional consensus to assist employers in their decisions on whether, how and in what circumstances they should test for drugs and the lack of any 'accepted protocols relating to testing in the workplace'.

The IIDTW's work was guided from the outset by two clear principles.

- That the Inquiry, while rigorously examining the issues, would at all times remain impartial, and maintain its independence from all interest groups.

- That the Inquiry would work to be open and transparent in all of its endeavours, while protecting the privacy of individuals where necessary. In incidences where sources were kept confidential, those sources would be thoroughly checked. The IIDTW has sought verification for all quotations.

Methodology

The IIDTW has considered both written and oral evidence.

- 1 *Literature reviews*: the IIDTW began by identifying and scrutinising the existing evidence on drug testing at work and commissioned a series of literature reviews. Reviews were conducted by Ross Coomber, Principal Lecturer in Sociology at the University of Plymouth; Peter Francis, Natalia Hanley and David Wray of the Sociology and Criminology Division, Northumbria University; and the Inquiry benefited from the pre-existing work of Johanna Beswick and colleagues at the Health and Safety Laboratory.
- 2 *Expert advice*: the IIDTW's deliberations were informed by a number of specially prepared written submissions from experts – including Commissioners – on the science, sociology, ethics and law of drug testing. It heard extensive evidence from a wide range of individuals and agencies – including employees and employers, trade unions and business organisations, drug-testing companies and regulatory authorities, scientific experts, lawyers, philosophers and social scientists. The Inquiry has been reliant on the advice it has received from lawyers on some difficult legal issues. A report was commissioned by the IIDTW from Gillian Ferguson of the Matrix Research Panel at Matrix Chambers. The Inquiry also received expert legal opinion from Michael Ford, a leading barrister with expertise on drug testing. In addition, the Commissioners benefited from the evidence provided by a number of leading legal practitioners working in England and Wales.
- 3 *Polls and research*: the IIDTW was responsible for initiating new research that has helped to fill in some of the gaps in the available evidence base. In particular, the Inquiry commissioned a MORI poll on employers' attitudes to drug and alcohol policy in general, and drug testing in particular. Questionnaires were also distributed on the Inquiry's behalf by the Confederation of British Industry (CBI), the Federation of Small Businesses (FSB) and the Trades Union Congress (TUC). The clubbers' magazine *Mixmag* included questions on behalf of the Inquiry in its annual drugs survey and the IIDTW further benefited from new research on drug testing in the UK published by the Chartered Management Institute.
- 4 *Hearings*: the IIDTW heard oral evidence from a wide spectrum of organisations, including employers, drug-testing providers and representatives from the relevant statutory and regulatory bodies. The IIDTW also spoke to a number of employees about their experiences of drug and alcohol use.⁵
- 5 *Round-table discussions*: the IIDTW set up a number of round-table discussions. A Health Round Table at the Royal College of Practitioners was attended by people

working across the National Health Service; a round-table discussion for Occupational Health and Human Resources Practitioners took place at the London Chamber of Commerce; and a Round Table discussion on the legal and ethical issues was the subject of the Industrial Law Society's Plenary Session on 12 September 2003.

Conclusion

Drug testing at work, then, is a complex issue, and this 18-month Inquiry has heard evidence from experts across a wide range of disciplines, as well as employers, employees and the industries supplying drug-testing equipment and services. But the questions that the issue of drug testing at work raises are not simply technical ones that can be left to the relevant experts.

Ultimately, this issue raises some profound questions for all of us: questions about the rapidly changing nature of work and leisure in the modern world; questions about health and welfare in the workplace; questions about the balance between corporate responsibilities and individual privacy; questions about risk, risk management and the 'nanny state'; questions about responsible behaviour at work; questions about stress in the workplace; and questions about the relationship between market imperatives and the development of humane and effective approaches to drug and alcohol misuse among staff where this is a genuine concern for organisations.

The IIDTW believes that these are important issues. This report reaches definite conclusions and puts forward specific recommendations. It is intended that it should also provide a clear introduction to the issues, an accessible and

comprehensive survey of the evidence and a detailed evaluation of the case for and against drug testing at work.

The remainder of the report is divided into four chapters.

Chapter 1 answers the obvious questions 'what is drug testing?' and 'how does it operate in the workplace?'. It outlines the principal arguments for and against testing at work. It then examines the scientific issues, the relevant legal instruments (including the Human Rights Act 1998 and the Data Protection Act 1998), the ethics of drug testing and the wider social implications.

The following two chapters review the evidence that has been presented to the IIDTW over the 18 months that it has been sitting, both in its oral hearings and in the form of written submissions.

Chapter 2 is concerned with the prevalence of drug use in modern Britain, the attitudes of employers and employees, the extent of drug testing in the workplace and the potential for future expansion. It presents fresh evidence on employers' attitudes to drug testing, notably the results of a MORI poll and a CBI survey, both conducted on behalf of the IIDTW.

Chapter 3 reviews the evidence on the costs and benefits of drug testing, with particular attention to: health and safety issues, absenteeism and staff turnover, performance and productivity, and the reputations of organisations. It also assesses the costs to organisations of drug testing, including not only the financial investment but also the potential damage to industrial relations and the possible recruitment and human resource costs.

Finally, Chapter 4 of the report summarises the IIDTW's conclusions and sets out the Commissioners' recommendations.

1 The background and context

This chapter sets the scene for the discussion of the specific findings and recommendations of the IIDTW that follow. It examines the broader context for the debate about drug testing in the UK and looks at some of the key issues in greater detail. It is particularly concerned to set out the broader scientific, ethical, legal and social issues.¹

1.1 'Drug testing at work'? The basics

1.1.1 What is drug testing?

The term 'drug testing' refers to the analysis of biological material to detect the presence or absence of drugs and/or their metabolites within the human body. Metabolites are the substances into which drugs, including alcohol, are converted by the human body. The presence of metabolites shows that the relevant substances have been used in the recent past.

The commonest form of testing for illicit drugs is the analysis of urine samples. For alcohol, breath tests are more common, and these are often followed up by blood tests for confirmation. In addition, oral fluid, hair and sweat can be tested.

1.1.2 Drug testing in the workplace

The term 'drug testing at work' refers to all kinds of employment-related drug testing. The principal forms of testing at work are identified below.

- 1 *Pre-employment testing* (also often referred to as 'screening'): this is testing conducted as part of the screening and selection process for job applicants.
- 2 *Routine medicals*: drug testing as part of routine medicals for staff, usually as part of a pre-employment process.

- 3 *Transfer testing*: testing when employees move to a new job within a company or are promoted.
- 4 *Mandatory random testing*: where employees are required to submit to tests as a matter of course, either regularly or irregularly. Typically, National Insurance numbers are used to generate a random sample of a pre-agreed percentage of the workforce.
- 5 *Post-accident testing*: testing may take place as part of the procedure for investigating and dealing with workplace accidents.
- 6 *'For cause' testing*: employees are tested where an employer or manager believes that there is reasonable suspicion of drug use at work.
- 7 *Post-treatment or follow-up testing*: this covers the testing of employees who are known to have used drugs, including those who have previously tested positive and may be in treatment.
- 8 *Voluntary testing*: employees volunteer to be tested.

These eight forms of testing are not exhaustive of all the possibilities, and they may be used either independently or in a whole variety of different combinations. Drug-testing regimes within the workplace can also vary in other ways – for example, depending on whether employees are or are not given notice that random drug tests will be conducted on a particular date. Or, to take another example, an organisation may decide to drug test only those staff who could pose a significant safety risk, or it may test all staff – or, at least, a random cross-section of staff. In some organisations, everyone

may be tested from senior management downwards.

1.1.3 Why test?

There are four fundamental reasons for drug testing at work.

- 1 *Safety*: there is concern that an individual who is impaired by alcohol or drugs is an increased safety risk to him or herself, co-workers and/or the public. This may be of particular concern where employees have safety-critical functions. This is true, for example, of air traffic controllers, train drivers, ambulance drivers, pilots, bus drivers, miners and quarry workers.
- 2 *Organisational efficiency*: it is believed that the use of alcohol and drugs can be a cause of low productivity, absenteeism and high staff turnover. It is further assumed that drug testing can reduce the number of working days that are lost through staff absence, increase productivity and reduce the costs of recruiting and training new employees.
- 3 *Reputational risk*: some employers are concerned about the damage that they believe can be caused to the reputations of their organisation as a result of alcohol and drug use among their workforce. The use of illegal drugs by employees will be a particularly sensitive issue in some professions, such as the police force and the prison service.²
- 4 *Employee welfare*: it has been suggested that drug testing can help to improve the health and welfare of the workforce by deterring drug use and by helping to identify staff

who have problems. These individuals can be encouraged to seek help by their employers and supported in their efforts to address their substance misuse problems.

It is not only existing employees who are drug tested. Potential employees may be asked to take drug tests as a part of the recruitment processes of organisations. It is believed that such pre-employment testing (or 'screening') can help to ensure that staff whose drug use could compromise safety or performance or the employer's reputation are not being recruited.

In addition to these rationales for drug testing at work, some employers may simply be reluctant to take on job applicants or to retain in employment people who have taken illegal drugs, regardless of whether or not this affects their capacity to do the job in question. Some employers may see themselves as having a quasi-policing role with respect to the workforce, and view drug testing as a means of discouraging socially unacceptable and illegal forms of behaviour. Finally, a stigma can attach to people who have a history of drug and/or alcohol problems, including those in treatment, and this may affect employers' attitudes.

1.1.4 Against drug testing

Aside from doubts that drug testing has the benefits that are claimed, there are several arguments against drug testing at work.

- 1 *What is being identified?* It is suggested that, as a drug test does not identify impairment, but merely the presence of metabolites that indicate past use, this is not useful or appropriate information for an employer.

- 2 *Breakdown of trust*: a workforce, believing itself to be under surveillance, may no longer trust the employer and withdraw goodwill.
- 3 *Inability to recruit qualified people or the loss of key staff*: it is suggested that some people might prefer not to work for employers who test for drugs. In addition, it is argued that, by dismissing an employee after a positive drug test, a member of staff, in whom a long-term investment might have been made, is lost to the organisation.

1.1.5 The key questions

It is actually misleading to talk about *the* issue of drug testing at work. The reality is that the pertinent arguments will vary significantly depending on what type of drug testing is under consideration and for what purpose. For example, the use of random drug tests as a means of detecting and deterring the use of drugs or alcohol on a building site or at a quarry will raise different questions to the use of pre-employment screening to exclude prospective employees because of a general reluctance to offer employment to candidates who have used illicit drugs in the past. Similarly, the information that someone is intoxicated at work has a different significance for employers than the information that someone may have used drugs at some time in the past few months. In short, there are a whole range of issues involved in 'drug testing at work' depending on the *type* of testing, the *purpose* of testing and the *context* for testing.

Drug testing: what happens?

For the most part, the companies that gave evidence to the Inquiry and carried out drug testing did so by taking urine samples. At the pre-employment screening stage, the most common approach was to use a presumptive test kit (for example, a dipstick) and make a decision about a job applicant based on this result. Testing may be part of the general medical examination that is carried out as part of the recruitment process and people may be offered a job pending the result from the laboratory.

When existing employees are tested, the companies that gave evidence to the IIDTW either, as a first step, used a presumptive testing kit and, as a follow-up, sent the sample to a testing laboratory for confirmation or else they sent samples directly to a testing laboratory. Typically, a laboratory or testing agency will be contracted to perform this task and will collect two samples: the first is analysed by the laboratory, the other is frozen. If the veracity of the first result is challenged then the frozen sample can be sent to another laboratory.

Some companies set aside a specific room where people were required to give a sample. If this is a toilet, then taps may be sealed and something may be added to the water to avoid tampering with the sample. Other companies will send people to a medical centre or hospital to have a sample taken. The IIDTW heard of

(continued overleaf)

incidents of people being asked to strip down before giving their sample, but this is rare. Nor is it normal for someone to be present to supervise the production of samples, although this is common practice in the army.

The result of a drug test is legally defensible only if it can be proven that a correct chain of custody procedure³ has been followed in sending the sample to the laboratory, to ensure that it could not have been tampered with or mixed up with another sample.

1.2 How do drugs affect people at work? The science

Why should employers be concerned if people are actually turning up for work under the influence of drugs?

Drug use can affect the individual's capacity to perform a whole range of work-related tasks and functions.

The obvious example is drink driving. Where people are driving under the influence of alcohol, this impacts on their perception, motor skills, decision making, attitudes to risk and so forth. Similarly, people put themselves and others at risk when they drive or operate machinery at work under the influence of alcohol or other, illicit, drugs with similar psycho-active properties.

Where an individual is under the influence of alcohol or drugs, this may affect productivity and the capacity to deal with colleagues and the public.

So, in one sense, the answer to this question is obvious: it is a bad thing if people are

intoxicated at work. In addition, ability to perform at work may be negatively affected by the after-effects of drugs and alcohol – including hangovers and the 'come down' experience that can follow the use of illicit drugs, as well as experience of withdrawal symptoms. Nonetheless, the issues are not entirely straightforward. Three points in particular should be noted.

- 1 Different drugs have different effects. Some drugs may be used in the belief that they *enhance* performance. For example, amphetamines may reduce fatigue in the short term and enable people to 'keep going' (for example, there is evidence of their use among long-distance lorry drivers and by the armed forces in specific circumstances).
- 2 The grounds for concern about drug use at work do not neatly map on to the legal–illegal distinction. Alcohol may impair performance at work to the same – or even a greater degree – than cocaine or amphetamines. Many prescription and over-the-counter drugs have side effects. Licit drugs can be a source of impairment too.⁴
- 3 People who are undergoing treatment for drug use may be prescribed substitutes, such as methadone, which may show up in drug tests, and could impact on performance.

While the general reasons for worrying about the impact of drug use at work are straightforward, there are some complexities. Different psycho-active substances (licit and illicit) will have different effects and there is

much that is unknown about the impact of psycho-active substances on productivity and safety at work.

1.3 Does it work? The science

To begin with, it is necessary to address some obvious practical questions about drug tests. How are they carried out? Has a 'chain of custody' (ensuring that a sample is intact and could not have been tampered with – see note 3, this chapter) been strictly adhered to? Do drug tests work? How reliable are test results? What do they tell us? What don't they tell us? The answers to these questions will, of course, vary depending on the kind of testing that is under consideration.

1.3.1 What drug tests do

Drug tests can indicate whether a drug or metabolite is present in the body of the subject.

A drug test will generally reveal only the presence or absence of the particular substance that is being tested for. It will be possible to detect whether a drug has been used over a limited time period only. This 'detection period' will vary depending on the nature of the substance that is being tested for and the type of testing.

1.3.2 What drug tests don't do

For the most part, drug tests can indicate only that a drug or its metabolite is present, and cannot provide a direct measure of impairment or intoxication. The main exception to this rule is breath tests for alcohol. By contrast, other forms of testing pick up different information. The testing of human hair for the presence of cocaine or heroin may reveal the presence of

drugs that were taken months – or even years – previously, while failing to pick up evidence of use over the previous few days.

Drug tests are not a reliable indicator of levels of intoxication and impairment. For the most part, a drug test will not prove that its subject was intoxicated at a particular time, nor provide a reliable guide to the degree of impairment that exists where drugs are used. Another limitation of most drug testing is that it provides little information on an individual's pattern of drug use – that is, whether he or she is an addict, a regular user, irregular user or one-off user.

1.3.3 How reliable are the results? Cut-off levels

Testing equipment can be sensitive enough to detect very low levels of substances that have found their way into the body other than through illicit drug use. In other words, drug tests may be too sensitive. The use of over-the-counter drugs can produce a positive test for illicit substances – for example, the use of codeine (which is available in over-the-counter painkillers) can result in a positive test for opiates.

This problem has led to some bitter controversies about the reliability of positive test results for sports personalities and there is presently a debate about appropriate 'cut-off' points for recording a positive or negative reading in the workplace.⁵

One way to deal with this problem is to identify cut-off points so that detection of low concentrations of substances are not recorded as a positive result for the purposes of determining whether the subject has used an illicit drug.

But this is not unproblematic.

If cut-off points are set too high, then the concentration levels of opiates within the body will fall rapidly below the cut-off level following consumption, and the ‘window of opportunity’ for getting a positive test for a drug like heroin will be extremely narrow.

If the cut-off is high, someone who tests positive for an opiate on Tuesday may test negative by Wednesday. On the second day, there will still be significant traces of opiates in the body, but they may fall short of an excessively high cut-off point.

An interesting, and related, point is that surprisingly little is known about the impact on behaviour of given quantities of drugs. Thus, A.C. Grayling – a Commissioner on the Inquiry – comments in his evidence that many of the ethical issues concerning drug testing would be clearer ‘if medical evidence suggests that some residual trace of a given substance marks a limit below which no adverse affects can be expected’. But, in fact, the science in this area is underdeveloped. The precise relationship between the levels of drugs present in the human body and the impact on behaviour is not well understood, and will vary a great deal depending on the substance. This was confirmed for the IIDTW by a witness from the drug-testing company Tricho-Tech, who explained that ‘the level of drugs present can be measured in external agents like saliva, urine, hair and blood. But we cannot measure the quantity that needs to be present in the brain to induce a particular status. The relation between the level in percentage of a certain drug and its effect is therefore not clear’. Indeed, the effective doses of different drugs can vary by several hundred or thousand fold, so that the level of detection that is set for one drug may be wholly unsuitable for another.

1.3.4 How reliable are the results? More on false positives

The term ‘false positive’ is used to describe a situation in which someone tests positive for a drug, but has not consumed that drug over the relevant time period.

As indicated in the previous section, there are a number of potential sources of ‘false positive’ results.

- 1 *The cut-off concentration levels are too low:* for example, someone who has eaten a bread roll sprinkled with poppy seeds tests positive for heroin.
- 2 *The subject of the test has consumed licit drugs that invalidate the result:* over-the-counter or prescribed drugs may produce positive results for illicit drugs. For example, occasional users of the American version of a Vicks Nasal Inhaler have tested positive for amphetamines or methamphetamines.⁶
- 3 *Passive consumption:* as the debate about passive smoking has highlighted, a positive test could, in theory, result from the passive inhalation of substances. For example, somebody who has recently been in a room where cannabis has been smoked could, in theory, test positive for cannabis.

Of course, the possibility of false positives does not invalidate drug tests, although it does mean that their results need to be treated with a degree of caution. It should be noted that these problems are by no means unique to drug testing, but are equally applicable to other forms of screening – for example, for cancer and other diseases – which are not infallible either. The issues that drug testing raises can be illuminated by considering the wider debate on the science and ethics of screening.

In recent years, better scientific knowledge and improvements in testing techniques and protocols have significantly reduced the likelihood of 'false positive' results.

Where an initial oral fluid or urine test shows up positive in a cup or vial by a change in colour, it is now widely recognised that such positive test results need to be followed up by a full, more costly laboratory test in order to be relied upon. There may be an alternative – and 'innocent' – explanation for the presence of an illicit drug. This may emerge only after review of a pre-test interview, in which subjects are asked whether they have taken any over-the-counter or prescribed medications. There are documented cases of people giving wildly improbable explanations for the presence of drugs in their bodies, which have turned out on further examination to be true.

1.3.5 How reliable are the results? False negatives

The term 'false negative' is used to refer to a situation in which someone tests negative for a particular drug, but has in fact consumed that drug in the relevant time period of concern to the tester.

For the most part, the causes of 'false negatives' are simply the corollaries of 'false positives'.

- 1 If cut-off concentration levels are set too low in order to deal with false positives, this will result in positive results being dismissed as unreliable in some cases where the subject has consumed illicit drugs.
- 2 The 'window of opportunity' for detecting drugs in the human body will vary depending on the type of test, the particular

substance that is being tested for and the level at which the relevant cut-off has been set. For example, heroin will leave the body much more quickly than cannabis and a urine test for cocaine or heroin will be reliable for a period of two to three days, whereas a hair test may be able to detect these drugs in the human body over a period of several months (see Table 1).

- 3 There are masking agents and adulterants that can be used to corrupt test results. Increasingly, these substances may be tested for as well as the drugs themselves.

The results of drug tests need to be treated with some caution, as testing procedures are fallible. It is also important to be clear what particular drug tests can and cannot do. A test that can reveal the presence of heroin that was taken by one person months previously may not detect that another subject was actually on heroin at the time the test was taken. Another type of test may pick this up, but will not be able to detect that the subject used cocaine or heroin a few days earlier. It is important to be aware of these limitations.

But, at the same time, drug-testing methods and technologies are getting increasingly sophisticated. For the most part, and within these limitations, it is possible to be reasonably confident about test results, so long as the proper procedures are followed. But the detection of drugs or their metabolites in the human body will often tell us little or nothing of value about impairment or the impact on performance. It is another question, of course, whether 'tests work' in the sense that they are an effective means to the ends of employers, including reducing accidents, cutting

Drugs testing in the workplace

Table 1 Drug testing, detection times and reliability

Type of test	Urine	Saliva	Sweat	Blood	Hair
Detection time	2/3 days	24 hours	24 hours to 2/3 days	Up to 31 hours	1 week to 18 months
Reliability	Most researched. Has been around for 20 years. Best test for cannabis use. Sample needs to be stored and preserved properly. Most open to fraud (substitution of samples). On-site positive result needs lab confirmation.	Good for recent drug use (cannabis and opiates in particular) but a mouth wash would adulterate on-site test. Samples need refrigeration. Dipsticks can be used for on-site results (e.g. can test saliva at the road side), positives need confirmation.	Drug patches used mainly for monitoring. Detect up to a week while worn. Drug swipes up to 24 hours but not very reliable. Police have tried but doesn't work efficiently.	Open to fraud, sample needs careful storage and preservation, needs lab analysis. Not done for on-site results.	Cannot detect alcohol. Not appropriate to detect recent use, needs lab analysis.

Drug/drug type	Drug detection times
Alcohol	6 hours to 1 day
Amphetamines	1 to 4 days
Benzodiazepines	Short-term therapeutic use: 3 days Long-term chronic use: 4 to 6 weeks
Cocaine	2 to 5 days
LSD	1 to 4 days
Marijuana	Casual use: up to 7 days. Chronic use: up to 30 days or longer
MDMA	1 to 4 days
Mescaline	1 to 4 days
Methadone	1 to 7 days
Methamphetamines	1 to 4 days
Nicotine	1 to 2 days
Opiates (including heroin)	1 to 4 days
Propoxyphene	1 to 7 days
Psilocybin (Mushrooms)	1 to 3 days
Steroids (Anabolic)	Oral: 2 to 3 weeks. Injected: 1 to 3 months. Nandrolone: up to 9 months
Tricyclic Antidepressants	1 to 9 days

Source: this table is reproduced from a Factsheet that appeared in *DrugLink*, Vol. 19, No. 2, March/April 2004.

absenteeism, increasing productivity and enhancing the reputation of the organisation. These important issues will be examined in detail later in this report, when the principal findings of the IIDTW are set out and discussed.

1.4 The law

Drug-testing technologies are not infallible. However, it is possible, within strict limits, to find out a great deal about people's alcohol and drug use by testing. It can be done, but should it be done? Is it permissible for employers to drug test their staff – and, if so, in what circumstances? Is it ever encouraged or required? What are the rights and responsibilities of employers and employees in this area? The answers to these sorts of questions will vary significantly depending, for example, on whether testing is about safety and performance at work or behaviour outside the workplace that has no demonstrable implications in terms of impairment at work.

To summarise, there are a number of aspects of drug testing that raise ethical and legal issues. In particular:

- employees taking illicit drugs are engaging in an illegal activity
- employers have health and safety responsibilities to their employees and to the public at large
- employees may lose their livelihoods, face other disciplinary action or be stigmatised where they test positive for drugs
- testing may be perceived as a violation of the integrity and privacy of the individual, particularly in the absence of consent

- drug testing can reveal sensitive information about people that should not be used in inappropriate ways.

This section takes a close look at the legal status of drug testing in the UK, while the following section discusses the wider ethical questions.⁷

1.4.1 An emerging issue for jurisprudence

In his evidence to the IIDTW, leading barrister Michael Ford explained that drug testing at work had been 'a matter for unconstrained management prerogative' for years, but that this 'is now less so'. So what has changed? Of most significance, two landmark pieces of legislation were passed by the UK Parliament in 1998: the Human Rights Act and the Data Protection Act. Both have considerable potential relevance to the legality or otherwise of different forms of drug testing.

However, as a number of witnesses to the IIDTW stressed, the precise significance of these legal instruments is unclear. As Michael Ford explains 'there has been little case law on the Human Rights Act and the Data Protection Act in relation to the issue of drug testing ... quite how extensive an incursion the legislation will make into management prerogative in this area remains a matter of considerable uncertainty'. He proceeds to note that any discussion of the law on drug testing is bound to 'venture into uncharted territory'.

What is clear is that drug testing raises fundamental issues for law and ethics. As Gillian Ferguson, from Matrix Chambers, explains in her evidence to the IIDTW, this is a legally and ethically controversial area, which is likely to generate many future cases for the

consideration of employment tribunals and law courts because of the tensions between the interests of employers and employees. 'From an employer's perspective', she comments, 'key reasons for testing include compliance with health and safety laws, enhanced productivity and the promotion of public confidence. Standing in potential conflict with these are the employees' interests in privacy, dignity and bodily integrity.'

This is a controversial area of law.

1.4.2 'Unconstrained managerial prerogative'

Leaving aside anti-discrimination provisions (see below), UK employment law has had little to say about drug testing at work. To paraphrase Michael Ford, the reality is that employers have been able to do pretty well as they choose.

1 *Pre-employment*

Outside of anti-discrimination law, an employer is highly unlikely to be open to legal challenge for refusing to employ a candidate who tests positive for drugs, or who refuses to take a test, or who has lost a job in the past because of an alcohol or drug problem. This has traditionally been treated as a matter of freedom of contract – if the employer chooses not to enter into an agreement with a prospective employee, for whatever reason, then that is, literally, his or her business.

2 *Assault and consent*

Employers cannot physically compel their staff to submit to drug tests. An employer who attempted to take, say, hair or blood by force would be committing a crime. In practice, however, this legal prohibition on assault will

place little or no restriction on the employer's ability to drug test staff and/or potential employees. For the most part, potential employees will consent to drug testing if they know that the alternative is to be no work or a damaged career. Subsequently, if refusal to take a test is treated as a positive result, an employee has little real choice.

In organisations that do testing, it is common for employers to make it an express term of contract that an employee submit to a drug test if required. In addition, there is an implied condition in employment contracts that an employer will not act in ways that will damage relationships of trust without good reason.⁸ The IIDTW was advised that 'so long as an employer can point to some possible reason for justifying drug testing of an employee – which might simply be the effect on its reputation if its employees are known to be taking drugs – testing is unlikely to breach the implied term'.

Employers cannot force anyone to take a drug test, but, under employment law, they can refuse to employ anybody who says 'no'. And they can treat refusal to submit in the same way as they would treat a positive test.

3 *Dismissal*

Generally speaking, employers have wide discretion, as a matter of contract, to determine what kind of matters will result in disciplinary action and what the sanctions will be. However, if an employer sacks somebody, this brings another area of employment law into play. Employees, so long as they have been in their current jobs for at least 12 months, are protected against 'unfair dismissal' by the Employment Rights Act 1996.⁹

Legal experts told the IIDTW that it was highly unlikely that an employment tribunal would feel that a dismissal was unfair if there was evidence that drug or alcohol use affected performance at work – and particularly not if there were health and safety considerations.

For a dismissal in these circumstances to be judged 'fair', however, it will probably be necessary to demonstrate *some* link between an employee's drug and alcohol consumption and their work. The IIDTW heard that employment tribunals have tended in the past to accept whatever employers have told them about what will and will not affect work. It has been common for tribunals to accept justifications for dismissal that gesture towards some general and rather vague claims about the adverse effects of drug use on the organisation's reputation. But this may be starting to change. leading barrister Michael Ford told the IIDTW 'it is probably true that tribunals nowadays increasingly tend to expect some stronger links between drugs and performance at work' and are not so ready to settle for 'vague claims' about reputation.

Employers may also run into trouble if proper procedures have not been followed in cases resulting in the dismissal of staff. An employment tribunal may want to know, for example, whether employees were warned of the consequences of drug use and whether the employer followed its own internal rules in the case in question.¹⁰

Unfair dismissal cases

Racal Services v. Flockhart EAT 701 / 00

The Employment Appeal Tribunal ruled that the dismissal of a safety-critical trackside worker who tested positive for cannabis had been 'fair', and this was the only conclusion open to an employment tribunal. In addition, on-duty consumption of drugs or present impairment is likely to constitute a legitimate ground for dismissal even when there are not these kinds of safety considerations.

Mathewson v. R.B. Wilson Dental Laboratory [1998] IRLR 512

A dental technician purchased some cannabis during his lunch hour for his personal use and was arrested and later fined. He admitted the offence to his employers immediately and was summarily dismissed. There was no suggestion that the employee took cannabis while at work. The tribunal held that nevertheless his dismissal was fair because it fell within the band of reasonable responses and this decision was upheld on appeal. Relevant considerations included the skilled work performed by the employee and the possible influence on younger members of staff.

Booth v. Southampton Airport Ltd, EAT Case NO 39214 / 81, IDS Brief, December 2002

An air traffic controller was dismissed for off-duty cannabis use. This was held to be a fair dismissal even though there was no

(continued overleaf)

evidence it affected his work in any way. The employer justified the dismissal by referring to the importance of preserving public confidence in the service.

Norfolk v. Bernard [1979] IRLR 220

A drama teacher was dismissed following his conviction for the possession and cultivation of cannabis. In the absence of any evidence that the drug conviction or drug use had affected or would affect his work or the employer's reputation, an employment tribunal found that the dismissal was unfair and this decision was subsequently upheld by the Employment Appeals Tribunal.

4 References

Where an employee is dismissed for failing a drugs test, it may be very difficult to get another job. An employer who had dismissed an employee for a positive drug test would be likely to pass this information on to a prospective new employer – not least because failing to provide this information could leave the previous employer open to legal action if drug or alcohol use by the employee subsequently led to serious problems in the new job.¹¹

1.4.3 The responsibilities of employers

Is there anything that employers are legally required to do about drugs at work? After all, if they fail to take effective action to prevent their employees working under the influence of alcohol or drugs then this could result in accident and mortality.

Three key legal instruments are of relevance here.

- 1 *The Health and Safety at Work Act 1974*: employers have a duty to protect their employees' health, safety and welfare in the workplace. They are also legally responsible for the welfare of third parties.¹²
- 2 *The Management of Health and Safety at Work Regulations 1999*: these regulations oblige employers to conduct assessments of health and safety risk to their employees and third parties.¹³
- 3 *The Transport and Works Act 1992*: it is a criminal offence for certain workers – including drivers and conductors on buses or trains – to work under the influence of alcohol or drugs.¹⁴ Under these circumstances, if the employer has not exercised 'due diligence' in ensuring that the employee is not under the influence of alcohol or drugs, he or she is also guilty of a criminal offence. The avoidance of criminal liability, alongside the obvious safety concerns, has led many to introduce drug-testing programmes.¹⁵

Although these legal instruments do not expressly require employers in the relevant safety-critical industries to have drug-testing programmes, they have provided them with an incentive to do so.

The issue of drug testing is moving up the health and safety agenda in a society where problematic forms of alcohol and drug use are increasing among the working population. The Health and Safety Executive (HSE) has identified drug misuse as an important workplace issue. In a recent guidance document, *Drug Misuse at Work*, the HSE concludes that drug testing is a sensitive area,

and will be embraced by staff only as part of a wider occupational health strategy that has clearly been designed to minimise risk (Health and Safety Executive, 1999).

There is no direct legal requirement for employers to test employees (or prospective employees). In so far as drug testing is currently one means of meeting a legal obligation in the UK, it is because of health and safety law.

There is a qualification to this, however. Illicit drugs are illegal. In certain circumstances, employers who knowingly allow drugs to be used on their premises may be vulnerable to prosecution under Section 8 of the Misuse of Drugs Act 1971.

1.4.4 Legal protection for employees

Employees are entitled to protection of their health and safety at work. This is the basis of a strong argument for drug and alcohol testing. But people may also need legal protection to ensure they are not subjected to workplace procedures that violate their rights, invade privacy without good reason or are insufficiently respectful of their dignity as human beings. People cannot be physically compelled to submit to drug tests, as this would constitute criminal assault. But what other legal protections apply to drug testing at work?

1 *Discrimination*

An employer should not target alcohol or drug testing disproportionately at, say, young black men – or, indeed, at young men. It is also important to ensure that the way that drug testing is actually conducted takes proper account of ethnic, cultural and religious differences and sensibilities. Employers who discriminate against job applicants, staff or

contract workers on the basis of race, sex or disability (or, indeed, because they are members of trade unions) are likely to face action under anti-discrimination legislation.¹⁶

These laws also place limits on what employers can do with the information that is obtained from a drug test. For example, a test may (incidentally) reveal that somebody is taking prescription medication.¹⁷ An employer would be in breach of discrimination law if he or she declined to offer a job applicant employment on these grounds – or discriminated in other ways, such as turning someone down for a promotion or an internal transfer. This area of law may receive greater attention as prescription drugs containing cannabis become available for the treatment of some disabilities.

It might be argued that an alcoholic or someone with a drug dependency *is* ‘disabled’. This is not the legal position. The Disability Discrimination (Meaning of Disability) Regulations 1996 state that dependency on drugs and alcohol is not a ‘disability’ for the purposes of the Disability Discrimination Act 1995. There is a significant exception to this, however. Where someone has developed a mental health problem as a result of taking prescribed drugs, or undergoing medical treatment, this could potentially qualify as a ‘disability’.¹⁸

2 *Privacy*

Human rights

Individuals are entitled to a private life, outside of the workplace.

This right is recognised by the European Convention on Human Rights (ECHR), which was incorporated into domestic law by the Human Rights Act 1998.

Article 8 of the ECHR declares that ‘everyone has the right to respect for his private and family life, his home and his correspondence’.

This protects bodily integrity and requires free and informed consent to drug testing.¹⁹ Of course, it is unlikely that any employer would physically force someone to take a drug test. However, bodily integrity would also be violated if a blood or other sample was taken under another pretext and subsequently used for drug-testing purposes without the consent of the individual.

Other than this, the IIDTW was told that the impact of both human rights and data protection legislation was still a matter of ‘considerable uncertainty’.²⁰

What can be said with confidence is that Article 8 *could* have implications for the way the law deals with drug testing at work. Leading barrister Michael Ford told the IIDTW that ‘in view of changing attitudes to drug use and the growing evidence of widespread use of recreational drugs, it is plausible that in future drug use may be seen as an aspect of private life’.

However, even if drug use did come to be seen as an essentially private matter, the right to private life could still be overridden under Article 8 ‘in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’.

This is another significant hurdle to Article 8 being invoked to limit the power of employers.²¹

With this in mind, Michael Ford comments in his evidence to the IIDTW that the indications

are that ‘courts and tribunals will be slow in departing from their traditional approach, in which the right to private life in the context of work relationship has hardly figured at all’. He adds, however, that ‘the long term trend is less clear’.²²

There is a further, and very significant, restriction.

Under the Human Rights Act 1998, the rights contained in the ECHR can be invoked directly only against a ‘public authority’. The applicability of the right to privacy will depend not only on correct interpretation of Article 8, but also on whether or not the employer in question is a ‘public authority’.²³

Pressure from the labour movement

In the longer term, a range of external factors are likely to have a significant impact on the interpretation of Article 8. For example, organisations that represent the interests of the workforce will want to influence the development of drug testing at work, notably the trade union movement – as, of course, will employers’ bodies.

The International Labour Organization (ILO) adopted a set of guiding principles on alcohol and drug testing in the workplace in the early 1990s.²⁴ These principles could influence the way that Article 8 is interpreted by tribunals and courts in the UK, particularly given the role that British trade unions play in representing employees in unfair dismissal – and other relevant – cases.

Where an employer is testing, the ILO guidelines state that:

- there should be a formal written policy on testing

- methods of testing should be of the highest quality and reliability
- the objective of testing should be clearly defined and articulated
- it must be clearly demonstrated that testing can reasonably be expected to achieve its intended goals
- the substances to be tested for should be identified
- the test results should be kept confidential.

The Guidance states that ‘workers should have the right to make informed decisions about whether or not to comply with requests for testing’. It continues:

Rights of workers to privacy and confidentiality, autonomy and fairness, and integrity of their bodies must be respected, in harmony with national and international laws and jurisprudence, norms and values. Employees who refuse to be tested should not be presumed to be drug or alcohol users. The need for testing should be evaluated with regard to the nature of the jobs involved. With some jobs, the privacy issues may be determined to outweigh the need to test.

The substantive issues raised by this statement of principle are discussed elsewhere in this report. It should be noted here only that the development of drug-testing policy, and the interpretation of Article 8, is not only a matter for dispassionate deliberation in the law courts. This is an area where there is a potential for divergence between the interests of employers and employees, and some of the key issues are open to political contestation. It is against this

background that the relevant human rights instruments will be interpreted and implemented.

Data protection

Drug testing is a means of obtaining information. This information can be used in a variety of ways.

The Data Protection Act 1998 – which itself draws on Article 8 of the ECHR – sets out a series of legal requirements for obtaining, recording, processing, holding, using or disclosing information.

The first three data-processing principles are of particular significance to drug testing at work. They are:

- 1 personal data must be processed fairly and lawfully
- 2 personal data must only be processed for a specified lawful purpose
- 3 personal data must be adequate, relevant and not excessive in relation to the purpose for which it was processed.

The experts who advised the IIDTW felt that these principles placed real constraints on the scope of employers. Gillian Ferguson, of Matrix Chambers, argued that ‘Data Protection Act compliant drug testing will have to be carefully tailored to specific purposes ... unreasoned and unnecessary testing will not be acceptable’. Michael Ford agreed: ‘plainly, the application of these principles will have a significant effect on drug testing by employers: in general terms employers will have to be much clearer as to the purpose of drug testing and be able to justify that testing in the light of how it affects their workers and their right to respect for private

life'. He added that 'it may also prove difficult for them to rely on blanket "consents" obtained through clauses written into contracts of employment to which individuals have little choice but to agree'.

In addition, the Data Protection Act places strict controls on the handling of sensitive data obtained from a drug test – such as the information that the subject has committed a criminal offence by using an illicit substance or is taking a prescription drug.

To summarise: employment law appears to strongly favour the employer. However, it appears that other emerging areas of law are starting to provide a counterbalance to 'unconstrained managerial prerogative', notably the Human Rights Act and the Data Protection Act. However, this all remains uncharted – and politically contested – territory. It is not yet clear precisely how the courts will interpret Article 8 or the data protection legislation.

More pressure for a health and safety focus?

The precise application of the data protection principles to drug testing will depend on what is and what is not considered to be a good reason for processing this information. Here, as elsewhere, there are indications that the acceptability of testing may hinge on whether it has a legitimate health and safety purpose.

The impact of the Data Protection Act on employment practice has so far been limited, perhaps because its full implications have not yet become clear to employers. To date, there has been very little litigation, in part because there is not much scope for it.²⁵

The issue has recently been clarified with the publication in November 2003 by the Information Commissioner of the consultation draft of Part 4 of the *Employment Practices Data*

Protection Code (this document is on the Information Commissioner's website at www.informationcommissioner.gov.uk).

According to the draft Code, the legitimacy of drug testing depends on showing that there are health and safety concerns and providing evidence of real (not assumed) impairment of performance; it also casts doubt on the legitimacy of the practice of random testing in all but safety-critical industries. Thus it suggests that 'the collection of information through drug and alcohol testing is unlikely to be justified unless it is for health and safety reasons'²⁶ and recommends that employers should 'confine testing to those workers whose activities actually have a significant impact on the health and safety of others'.²⁷ Even in safety-critical industries, 'workers in different jobs will pose different safety risks', so that '[t]esting of all workers in a business will not be justified if in fact it is only workers engaged in particular activities that pose a risk'.²⁸

The Code recommends that the purpose of testing should be to 'detect impairment at work rather than illegal use of substances in a worker's private life'. Testing for illegal use may, however, be justified, according to the Code, where such use would 'breach the worker's contract of employment, conditions of employment or disciplinary rules, and cause substantial damage to the employer's business, e.g. by seriously undermining public confidence in the integrity of a law enforcement agency'.²⁹

The *Supplementary Guidance* issued along with the Code urges employers to '[t]ake particular care when carrying out an assessment of whether drug testing is justified on health and safety grounds', and to bear in mind that 'other than in the most safety-critical areas,

regular drug testing is unlikely to be justified unless there is reasonable suspicion of drug use that has an impact on safety'.³⁰ It suggests that employers should employ drug testing only if it provides significantly better evidence of a health and safety danger than the available alternatives, such as tests of cognitive ability, and recommends that employers should therefore use tests that are designed to detect recent exposure.³¹

Such a health and safety emphasis is common to many jurisdictions. In Canada, for example, workplace drug testing constitutes a 'bona fide occupational requirement' only if it is conducted for a purpose that is 'rationally connected to the performance of the job'. Or, again, France directly authorises alcohol testing *only* of employees who are employed in particular safety-sensitive positions. Similarly, drug testing is permitted in the Netherlands if there is a major risk to the safety of the employee, co-workers or third parties. The United States may seem to provide an exception to this general rule. However, while extensive drug testing in the United States was initially motivated by concerns about crime and productivity, the justificatory emphasis has since shifted to health and safety.

Data protection: quality assurance and procedural matters relating to tests

The Information Commissioner's draft guidelines referred to in the previous paragraphs also advise employers that they must justify and communicate the criteria on which those to be tested are selected. Covert testing should not be used. Drug and alcohol testing should be of sufficient quality to support decisions made on the basis of the tests and should be conducted and interpreted by a

person suitably qualified and competent in the field of drug testing.

A note on consent

If the legitimacy of drug testing is increasingly thought to depend on the purpose for which it is conducted, then this implies that less importance is attached to the issue of consent.

Of course, to test someone without their consent is against the law, so consent is legally significant in this respect. But, if a drug test serves no legitimate purpose, then the consent of the employee is not obviously going to be sufficient to legitimise it. Thus, in the conclusion to her research paper, Gillian Ferguson of Matrix Chambers comments that 'employee consent is increasingly regarded [by the law] as a spurious basis on which to conduct tests'. This is because it is recognised that there is a substantial inequality in bargaining power between employees and employers – and between job applicants and prospective employers. Bluntly, it is hard to say no.

3 Dignity

Even where drug testing is permitted, encouraged or required by the law, there could still be a possible legal challenge if the way it was conducted was inappropriate. In particular, Article 3 of the ECHR protects the individual from cruel and degrading treatment. For example, the courts have held that a lack of privacy in prison toilet facilities can contribute to 'degrading treatment' of prisoners.

This article might be invoked if testing was conducted in a particularly brutal and insensitive manner. For example, a representative of Amicus, the UK's largest manufacturing trade union, told the IIDTW of one case in which a bald staff member was

required to provide a sample for a hair test. He was told that a sample – approximately the size of a pencil in circumference – would be taken from his underarm hair or pubic hair. When he declined to take the test, he was dismissed for refusing to comply with a ‘reasonable request’.³² This sort of practice is a matter for some concern. But it would probably be overstating the case to say that it constituted degrading treatment for the purposes of Article 3.

The lawyer’s evidence

The IIDTW wrote to 136 lawyers across England and Wales who specialised in employment law, inviting them to give evidence. The majority did not believe they had much to contribute to the IIDTW’s inquiry, as, significantly, they had not been involved in cases where alcohol or drug testing was an issue. None of the lawyers who the Commissioners spoke to felt that alcohol and drug use in the workplace was a significant problem for the businesses that they represented.

A lawyer from a leading firm of UK solicitors, who mainly represents corporate and multi-national clients from the United States, reported that 20 per cent of these clients did some form of drug testing, and numbers were increasing. He told the IIDTW that some employers are aware that cannabis metabolises slowly and can show up in a test long after it has ceased to impact on performance, but that there is still a tendency to deal with all drug use as a disciplinary matter. For many companies, a positive test will result

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in dismissal in the absence of any evidence of an effect on performance. This witness expressed concerns that a minority of managers might be tempted to abuse drug testing to ‘manage out’ unwanted employees. He also commented:

I have known one company that had a ‘snorting room’ in the City. People turn a blind eye with regard to drugs and alcohol – but also with a range of other behaviours – because they don’t want to lose a key employee ... someone who can make a lot of money.

A representative from Thompsons Solicitors – the largest firm of trade union solicitors in the country – had a number of concerns about the legal status of drug testing. He commented that an Employment Tribunal is likely to consider dismissal for drug use as being within the ‘band of reasonable responses’ to ‘gross misconduct’. He believed that this gave employers too much latitude to act in a discriminatory way, and he argued that a positive drug test should not be a justification for dismissal in the absence of evidence of impaired performance. Random drug testing for an entire workforce could seldom if ever be justified, he thought, and there should be safeguards where staff are tested – for example, committing organisations to support the rehabilitation of staff with drug or alcohol problems.

A partner in a large regional practice, which is the solicitor for a number of safety-critical industries, reported that the

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most common reason for introducing testing was pressure from a parent or partner company in the United States. She reported that almost all US companies want drug testing introduced if they are to do business with organisations in the United Kingdom and claimed that all Fortune 500 companies³³ have pre-employment tests and random testing. She commented on the problems that small and medium-sized companies can have in developing the infrastructure to enable them to drug test and the general reluctance of employers in the UK to 'police society'. It was her view that the firm's client base was cutting back on drug testing – primarily because of the expense – and that, for the most part, businesses in the UK do not see alcohol and drugs as a big problem for them.

1.5 More on the rights and wrongs of drug testing: ethics

Discussion of the legal position on drug testing directs our attention to some of the broader moral questions. It is helpful to identify five issues in particular.

1.5.1 Private life, public life

A distinction between the public sphere and private sphere has been fundamental for liberal societies like the UK.³⁴ For a society that is committed to the values of toleration and autonomy, the mere fact that an action is disapproved of – or is harmful to the individual involved – does not, in itself, provide a compelling justification for interference with

personal choice and private life. Indeed, 'toleration' has been defined as 'the deliberate choice not to prohibit, hinder or interfere with conduct of which one disapproves, where one has both the requisite power and the knowledge'.³⁵

Perhaps the best known statement of this principle is found in J.S. Mill's *Essay on Liberty* (1859). Mill writes that:

... the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

It can be argued that the state is sometimes justified in acting, paternalistically, to protect individuals from the harmful consequences of their own actions. This is epitomised, for example, in the UK's drug laws. Nonetheless, there is, in general, a strong presumption against interfering with individual freedom, which can usually be overridden only by demonstrating that this is necessary to protect others from harm.

In his evidence to the IIDTW, the philosopher A.C. Grayling – a Commissioner for the Inquiry – argued that liberal societies accord a special moral weight to the rights and freedoms of individuals, but that these freedoms can be limited where third parties are affected or harmed. He comments, therefore, that:

... there is surely widespread agreement that [drug] use by people whose work affects the well-being, and even lives, of others must be a matter of special interest. No one would wish to be a passenger in an aeroplane flown by someone drunk or in a state of heroin-induced euphoria.

A.C. Grayling adds that employers are also justified in requiring their employees not to turn up for work in a condition where their intoxication, while not a threat to safety, is 'an embarrassment or a nuisance' (say, affecting an assistant in a retail outlet). In such cases, A.C. Grayling concludes that 'for cause' testing may be justified, but that random testing 'is, by the principle, unethical'. There are, A.C. Grayling argues, no grounds at all for workplace testing in all those cases where an individual's use of psychotropic substances affects nobody else. In such cases, drug testing at work offends against some of the fundamental principles that undergird a liberal-democratic society.

1.5.2 Privacy, liberty and law enforcement

If employees or prospective employees are taking cannabis or cocaine, then they are committing a criminal offence. On the face of it, this would seem to be of considerable importance to the arguments for and against drug testing at work. On closer inspection, however, it is of doubtful relevance. Of course, employers can have a legitimate interest in knowing whether the people who work for them have broken the law (hence the arrangements for disclosure of criminal records), but this is a different matter from permitting employers to test as a means of *actively* investigating employees and potential employees.

Nobody seriously argues that organisations should be granted the power to search the houses of job applicants, or to monitor the bank transactions of their staff, or to acquire stop and search powers. It is doubtful that there are better reasons why employers should have drug-testing powers simply *as a means to* check that employees are not breaking the law.

Furthermore, while employers do have an interest in activities of staff that impact on their capacity to work, there is no general obligation on employees to order their leisure time in such a way as to *maximise* productivity at work. It would be inappropriate for employers to have a say in what time their staff went to bed or the amount of exercise they get on weekends, although this could significantly affect performance. The fact that, say, having a drink in the evening can affect productivity the next day is not – in and of itself – sufficient to demonstrate that employers can legitimately concern themselves with the out-of-work activities of the people who work for them.

In his evidence, A.C. Grayling comments that:

... random testing which uncovers the subject's own-time private activities introduces a questionable grey area. Principally, it raises questions about the degree to which, in the absence of express agreement and definition, an employer can exercise influence over employees' private lives. Since these are a fundamental individual privilege, only the most careful mutual arrangements between individuals and those who employ them in safety-critical situations can be regarded as ethically sound.

A.C. Grayling proceeds to argue that, in all other employment situations, 'there can be no justification for invasion of privacy by an employer of this or any cognate kind'.

1.5.3 Purposes and outcomes

Implicit in much of the evidence presented to the IIDTW was an acceptance that drug testing at work did constitute an invasion of privacy and that there needs to be a compelling reason for

overriding this right. Many witnesses felt that the case for drug testing was strongest where the employer's *purpose* was to promote health and safety, or was about enhancing staff performance in some other way. But, it might be thought, what ultimately matters is not the *motivations* of employers, but the *outcomes* of drug-testing regimes. If drug tests do not improve safety or enhance performance, then the case for testing is weakened significantly. Does drug testing actually achieve its objectives? Is it an effective measure of impairment? Does it deter people from using drugs and alcohol at work? Does drug testing reduce absenteeism or increase productivity? These issues are examined in detail elsewhere in this report.

Even where there are good arguments for drug testing at work, there will also be ethical questions about the *type* of testing that is used. As a general principle, there is a clear case for saying that employers should adopt the least invasive drug-testing regime that is consistent with realising their ends. While drug testing will rarely – if ever – constitute ‘degrading’ treatment in the sense required to invoke Article 3 of the ECHR, it may be experienced as humiliating, uncomfortable or embarrassing.

1.5.4 Fairness

Testing should not be discriminatory. This is not simply a matter of avoiding discrimination on the basis of gender, race or disability, but also of making sure that *no* employee is ever ‘selected’ for testing without good reason. This effectively means that workplace drug testing – if it is not voluntary – should either be ‘for cause’, ‘post-accident’ or random, and within a transparent and agreed policy.

It is also important that any disciplinary

action taken against workers who test positive is fair and proportionate. There is the wider moral issue of whether an employee who is found to have a serious drug problem should be disciplined (for example, suspended or dismissed) or helped. To discipline staff simply for *use* of illicit drugs might be seen to constitute an arrogation of a law-enforcement role by the employer. This would imply that any disciplinary action should be focused on the consequences of impairment for performance at work rather than the consumption of a drug as such – otherwise loss of employment would effectively act as a sort of quasi-judicial sanction for breaking the criminal law.³⁶

But nor should the responsibilities of employees be neglected. Society takes a dim view of people who drive under the influence of alcohol. It is also wrong for people to turn up at work in a state of intoxication that makes them unfit for their work and that might put their colleagues or members of the public at risk.

1.5.5 Welfare

It is increasingly accepted that employers have a wider responsibility for the welfare of their staff than simply to protect them from accident and injury at work. Generally, employers would be thought to have ethical obligations, alongside any legal responsibilities, to deal in a sensitive and appropriate way with staff who, for example, develop significant health or mental health problems. In part, this is because depriving employees of work is likely to exacerbate such problems as people become increasingly reliant on workplace relationships for support and structure in their lives. Similar considerations will apply to staff with drug and alcohol dependency problems.

It is also arguable that employers have an ethical responsibility to ensure that the pressures of work are not so excessive as to increase significantly the chances that staff will turn to damaging forms of alcohol or drug use – for example, by ensuring work loads do not become unmanageable and by taking firm action to tackle bullying at work.

1.6 Social problems and social responsibilities

The issue of drug testing at work also needs to be placed in a wider social context. Work has a broad social significance. For many people, it is a source not only of income but also – and increasingly – of self-esteem, a structured life and social support and friendship networks. This means that the way that employers approach drug testing at work has wide repercussions for society as a whole. For example, if organisations refuse work to anybody with a history of drug or alcohol dependency – including people who are in, or have recently completed, treatment – then this will tend to exacerbate social exclusion. Similarly, if staff who fail drug tests are dismissed, then this could, in some cases, precipitate a downward spiral of exclusion and substance misuse.

There are obvious and strict limits to the extent that society can reasonably expect employers to shoulder responsibility for social problems. But it is important that these wider issues are not ignored in the debate about drug testing at work.

1.6.1 Drugs and social exclusion

Excluding people who use drugs from work will have a number of negative outcomes. These include:

- loss of income for individuals and their families
- potential exclusion from future employment
- potential loss of home and family relationships
- creating a net drain on, rather than a net contribution to, society.

1.6.2 The pressures of work

People do not develop alcohol and drug problems independently of everything else that is happening and it is important to be aware of the wider causes and contexts of problematic substance use. The problematic use of psycho-active substances can be a response to the problems of daily life. The workplace itself contributes to these pressures. There is a growing body of anecdotal evidence that the demands of work are greater than ever before, and that some people come to depend on alcohol and drugs as a way of dealing with these pressures.

The IIDTW heard from a number of employees who said that their drug or alcohol use was, in part, an antidote to the demands of the workplace. For example, one management consultant in his mid-twenties told the Inquiry about his experiences of working for an international consultancy firm. He explained that ‘people worked incredibly hard and very long hours ... the whole environment was pressure ... big stress – big pressure’. A woman in her late-twenties, working in telecommunications,

claimed that ‘in a time-deprived, working life, smoking cannabis is crucial to me to cope with the workload and hours’. It would be a mistake to attach too much significance to the remarks of one or two witnesses to the Inquiry, but these comments are suggestive and resonate with the experience of many. At the very least, it is evident that employment policies should ideally address the causes of problematic drug and alcohol use – for example, by recognising the need for a sensible work–life balance.

1.7 Conclusion

The issue of drug testing at work raises important questions about the legal obligations of employers and their wider social responsibilities. Most employers recognise that these sorts of considerations are a source of significant constraints on their employment policies. But their first concern must be for the efficiency of their organisations. When employers are developing drug and alcohol policies, they are – quite rightly – interested in the costs and benefits to them. A number of the points made in this detailed discussion of the scientific, legal, ethical and social issues raised by drug testing also have business implications, and will impact on the efficiency and productivity of organisations.

For example, there are the human resource costs of refusing employment to talented people, or of dismissing highly trained staff, for what may be a one-off or recreational and non-problematic drug experience. Particularly in a culture where experimental drug use is widespread, an ill-considered drug-testing regime may also have a negative impact on industrial relations if there is no clear rationale for testing. In addition, employers could be vulnerable to legal challenge, notably under the Data Protection Act.

How do employers hope that they will benefit from investment in drug testing and would any benefits offset these costs? In safety-critical industries, this is about health and safety obligations and a desire to reduce the incidence of accident, injury and mortality. Elsewhere, they may believe that testing can improve efficiency and productivity. The IIDTW has talked to many British employers about their attitudes to drug testing, and has conducted a thorough review of all the evidence on safety, productivity, reputation and efficiency. This evidence is examined in Chapter 3 of this report, which also takes a more detailed view of the costs. First, however, it is necessary to say more about the extent of drug testing at work in contemporary Britain.

2 The evidence: trends and trajectories

Many people have had no direct experience of drug or alcohol testing in their working lives, and may doubt that this is a significant problem for them or a particularly salient issue for public debate. Is drug and alcohol use at work a major problem? How widespread is drug testing? Are there good reasons to think that drug testing is becoming more widespread in Britain, or is likely to become so in the foreseeable future? This chapter addresses these questions and, in particular, asks whether there are genuine grounds for concern about alcohol and drug use at work or about the use of drug testing in the UK. It also presents new evidence commissioned by the IIDTW, including the results of a MORI poll.

2.1 Drugs and alcohol at work – is there a problem?

2.1.1 Prevalence and cultural change

In an article in the magazine *Safer Society*, Peter Martin, Chief Executive of the charity Addaction, recently commented that ‘there has been a massive social change in the last 20 to 30 years, with drug use more commonplace than ever before ... we have to direct our strategy to recognise that we are living with a drug culture’.¹ As noted earlier, Howard Parker and his colleagues at Manchester University have recently concluded that employed young people are no longer ‘maturing out’ of binge drinking and recreational drug use in their mid-twenties. On the contrary, a growing number of young adults view ‘substance use as a de-stressing – chilling out – activity, whereby intoxicating weekends and going out to “get out of it” is the antidote to the working week’.² The Government’s *Alcohol Harm Reduction Strategy*

for England, published in March 2004 (Prime Minister’s Strategy Unit, 2004), confirms that binge drinking is widespread among the working population.

The use of psycho-active substances is widespread in British society, as is confirmed by the official data on prevalence. This is not to condone the use of illicit drugs. But it is something that employers need to take into account in developing drug and alcohol policies. A business that refuses to employ anyone who tests positive for drugs will exclude large numbers of talented and otherwise law-abiding young people. Moreover, where recreational drug use is widespread, it may be seen as unfair if a few staff each year face disciplinary action as a result of random drug tests. In addition, while recreational drug use is widespread in contemporary Britain, it is young people at the margins of society who are the most likely to have experience of drugs, particularly Class A drugs.³ If a history of drug use were to become a major barrier to employment, then this would impact disproportionately on some of the most disadvantaged young people.

2.1.2 The impact on work

Over a third of respondents to the *British Crime Survey 2002–2003* reported that they had used an illicit drug. More than a quarter of 16 to 24 year olds said that they had done so in the previous year. These are striking findings. But do they show that drug misuse is having a significant impact in the workplace and should therefore be a matter of serious concern to employers?

This is certainly the message that is coming from some leading providers of drug-testing services. In a presentation to the IIDTW, Altrix

placed a great deal of emphasis on the scale of the drug problem in the UK, telling the Inquiry that its message to employers was that they could no longer ignore evidence for a high prevalence of illicit drug use.⁴

Studies like the *British Crime Survey* are of limited value in assessing the real impact of drugs in the workplace. It does not follow because somebody has used an illicit drug at some time in their lives – or in the previous year or month – that this will have had a discernible impact on their work. After all, for most people who experiment with illicit drug use, this is no more than a brief adolescent flirtation, which is anyway indulged outside of work hours.

What is relevant is not so much general prevalence data as finer-grained research that can show the extent to which alcohol and drug use is *directly* impacting on performance at work in the UK – for example, evidence on intoxication at work or the relation to absenteeism. In fact, the available research, such as it is, tends to show only that some employers *perceive* alcohol and drug use to be a significant problem.

Employers' perceptions will not be groundless, of course, and this sort of research is illuminating. For example, UK-based research conducted by Alcohol Concern, DrugScope and *Personnel Today* concludes that the majority of employers do view alcohol and drug use as a major cause of absenteeism. Indeed, around one-third of employers questioned for this 2001 survey said that they would actively consider introducing drug testing because of concerns about the impact of drug and alcohol use in the workplace.⁵ Similarly, research conducted by the Chartered Management Institute in 2003 concludes that there is a widespread perception

among employers that alcohol and drug use has increased and that this is a source of problems for their organisations.⁶

As Ross Coomber, Professor of Sociology at the University of Plymouth, concludes in his literature review for the IIDTW:

... the evidence for clear-cut deleterious effects of drug use on business is equivocal. What is less so is the belief by the business sector of the harm that drug use, and alcohol consumption in particular, causes to British industry.

This is not to say that there is no direct evidence of drug and alcohol use impacting on performance at work. Evidence to the IIDTW suggests that some sectors of industry have higher levels of substance use than others.⁷

Two small-scale surveys, conducted for the IIDTW, suggest that drug and alcohol use is having an impact. Of nearly 250 respondents to a questionnaire in the Trade Union Congress's (TUC's) online magazine, *Hazards*:

- 71 per cent said that they or someone they knew had worked under the influence of drugs or drink
- 58 per cent felt that they or someone they knew had performed less effectively because of drugs or drink.⁸

In 2003, the IIDTW also placed a range of questions on drug use at work in a survey of drug use ('The world's biggest drug survey') that appeared in *MixMag*, which describes itself as 'the world's biggest clubbing and dance music magazine'. Of 1,134 respondents, 22.9 per cent said consumption of alcohol had made a difference to their performance at work, 63.9 per cent said that illicit drugs had done so.

Both the TUC and *MixMag* surveys were based on small, self-selecting samples, whose responses to other questions suggest that they were not representative of the working population as a whole. But these findings are interesting nonetheless.

It would be difficult for an organisation to justify investment in a drug-testing programme on the basis of evidence that a minority of staff are sometimes less productive at work because they have a hangover, or that there are a handful of absences each year due to illicit drug use. There are also questions about the *effectiveness* of drug testing as a means of deterring drug and alcohol use, and reducing absenteeism. These are examined in detail in the next chapter of this report.

But, first, it is necessary to say more about the extensiveness of drug testing in the workplace in modern Britain and to identify some of the pressures that could potentially drive future expansion.

Drugs and alcohol at work: personal testimonies

The IIDTW was unable to talk to large numbers of employees. However, the commissioners felt it was important to hear the voices of some employees in the course of the Inquiry. Their evidence is anecdotal, and there is no reason to assume that their experiences are typical. But this testimony was greatly appreciated by the Commissioners. It provides an insight into what is happening in some workplaces and adds some texture to the research data. (All names have been changed to protect the identities of witnesses.)

(continued)

James

James is a management consultant in his mid-twenties. Asked about the use of drugs in a City environment, he said:

... from my experience, dope is mainstream, although it is still a minority who take drugs. People are aware who's using various drugs – out of 20 friends from work, about five or six take drugs. But they all perform at work. It shouldn't be about drugs, but about whether they perform. I have friends in banking, where it's mainly coke. I have never seen heroin. I have seen it at parties ... people in suits doing lines of coke.

Ian

Ian has worked for London Underground for five-and-a-half years. In the past, he has drunk heavily at work and used drugs. He is now undergoing treatment for drug and alcohol abuse. Did he think that his alcohol and drug use had an impact on his performance? 'I tended to work hard to cover up', he said, 'maybe sometimes my reactions were not as good as they could be ... [but] it never impacted on my performance, that was never called into question, but my attendance suffered. I would take the odd day off after a heavy session – probably not more than eight or nine days over four years.'

John

John is a relatively high-profile chef in a well-known restaurant. He told the Inquiry that, in kitchens, 'it seems socially acceptable to take Class A drugs – cocaine, ecstasy and ketamine – although they [i.e. young people] use less alcohol than we did'.

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Janine

A successful young woman in her late-twenties told the IIDTW:

I can't fall asleep until an impractically late hour which would decrease my performance at work the next day. Smoking [cannabis] shortens the de-stress process ... smoking is crucial to me to cope with all the workload and hours.

2.2 Drug testing at work: prevalence and employers' attitudes

How widespread is workplace drug testing in the UK?

Is there any evidence that organisations that are not currently testing are likely to introduce programmes in the future?

2.2.1 The background

Over the past 25 years, there has been a massive expansion of drug testing in the United States. The Reagan administration promoted the use of drug testing in the mid-1980s as part of its 'war on drugs' crusade, legally requiring federal employers to test their staff.⁹ By the mid-1990s, testing had spread to become 'common organisational practise' in North America.¹⁰ In Europe, it has been a different story. In part, this is because concern about drugs at work has tended to focus more on health and welfare, and testing in the workplace has not generally been viewed as a crime-reduction measure.

It has been argued that, in terms of the *extent* of drug testing at work, Europe lags behind the United States by some ten to 15 years.¹¹ But, in the view of the IIDTW, this wrongly assumes that there is some sort of inevitability that Europe will take the same path as North

America. It also ignores the evidence that enthusiasm for testing at work may already be on the wane on the other side of the Atlantic. This said, the exponential growth of drug testing in the United States does show how rapidly this practice can take root and expand. Drug testing has already migrated beyond the workplace into many North American schools, and has done so to such an extent that it has been claimed that it is now 'nearly a universal experience for American youth' (Caulkins *et al.*, 2002). Home-testing kits are also widely available. Public opinion polls in the United States indicate that there is widespread support for drug-testing programmes. There are indications that this momentum is gathering pace in the UK too. At the end of February 2004, for example, Tony Blair announced plans to empower head teachers to drug test children in schools in the UK.

It has been claimed by some commentators that drug testing at work is much more widespread in the UK than in most other European countries. In 2001, Dr Alain Verstraete – from the Laboratory of Clinical Biology-Toxicology at Ghent University Hospital, Belgium – and Dr Anya Pierce – from Beaumont Hospital, Dublin, Ireland – estimated that anywhere between 220,000 and 330,000 drug tests are carried out in Britain each year – 35 per cent in prisons, 40 per cent in the military and 25 per cent by employers. They also report that these tests are being handled by two major laboratories and three smaller ones operating across the UK (Verstraete and Pierce, 2001). A study published by the Chartered Management Institute in 2003, *Managing the Effects of Drug and Alcohol in the Workplace*, found that 16 per cent of all organisations made use of random testing and

14 per cent of pre-employment testing as part of their recruitment process. This rose to 59 per cent for the uniformed and emergency services, and 53 per cent in transport industries.¹² This study was based on self-completion questionnaires that were sent out to a nationally representative sample of 4,000 CMI members in September 2002. This sample was drawn from all management levels, sectors and sizes of organisation. The CMI received 670 completed questionnaires, a response rate of 17 per cent.

Ross Coomber concludes, in his literature review for the IIDTW, that 'drug testing may be (slowly) on the increase in the UK' (and 'this appears to be coinciding with a period where drug testing in the United States has shown slight declines').

As the findings of the Chartered Management Institute survey suggest, drug testing in the UK has been overwhelmingly concentrated in safety-critical industries. This largely reflects the legal requirements of the Transport and Works Act 1992, and employers' concerns about their health and safety responsibilities. The IIDTW spoke to a large number of organisations running drug-testing programmes; the overwhelming majority did so for health and safety reasons (see box).

A sample of the evidence from British companies testing for drugs and alcohol

The Inquiry heard evidence from a number of British companies that use drug testing. They are predominantly in the 'safety-critical' category.

- *British Energy* is testing pre-employment, 'for cause' and on an unannounced random basis.

(continued)

- *UK Coal* is testing at pre-employment stage and intends to introduce testing post-incident.
- *Foster Yeoman* – a large quarrying business – is testing pre-employment, 'for cause', post-accident, random and 'follow up' (i.e. after an employee has requested help).
- *Seaboard plc* is testing pre-employment and 'for cause', and safety-critical staff are tested post-incident.
- *Southern Water* is testing pre-employment and 'for cause'.
- *Transco* retains the right to screen applicants pre-employment, but has never done so in practice.
- *London Underground* tests pre-employment, on promotion and where an employee is transferred from one area to another, and randomly for safety-critical roles.
- *Rolls-Royce plc* tests pre-employment and 'for cause', and conducts random testing if required for the Federal Aviation Authority or Ministry of Defence.
- *The United Kingdom Atomic Energy Authority* tests pre-employment, 'for cause' and random.
- *Stagecoach* – the bus and coach operators – tests both pre-employment and at random.
- *BT* tests only people working trackside on the railways, before they are deployed trackside and then on a random basis. This is a tiny proportion of its workforce.
- *Citigroup* states in employees' contracts that they can be tested at any time.

2.2.2 The MORI poll

The IIDTW commissioned a MORI poll in April 2003 to get a better overview of the current situation and to find out about employers' attitudes.

MORI conducted telephone interviews with over 200 UK companies.¹³ The person with overall responsibility for human resources issues was interviewed.

The overall message from the MORI research was that testing at work remains the exception in the UK, but that a significant proportion of businesses would consider drug testing if they were persuaded of its benefits.

Three-fifths of the businesses interviewed did not believe that drug and alcohol testing was an issue for their sector, compared with only one-fifth who said that it was. The remainder were either non-committal or unable to give an answer.

The majority of businesses had a drug and alcohol policy, but:

- only 4 per cent said that they conducted drug tests
- a further 9 per cent said that they were likely to introduce testing in the next year (2 per cent said that this was 'very likely' and 7 per cent that it was 'fairly likely')
- 87 per cent said that they were unlikely to consider testing in the coming year (31 per cent said 'not very likely' and 56 per cent 'not at all likely').

The most common reason given for not conducting tests was that employers didn't think that drug or alcohol consumption at work was a problem for their staff (mentioned by 60 per cent) or it was not considered relevant to their line of work because there were no serious

health and safety concerns (mentioned by 20 per cent). Other reasons given for not considering testing included: costs, lack of knowledge on how to go about it and a belief that it impinges on employees' human rights.

Only 1 per cent of the businesses said they had been approached by organisations promoting drug- and/or alcohol-testing products in the previous year.

The vast majority of businesses interviewed for this MORI poll were not testing for drugs and/or alcohol, nor did the majority of interviewees think that their organisations were likely to introduce testing in the near future. But it would be wrong to conclude that this poll rules out a significant expansion of drug testing in the UK over the next five to ten years.

In particular, the majority of employers said that they would be more likely to consider the introduction of drug testing if certain conditions were met:

- 78 per cent said that they would be more likely to test if they believed that the use of drugs or alcohol was affecting staff performance/productivity
- 72 per cent if they believed drug and alcohol use was prevalent within the workforce
- 61 per cent if they believed it was prevalent in their sector or industry
- 89 per cent if it affected health and safety
- 94 per cent if it was an insurance requirement
- 96 per cent if it was a legal requirement (that is, 100 per cent of companies that were not *already* drug testing).

It is not, of course, surprising that employers are concerned about legal requirements; but these findings also suggest that they are open to persuasion and that they might change their minds on testing. If only one in a hundred businesses had been approached by drug-testing companies in the previous year, then this leaves a large potential market of businesses that would consider drug testing if they were to be persuaded both that drugs and alcohol abuse is a problem for them and that drug testing would enhance their productivity.

2.2.3 The CBI survey

The Confederation of British Industry (CBI) distributed a questionnaire on behalf of the IIDTW in 2003, to approximately 100 members of its Health and Safety Panel (HSP), which was completed and returned by 50 companies. The HSP provides strategic direction for CBI staff on the full range of health and safety issues. Membership is by invitation only, and will tend to comprise companies that have a particular interest in health and safety issues. Over three-quarters of respondents who completed and returned the CBI questionnaire were from safety-critical industries.¹⁴ Four out of five of these organisations (80 per cent) said that they had a drug and alcohol policy. Nearly a third (30 per cent) tested for drugs and alcohol. A further 12 per cent reported that they intended to introduce drug testing in the future, but only one company said that it was planning to introduce alcohol testing.

Of the 15 companies that tested for drugs:

- all 15 tested pre-employment
- four tested systematically throughout employment

- eight tested randomly
- seven tested voluntarily.

Of the 15 companies that tested for alcohol:

- ten tested pre-employment
- three tested systematically
- six tested randomly
- six tested voluntarily.

As regards motivation for testing: 15 companies mentioned health and safety, ten referred to performance at work, two to their insurance requirements and four to the legal requirements.

With regard to insurance requirements, the Association of British Insurers (ABI) told the IIDTW that there were no insurance companies with a formal underwriting policy on drug testing and that a failure to drug test would not affect the insurance premiums of British companies. Representatives from the ABI told the Commissioners that ‘insurers would never say to the businesses they insure “we would change your premium if you introduced a drug and alcohol policy” ... premiums go up because a firm has accidents and claims ... [it is] impossible to link price reductions with the implementation of a substance misuse policy’. Pointedly, these witnesses explained that ‘insurers have far more claims that result from simple and obvious failures on the part of the employer to manage, train and provide safety equipment to their workforce than for any other reason. There is no evidence of a trend of claims for drug and alcohol abuse’.

2.2.4 Small business – the dog that didn't bark

The IIDTW was advised that small businesses often had very different attitudes and experiences to larger organisations, and that this was likely to be true of drug testing also. The Inquiry arranged for a questionnaire to be sent out to all members of the Federation of Small Businesses (FSB). This elicited no replies. The FSB reassured the Commissioners that a low response rate was not unusual because small businesses tend to be preoccupied with day-to-day management, and have very little time or capacity to devote to wider issues like drug testing. The IIDTW feels that the lack of any responses to the FSB questionnaire is a significant finding in its own right. It suggests that small businesses do not regard drug use among their employees as a serious problem, or see drug testing as a priority for them.

2.2.5 Conclusion

Overall, the picture is somewhat confusing.

The 2003 MORI poll for the IIDTW found that 4 per cent of businesses were testing for drugs and alcohol. The CBI Survey says 30 per cent. And research for the Chartered Management Institute (CMI), also conducted in 2003, found that 16 per cent of organisations were conducting random testing and 14 per cent were doing pre-employment testing. To further confuse matters, no fewer than 41 per cent of respondents to the MixMag survey said that they had been tested at work, including 24 per cent who said that they had been tested as part of the selection procedure for their current job. And 48 per cent of respondents to the TUC online survey said that their employers tested for drugs or alcohol, with 14 per cent saying

that they – or someone they knew – had lost their job as a result of a drug test.

The high incidence of testing reported by respondents to the *MixMag* and the TUC surveys is not all that difficult to explain. The samples were self-selecting, and it is a reasonable supposition that people with direct experience of drug testing are much more likely to take the time to complete a questionnaire. But these findings should not be dismissed entirely. First, they confirm that there are significant numbers of people who have first-hand experience of drug testing in the workplace. Second, they suggest that drug testing at work is a concern for employees – at least, to the extent that a significant number will take the time to respond voluntarily to these kind of survey questions. Nonetheless, it is clear from looking at these two sets of findings that the respondents are not representative.

There is also an obvious explanation for the fact that both the CBI survey and the CMI research found a significantly higher proportion of organisations drug testing than the MORI poll did. Companies that were drug testing – or were considering doing so – would be more likely to respond to the CBI survey than those that were not doing so. In addition, and relatedly, no fewer than three-quarters of respondents to the CBI survey were working in safety-critical areas. A similar point applies to the research by the CMI. A high proportion of respondents were from the uniformed, emergency and transport services. In these safety-critical professions, the incidence of testing will be much higher than in other businesses.

All in all, these surveys suggest that a significant number of UK businesses in *safety-critical sectors* are testing for drugs and/or

alcohol. But *overall* the proportion might nonetheless seem quite low – at least on the MORI poll sample. However, even if only 4 per cent of all businesses are drug testing, then this is affecting hundreds of thousands of employees. Many organisations that are testing are exceptionally large businesses with lots of employees. Furthermore, if the 9 per cent of respondents who told the MORI researchers that they were likely to introduce drug tests in the next year were to do so, this would *treble* the proportion of businesses conducting tests in a single 12-month period, bringing the total to more than one in ten of all businesses. Ultimately, however, the reality is that there is a shortage of reliable data on drug testing at work, and that further research and monitoring will be needed to measure these trends.

2.3 What kinds of tests are used by UK employers?

The IIDTW found that, where UK employers do test for alcohol or drugs, they do so for a variety of reasons and in a variety of ways. Some test pre-employment, others ‘for cause’ and others at random. These different kinds of drug test can be combined in a variety of ways. Organisations also differ in the way that drug testing is implemented – for example, who is tested – and in their protocols for dealing with test results. Of particular importance, there is a distinction between the use of drug testing in safety-critical industries on the one hand, and testing in environments in which there are not the same health and safety concerns on the other.

The IIDTW was told, for example, that some organisations that drug test prospective

employees as part of their recruitment procedures will *not* inform candidates that testing for drugs will be part of the pre-employment medical. But other organisations, such as Rolls-Royce plc, will inform applicants that drug testing is part of the recruitment process in advance, in order to ‘give them an opportunity to behave responsibly’. Different organisations may also deal with a positive result at the pre-employment stage in different ways. Most organisations will not employ an applicant who tests positive because of a general concern about ‘drug users’. But the IIDTW heard from UK Coal that it allows an applicant who tests positive to reapply six months later.

Similarly, the IIDTW heard from a number of companies that said that they test ‘for cause’ in cases where an employee’s behaviour gives rise to a suspicion that they are under the influence of alcohol or drugs. But other organisations explained that they regarded unsatisfactory behaviour or poor performance, whatever its cause, as a management issue to be dealt with through normal disciplinary process, rather than an occasion for drug testing.

The IIDTW talked to companies that test on a random basis. But, again, this form of testing is implemented in a variety of ways. An organisation may decide to test 1 per cent, 5 per cent or even 25 per cent of its workforce. Quarrying and some offshore drilling companies told the IIDTW that they conduct random drug tests on *all* staff, regardless of seniority or the safety-critical nature of their role.¹⁵ But other organisations – for example, London Underground – test only those who are involved in ‘safety-critical’ work (as they define it).

In addition, different organisations test for different substances. The IIDTW found that most organisations that undertake drug testing will test for cannabis, amphetamines, ecstasy, cocaine and opiates. But there are important differences from industry to industry. The bus and coach operator Stagecoach, for example, told the Inquiry that it invariably screens for cannabis, but that every employee is also asked to take a second test ‘blind’, which screens for one other commonly used substance. A minority of organisations – particularly in the transport industry – also use breathalysers to test for alcohol. But the IIDTW found that this is uncommon in other sectors – in part, because employers feel that they can recognise whether employees are working under the influence of alcohol or not, without resorting to testing.

Finally, the IIDTW has revealed some significant differences in the way that different organisations respond to those employees who declare that they have a drug or alcohol problem. Some larger organisations provided a range of services to staff who came forward in this way. Employees with drug or alcohol problems might, for example, be taken off safety-critical work and given other things to do. Some organisations can also arrange for employees to have a comprehensive needs assessment and counselling (either in-house or bought-in), and may even support staff through treatment, including residential programmes. Generally speaking, employees who subsequently come back to work will be regularly and (relatively) frequently tested for a period of time.

Typically, the policies of these organisations state that, if employees come forward, they will not be victimised. Staff whose drug use is

uncovered as a result of a positive drug test may be dealt with less sympathetically. But this is not invariably so. In particular, British Energy told the IIDTW that an employee who tested positive would be likely to be removed from safety-critical work and subjected to close monitoring with support on an ongoing basis, but would not necessarily face dismissal.¹⁶

It is important, then, to be aware of the wide *variety* of drug-testing regimes that are operated by employers, as well as simply the *extent* of drug testing in the UK.

2.4 Pressures for expansion

To conclude this section, the IIDTW believes that the polling evidence shows that a major expansion of drug testing at work in the UK – while far from inevitable – is a genuine possibility.

The signs are there.

First, while the social and political situation in the UK today is, of course, very different from that in the United States back in the 1980s and 1990s, the American experience does show how rapidly drug testing at work can expand. Strongly promoted by the Reagan administration from the mid-1980s as part and parcel of its ‘war against drugs’ – but also as a response to a number of high-profile accidents – workplace testing in the United States has extended from environments where safety is paramount to those with low safety concerns. Pre-employment testing has become routine in almost every occupational area. Peter Francis, Senior Lecturer in Criminology and Sociology at the University of Northumbria, has estimated that 40 to 50 per cent of all companies in the United States are now drug testing. A recent

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review suggests that something like 15 million employees are tested annually in the United States.¹⁷

It is notable in this context that a number of UK companies that provided evidence to the IIDTW had introduced drug testing partly under the influence of developments in the United States. British Energy, a leading nuclear energy producer with over 5,000 employees, told the IIDTW that it had introduced unannounced testing after employees had visited and worked on American sites where it was compulsory. Rolls-Royce plc introduced drug and alcohol testing in the UK in the early 1990s to enable the company to continue its work with US Airfreight, because random drug testing is a requirement of the US Federal Aviation Authority.

Second, it is evident that more and more UK employers – including many outside of the safety-critical sector – are coming to see drug misuse as a serious issue for them. This is clear, for example, from evidence provided by senior figures in the business world to the All-Party Parliamentary Drug Misuse Group in July 2003.

Third, commercial incentives may also help to drive an expansion of drug testing in the UK. In the United States, drug testing is a multi-billion-dollar-a-year industry.¹⁸ In 1993, it was estimated that the manufacture of equipment and chemicals alone was worth annually \$300 million in the United States (Zwerling, 1993). In addition, large numbers of Americans are employed in drug testing – and related –

services providing everything from analysis of tests, to substance misuse programmes, to ‘beat-the-test’ services.¹⁹ Drug testing is big business.

Unsurprisingly, a growing number of companies are promoting drug testing at work to UK businesses. The IIDTW took evidence from several of these businesses. It was clear that many of them viewed the supply of drug and alcohol services in the workplace as a market with an enormous potential for growth.

The Inquiry’s perception was that the active marketing efforts of the sector were beginning to encourage a rapid expansion in workplace testing.

The sector consists of a very disparate group of companies and individuals. Many of them are very responsible, working to high standards. However, the picture is mixed. On the issue of marketing, one or two of the companies that gave evidence to the Inquiry made what appeared to be inflated claims about both the extent of alcohol and drug problems in the workplace and the effectiveness of their own products. For example, one drug-testing company quoted the Health and Safety Executive (HSE) as saying that ‘drug abuse is responsible for 13 per cent of workplace accidents and 64 per cent of deteriorating job performance’. The HSE assured the Inquiry that it had never produced such findings. The company which provided a substantial amount of useful material to the Inquiry, acknowledged that the figures were incorrect and have assured the Inquiry that they now give accurate figures.

3 The evidence: costs and benefits

If drug or alcohol use is having a significant impact on performance at work, then there will be a *prima facie* case for drug testing as far as employers are concerned. If testing prevents accidents at work, then that looks like a good argument in its favour in certain industries. Employers could also be favourably inclined to test if it raised productivity, improved performance, reduced absenteeism or enhanced the reputation of their company.

But *is* drug testing a good way of realising any of these ends?

How effective is it in reducing workplace accidents? Does it have a discernible effect on absenteeism? What about productivity? And what are the costs for employers?

Surprisingly, perhaps, the IIDTW could find no conclusive evidence for a link between drug use and accidents at work, other than for alcohol. Nor was there any reliable data on the cost effectiveness of testing. The companies that gave evidence to the Inquiry did not appear to have conducted cost-benefit analysis or looked in detail at the opportunity costs of testing, by comparing the costs with other potential health and safety investments. An exception was a witness from the Engineering Employers' Federation, who explained to the IIDTW that:

... testing is not high up on the Federation's agenda and won't be without evidence that drug testing has clear benefits. There is more detriment than good in pursuing drug testing rather than more positive drug and alcohol policies to help give employees a chance and rehabilitation.

Nor was the IIDTW presented with any conclusive evidence of the deterrent effect of testing. The Commissioners heard of three

instances when a follow-up random testing of the entire workforce on an oil installation in the North Sea conducted shortly afterwards produced a drop in positive results compared with the original testing. Elsewhere, however, there was a lack of compelling evidence to show that drug testing is an effective deterrent (although the Inquiry notes that this is very difficult to prove one way or another).

3.1 Drug testing and safety-critical environments

A key rationale for drug and alcohol testing in the workplace is the danger represented by intoxicated workers, who may place the physical safety and even the lives of themselves and others at risk. If drug testing is an effective way of reducing the risk of accident in the workplace, this is an argument in its favour. The IIDTW has reviewed the evidence on the relationship between testing and safety in the workplace. It has also heard testimony from industries where the safety of employees, and often the public too, is a matter of day-to-day concern – including transport, the nuclear industry, coal mining and quarrying.

The safety point was well made by a representative from a large quarrying business in his evidence to the Inquiry.¹ The IIDTW was told that quarrying operations would continue in all weather conditions – and often in darkness – using massive equipment and transportation. This witness told the IIDTW that 'it is a gut feeling that, not so much drugs, as alcohol has been one of the main contributing factors' to workplace accidents in the quarrying industry. The Inquiry was told that quarrying had been one of the most dangerous industries

up until about ten years ago, but a whole raft of safety features had been initiated, and serious injury and mortality have steeply declined. This demonstrates the importance of a holistic approach to health and safety in these kinds of industries. Drug testing can have – at most – only a subsidiary role, and it is extremely difficult to assess the incremental impact of testing where it is operating alongside a range of other health and safety measures.²

3.1.1 The relationship between drugs and safety at work

Common sense suggests that intoxication increases the risk of accident at work.

But the reality is more complicated.

Taken as a whole, the available research suggests that the relationship between drug use and workplace accident is more complex and less definite than is widely assumed.

In 1993, a review of the findings of a number of key research studies on alcohol consumption and injury at work came to a surprising conclusion (Zwerling, 1993). Unsurprisingly, the research found that alcohol use among drivers of heavy goods vehicles increased the risk of fatal accident. However, these studies did *not* show conclusively that drinking was associated with more occupational injury overall. Some of the studies could find little or no general relationship between drinking and non-fatal accidents.

The same study looked at the research on illicit drug use and occupational injury. Unfortunately, there is a shortage of reputable work in this area. This is partly because standard tests for drugs cannot show whether or not somebody was *actually intoxicated* at the time the test was conducted. However, the research that was available in the early 1990s suggested that

the use of illegal drugs was only weakly related to accidents at work. There was some evidence of a relationship between the use of stimulants (such as cocaine and amphetamines) and fatal accidents in the heavy trucking industry.³ But, when it came to non-fatal accidents, the author of this review concluded that ‘there is little evidence of an association between drug use and non-fatal injuries’ (Zwerling, 1993).

This conclusion was supported by the US National Academy of Sciences in 1994 in *Under the Influence? Drugs and the American Workforce*. This report found no ‘clear evidence of the deleterious effects of drugs *other than alcohol* on safety and other job performance indicators’ (Normand *et al.*, 1994).

3.1.2 A note of caution

This is a controversial area and the IIDTW has found it hard to get clear and definite answers from witnesses. A literature review by the Health and Safety Executive (HSE) reports that ‘five studies have found some association between drug use and workplace accidents, whereas seven others have found little or no evidence’. Because of the paucity of good information, the HSE commissioned research by academics at Cardiff University, which was published while the IIDTW’s report was in draft (see box at the end of this section). This research suggests only that ‘recreational drug use *may* reduce performance, efficiency and safety at work’.

The evidence is inconclusive (Beswick *et al.*, 2002). Aside from this, the IIDTW would stress three key points.

- 1 It is not acceptable, as a general rule, for employees in safety-critical roles to be intoxicated at work. Nor is it acceptable for

employers to turn a blind eye if this is happening.

- 2 Safety concerns do not neatly map onto wider perceptions of the relative harmfulness or social acceptability of different psycho-active substances – or indeed to their legality. Alcohol may pose more threat to workplace safety in contemporary Britain than, say, cannabis or cocaine. Prescription and over-the-counter drugs may have problematic side effects too. Companies working in safety-critical environments need to be aware of the problems associated with licit drugs, as well as illicit ones. This point was explicitly made by Transco’s Senior Medical Officer in his evidence. For Transco, he explained, any problems of impairment at work were more likely to be with alcohol or prescription drugs given the age profile of its workforce.⁴
- 3 Intoxication at work is a source of risk in safety-critical environments, but it is not the only source of risk. Policy makers should not become fixated on intoxication at work and neglect other factors. As one commentator argues: ‘many job injuries stem directly from the workplace itself. Dangerous working conditions, noise and dirt on the job, and conflicts at work appear to be the greatest predictors of job injuries. Sleeping problems, which may be exacerbated by shift work, also seem likely to be another direct cause of job injuries ... Accident-prevention programmes might be more effective in focusing efforts on reducing the influence of these factors rather than illicit drug use’ (MacDonald, 1995).

Drug and alcohol policy is *one* key aspect of good employment practice in safety-critical industries, but it is not the *only* aspect. As Ross Coomber explained in his review for the IIDTW:

... one point which most expert commentators, informed testing protagonists, labour organisations and unions agree on is that where drug and alcohol testing programmes are introduced or already exist they should form part of a comprehensive drug and alcohol policy or programme, not exist in isolation.

The latest research

In 2004, the Health and Safety Executive published a research report on the relationship between drug use and accidents in the workplace entitled *The Scale and Impact of Illicit Drug Use by Workers*. The research was conducted in South Wales and took the form of a community-based questionnaire survey and a cohort study of workers carrying out cognitive performance tasks. Overall, 30,000 individuals in Cardiff and Merthyr Tydfil were randomly selected to receive the questionnaire, with 7,979 people completing the survey, of whom 4,620 (58 per cent) were currently in employment. Data was also collected from Accident and Emergency Units across Wales and there was a survey of college students. In total, 54 people undertook to carry out the cognitive performance task, 44 participants had used drugs in the week of the study and ten had not done so.

(continued overleaf)

The principal findings are outlined below.

- Thirteen per cent of working respondents reported drug use in the previous year, including 29 per cent of those under 30.
- Drug use does have an impact on cognitive performance, but this varies depending on the type of drug or drugs used.
- There is an association between drugs and minor injuries among those who are also experiencing other minor injury risk factors.
- There was no association between drug use and workplace accidents, though associations did exist between (a) cannabis only use and work-related road traffic accidents among those also reporting higher levels of other associated risk factors, and (b) drug use and non-work accidents among those who are also experiencing high levels of other risk factors.
- The lack of association with work accidents may be because: no association exists; the number of accidents was too small for a significant association to be detected; accidents were not restricted to those resulting from the individual's own error; at work, individuals are in familiar situations, doing familiar tasks from which as much risk as possible has been eliminated and are less likely to be experiencing the acute effects of drug use.

(continued)

It is concluded that, 'overall, the present project has shown that recreational drug use may reduce performance efficiency and safety at work'.

(The Scale and Impact of Illegal Drug Use by Workers, by Andy Smith, Emma Wadsworth, Susanna Moss and Sharon Simpson of the Centre for Occupational and Health Psychology at Cardiff University, is available from the Health and Safety Executive, and is at www.hse.gov.uk/research)

3.1.3 The role of testing

Responsible employers should adopt sensible policies to minimise the risks to health and safety as a result of intoxication at work.

Employers who gave evidence to the IIDTW took their duty of care for the health and safety of their staff very seriously. According to the MORI poll conducted for the IIDTW, 89 per cent of employers who were not already testing for drugs said they would consider doing so if they believed that this would have a positive impact on the health and safety of employees. But is drug testing a good way of detecting and deterring employees from coming to work in a state of intoxication? And is this the *best* way of addressing this problem?

A literature review prepared for the IIDTW by Peter Francis and colleagues at Northumbria University (Francis *et al.*, 2003) stressed that 'too few empirical studies on the effectiveness of workforce alcohol and drug testing exist to conclude that it reduces employee health and safety problems'. Another recent review of evidence on links between drug testing and

workplace injury concludes that both mandatory random and ‘for cause’ testing have only ‘very limited’ impact on accidents at work.⁵ As Peter Francis and colleagues state:

... the majority of research studies fail to take account of the possible and actual effects of non-drug-testing factors (such as increased employee training, superior capital equipment and better management and supervisory arrangements) in reducing employee and employer risk.

Furthermore, it is possible that drug testing may have a negative impact on health and safety, at least at the margins and in some circumstances. For example, Southern Water told the IIDTW that it had found that the introduction of a strict policy of drug testing following any incident that resulted in one or more days off work had the unintended and perverse consequence that routine and more minor accidents were not being reported at all for fear of triggering testing procedures. Witnesses from Southern Water told the Commissioners that this had resulted in an instance of chronic ill-health (a back problem) not being identified and dealt with. Once this unexpected effect was identified, Southern Water changed the testing policy as soon as it could.

Nor does drug testing measure *impairment* as such. To repeat, drug tests – with the notable exception of alcohol breath tests – reveal only that a drug or its metabolite is present in an individual’s body. Tests are unable to show whether or not someone is actually intoxicated, or to provide a reliable indication of impairment levels, or to reveal whether an individual is an addict or a regular, irregular or one-off user. This does not mean that drug and alcohol

testing cannot have a useful role in safety-critical industries. It does mean, however, that this role will be limited, and that organisations need to know how to interpret positive results and how to act appropriately.

It might be concluded that it would be better for safety purposes if it were possible to test *directly* for impairment (that is, fitness for work) rather than to do this *indirectly* by testing for the presence of drugs and metabolites in the human body – especially as this is a very unreliable guide to intoxication. Various methods of impairment testing are being developed (see box). Potentially, these tests could provide a more effective measure of impairment at work, while, at the same time, avoiding the invasiveness of traditional drug and alcohol tests. As one commentator has put the point, impairment testing looks directly at fitness to work – a legitimate concern for employers – and not at ‘lifestyle’.

Impairment testing

It was outside the remit of the IIDTW to assess in any detail the effectiveness of impairment testing, but the Inquiry believes, at least in principle, that this could provide a possible alternative to drug and alcohol testing with a number of advantages. Ross Coomber, Principal Lecturer in Sociology at the University of Plymouth, provided the IIDTW with information on a number of approaches to impairment testing that are being pioneered elsewhere in the world.

Examples of three systems are described below.

(continued overleaf)

Daily Skill Test System

Factor 1000 is a new product that is being marketed in the United States as an alternative to urine testing and on the basis of what is perceived to be some increasingly negative views of drug-testing programmes. It is produced by Performance Factors, which argues that 'many employees and union leaders believe that it [i.e. traditional drug and alcohol testing] is inaccurate, costly and an invasion of privacy'. By comparison, it is claimed, 'Factor 1000 tests whether the worker is impaired at the time he or she is being asked to perform a job – it doesn't judge off-the-job behaviour', and it 'is also effective in detecting impairment from stress and fatigue'. Essentially, this system tests an employee's judgement and response time by looking at his or her ability to manipulate a cursor on a computer screen.

The Drug Impairment Detection System (DIDS)

Air traffic controllers in Oklahoma City in the United States have been trialling the DIDS system, which works in the following way.

- 1 The individual takes a 'FIT' test, when a controlled dose of normal light is administered to the eye and a number of measurements are made of the eye's reaction.
- 2 A baseline is established for each subject by (a) ensuring he or she is drug-free at the time that the baseline is set; and (b) taking multiple tests to establish the subject's 'PassPoint' profile.

(continued)

- 3 With the baseline established, the measurements from subsequent tests are compared to the 'PassPoint' profile.
- 4 If impairment is identified, 'PassPoint' can recommend a confirmatory test and suggest which drugs are tested for.

(For a more detailed discussion of DIDS, see *Details on FIT PassPoint Substance Abuse Monitor* at www.pmifit.com [PMI, 2003])

OSPAT

This impairment monitoring system is being tried out by coal miners in Australia. Again, workers are required to undertake a simple exercise on a computer before starting their shift. A series of exercises are undertaken by each worker when the system is installed to establish a base line against which reactions are subsequently measured.

3.1.4 The evidence of employers to the IIDTW

The IIDTW heard evidence from a number of UK employers working in safety-critical industries. These witnesses enabled the Inquiry to explore further some of the key themes from the literature.

Four points that emerged from the evidence of these employers are of particular relevance in this context.

First, the majority of employers in safety-critical industries who provided evidence to the IIDTW felt that drug misuse at work was not a serious or widespread problem for their companies.

For example, Rolls-Royce plc told the Inquiry that, in the early 1990s, they had

instituted pre-employment testing of all prospective employees applying for repair jobs and extensive random testing of existing employees involved in the repair of aircraft engines. This was done for business reasons, given Rolls-Royce plc's involvement with US companies.⁶ By 1998, Rolls-Royce plc had conducted approaching 1,000 tests. Not one of these was positive. It told the IIDTW that random testing is now only carried out when this is specifically required by the US Federal Aviation Authority or the Ministry of Defence. A witness from Rolls-Royce plc told the IIDTW 'we felt there wasn't enough evidence from the performance, health and safety aspects to actually say we wanted to introduce random testing for the whole workforce'.

The United Kingdom Atomic Energy Authority (UKAEA) had a very similar message for the IIDTW. A witness explained:

... we've now done getting on for three years [of testing] and we pretty well confirmed that we don't have a problem. We've done nearly 2,000 tests, 1,300 were pre-employment, and we are quite surprised at how few of these came up ... out of the 1,300 we've only had 11 positives ... and we've [also] done 407 tests on UKAEA staff and we've had two positives. All except for one of all of those has been for cannabis.

Similarly, the quarrying company, Foster Yeoman, told the Inquiry that it had introduced a comprehensive drug and alcohol policy in November 2001, with provision for drug testing pre-employment, for cause, post-accident, random and as a follow-up where an employer has come forward for help. In this time, there had been only 12 positive tests. Six were found to be a result of (licit) medication, five detected

cannabis and one detected cannabis and benzodiazepines.

One or two companies, it should be noted, were more concerned about drugs, with this often relating to wider economic, social and demographic trends. A witness from UK Coal felt that there was likely to be illicit drug use among some employees, as some of the mines were in areas that are renowned for drug problems. This seems to have been borne out by the company's experience of testing. Between March and November 2003, the Inquiry was told that UK Coal had carried out 171 pre-employment tests. Over 5 per cent were positive even though applicants were told that they would be screened for drugs and alcohol as part of the recruitment process. But this appears to be the exception not the rule.

Second, many of the UK employers in safety-critical industries who took the time to provide evidence to the IIDTW stressed the importance of fairness and transparency.

An obvious issue here is whether or not testing should be restricted to staff whose role has a direct and obvious health and safety aspect or whether it should be carried out more widely within these industries. For example, British Energy told the IIDTW that all employees at every level of seniority within the organisation are tested as part of the pre-employment selection process, and could be subject to random testing as employees. This was at the request of the trade unions, but it was also believed to be a good way of demonstrating to staff that the company took the responsibility of managers for staff welfare seriously. A witness from British Energy explained: 'everyone can be tested, including administrative staff. Because ... they're all

Drugs testing in the workplace

contributing to the safety of the whole.’

Third, even in safety-critical environments, drug testing could be divisive and counterproductive if it was clumsily handled or inappropriate.

SeeBoard plc said that it had made the decision not to introduce random testing for all staff, in part because it feared that this would damage industrial relations. A witness from SeeBoard explained that ‘testing is very unpleasant, and it’s my job to look after the health and safety of staff, and not to police them’.⁷

Similarly, in its evidence, Southern Water told the IIDTW that it felt that it would be unlikely to test widely for drugs or alcohol in future, as ‘it did that much harm, [we] would want very good evidence before carrying out any [further] testing’. The witness explained that those who had been drug tested by the company had reacted negatively, that it was expensive and that there was no added value to the company. He concluded that he would prefer to focus on good day-to-day management of staff than on drug testing.

This point was made by a number of witnesses from the safety-critical industries who provided evidence to the IIDTW. For example, a witness from Transco, the gas supplier, said that the majority of health and safety incidents were caused by a general failure of the application of management systems and that high quality management made drug testing less of an issue. ‘Managers need to be trained in what testing can and can’t do’, he concluded.

Fourth, a number of safety-critical employers who gave evidence emphasised the need for welfare and support services for staff with alcohol or drug problems.

For example, London Underground has a ‘tough’ policy on alcohol and drugs, not least because of concerns about the requirements of the Transport and Works Act 1992. Its policy is believed to be one of the most comprehensive and stringent in the UK.

It states that ‘all employees are required not to consume or use illegal drugs at any time, whether on duty or not, so as to ensure they are not under their influence when reporting for duty, carrying out work for the company or when on company premises’. Employees are not allowed to buy alcohol while in uniform, and they are responsible for ensuring that their performance is not impaired by prescribed or over-the-counter medication.⁸

But London Underground stressed to the IIDTW that it has a strong commitment to staff welfare in this area. If an employee comes forward with an alcohol or drug problem, then he or she may be taken off duty, assessed for treatment and supported ‘within reason’. The IIDTW spoke to one London Underground employee who had been taken off duty for nine months while he underwent a programme of treatment. (It is a different story if staff declare that they have a problem only when confronted with a test or testing positive. In these circumstances, they can face disciplinary action which is very likely to lead to immediate dismissal.)

The President of the Police Superintendents’ Association also stressed the need for a supportive and welfare-orientated approach in his evidence to the IIDTW. He commented that the police force would tend to reflect:

... what goes on in society generally, given the age group we are recruiting from ... if there is

habitual use of recreational drugs by people outside the service ... [it simply flies in the face of reality to think that] drugs will suddenly disappear [inside the police service].

Police officers can be involved in a range of safety-critical tasks, including driving at high speeds through built-up areas and handling firearms. But there is also a special issue about the use of illegal drugs by police officers. The public will not have faith in police officers who are breaking the law, and ‘where an officer ... is buying illegal substances, they ... [may be] ... vulnerable to corruption, because they can be blackmailed’. But, as he also proceeded to argue, drug and alcohol use among police officers is about workplace stress and health, as much as detection and discipline. ‘Police personnel are put through some pretty stressful things and they are not given counselling on every occasion’, he explained, ‘the force has a responsibility to make sure they are looked after. It is not just a case of testing them and convicting them. [We are also proposing that] there are programmes there to help them and to treat them.’

These comments raise much wider issues about society’s attitudes to people who develop serious substance misuse problems. The IIDTW heard from a number of employers who were committed to supporting employees with drug and alcohol problems. But lawyers working in the employment field told the Commissioners that employees could be extremely reluctant to come forward for help. Some fear that they may be victimised and some workplaces have a culture in which admitting to this kind of problem is regarded as a display of weakness. The IIDTW was told that, in reality, it is very rare for employees to come forward on a

voluntary basis. Where they come forward at all, this is almost always precipitated by a crisis – often because someone is convinced that their substance problem is about to be exposed anyway. This all raises some wider questions about contemporary working cultures and our attitudes to those who develop drug and alcohol problems.

The issues about the quality of management systems and the role of support and welfare services are considered in the conclusion to this chapter. But, first, what about the other justifications for drug and alcohol testing?

3.2 Other rationales for drug testing: the evidence

Ten of the 50 companies that took part in the CBI survey conducted for the IIDTW said that their principal motivation for drug testing was to enhance performance at work, compared to 15 who said that their primary concern was health and safety. Over three-quarters of businesses responding to the MORI poll said that their decisions about introducing drug and alcohol testing would be influenced if they believed that substance use was affecting staff performance or productivity.

Some serious questions can be raised about the effectiveness of drug and alcohol testing as a way of reducing injury and death in safety-critical environments. But nobody would question the legitimacy of these *ends* in themselves. In the safety-critical industries, there is a *prima facie* case for alcohol and drug testing, although much of the evidence presented to the IIDTW throws doubt on how substantial the real benefits are. Significantly, however, 50 per cent of employers responding

to the IIDTW's MORI Poll did *not* think that drug and alcohol testing should apply *only* to health-and-safety-critical organisations.⁹

Obviously, employers have a legitimate interest in staff performance, beyond health and safety. But a range of legal, ethical and social questions now arise about the extent to which organisations can and should regulate the private lives of employees. These issues have been examined in depth elsewhere in this report (see Chapter 2). This section looks at a number of more practical questions. Most importantly, does drug or alcohol use actually have a significant impact on performance at work? And, be this as it may, is there any evidence that drug testing is an effective way of improving performance?

3.2.1 Absenteeism

A number of empirical studies have found that problem drinkers and illicit drug users tend to be absent from work more often than their colleagues. In their evidence to the IIDTW, Peter Francis and colleagues at the University of Northumbria detail the findings of a long succession of research studies – mainly, but not exclusively, from the United States – that conclude that there is a discernible relationship between drug and alcohol use and absenteeism.

The literature review prepared for the IIDTW by Ross Coomber, Principal Lecturer in Sociology at University of Plymouth, casts doubt on the veracity of these findings.¹⁰ In particular, he points out that the research has often failed to take account of other relevant factors that might influence rates of absenteeism – such as age, gender, ethnicity and occupational stress.¹¹ He also notes that there are some other research studies that have

concluded that there is little difference between drug users and non-drug users in their rates of absenteeism.¹²

Coomber proceeds to discuss a major review that was conducted in the 1990s and found 'a small but noticeable proportion of work problems are associated with alcohol and/or drug use', but concluded that it was difficult 'to draw firm conclusions about either the extent of work-related problems associated with employee substance use or any causal role that substance use plays in the emergence of those problems' (Hanson, 1993). Another – contemporaneous – review concluded that there was 'a weak association between a positive employment drug screen and the adverse employment outcomes of absenteeism, injuries, accidents and turn-over', adding 'the evidence is strongest for absenteeism' (Zwerling and Ryan, 1992).

Significantly, some of the research suggests that rates of absenteeism may be higher for problem drinkers than for illicit drug users. A major review, conducted in the mid-1990s, looked at the international research, including studies from the United States, France, Sweden, Australia and the United Kingdom. It concluded that there was an association between high rates of absenteeism and alcohol consumption – and, in particular, that 'absenteeism seems to be a marked characteristic of problem drinkers'. The authors conclude that rates of absence for problem drinkers are anywhere between two and eight times as high as for non-problem drinkers, and argue that this finding is robust cross-nationally (Martin *et al.*, 1994). This is in line with the findings of a research study that was conducted in the 1960s.

There is reputable evidence that absence rates are higher among problem drinkers. Overall, however, the research on the links between drug use and absenteeism is inconclusive. Perhaps the most that can be said is that there is some evidence for a weak relationship.

3.2.2 Turnover

The IIDTW was told that there is some evidence from the United States for a relationship between illicit drug use on the one hand and, on the other, a higher risk of being dismissed from or voluntarily leaving a job.¹³ The Inquiry's view is that this evidence should be treated with caution, particularly given the probable impact of a range of other demographic variables on staff turnover. It is likely, for example, that young employees are more inclined *both* to use drugs *and* to move from job to job.

3.2.3 Performance and productivity

The story on performance is much the same as for absenteeism.

A report by the Health and Safety Laboratory at Sheffield explains that there is 'conflicting evidence about the effect of illicit drugs on productivity' (Beswick *et al.*, 2002). Another major review of the literature concludes that there is 'insufficient evidence that ... illicit drug consumption is responsible for lowering labour productivity and work performance'.¹⁴ And Peter Francis and his colleagues told the IIDTW that 'at best it can be suggested that there is conflicting evidence as to the relationship between alcohol and illicit drug use ... and performance'.

The recent report for the All-Party Parliamentary Drug Misuse Group, *Drug Testing*

on Trial (All-Party Parliamentary Drug Misuse Group, 2003), cites the 1996 annual survey of the American Management Association. This survey asked corporations that had introduced drug testing about its effectiveness in terms of absenteeism/illness, disability claims, accident rates, incidents of employee theft and incidents of employee violence. The All-Party Group reports that:

... none of the ... indicators had a percentage increase above single digits answering 'yes' and only eight per cent of companies performed any cost benefit analysis of their drug testing programmes.¹⁵

To summarise, and as in the case of absenteeism, the common assumption that drug and alcohol use will have a major impact on productivity and performance at work is not well supported by the evidence.

Furthermore, and yet again, if there are grounds for concern about performance, they do not necessarily relate to those drugs that are of greatest concern to society. For example, an important review of the literature could find no evidence that marijuana use has a negative impact on performance at work.¹⁶ But there is research that suggests that there is a significant relationship between declining productivity and alcohol use, especially alcohol abuse.¹⁷

3.2.4 Reputation

It is extremely difficult to assess the impact of drug and alcohol use among employees on a company's reputation. A recent review of the literature highlights the paucity of research on the impact of drug use on the 'broader realm of customer and consumer relations'. From a different perspective, a representative of the

entertainment industry told the IIDTW that, even though a ban on smoking had been instituted, it could not be talked about because it would damage the reputation of the organisation, 'If I tried to introduce testing, I would probably lose my job', he added. Different sectors clearly value different reputations!

3.2.5 Conclusion

The best available evidence provides little support for alarmist claims about the impact of alcohol and drug use on absenteeism, turnover, productivity and reputation.

The IIDTW heard some inflated claims about the impact of drug use on performance from one or two drug-testing companies.

Occupational health professionals have a good understanding of drug and alcohol issues and will generally know when the claims that are being made for drug-testing services are unreliable or unsubstantiated. But the IIDTW was concerned that smaller organisations, without specially trained staff, could be persuaded to contract for services that they did not need, might be sub-standard and could damage relationships with their employees.

Given what is known about the effect of drugs on cognition,¹⁸ it is a reasonable assumption that intoxication will tend to affect performance at work.

Anybody who has ever *gone* to work with a hangover will know that this can affect performance. Anyone who has ever *not* gone to work with a hangover will know that it can cause absenteeism. The same will apply to the after-effects of many illicit drugs.

However, neither the research evidence nor the testimony of witnesses to the IIDTW suggests that this is actually a particularly big or

pressing issue for most organisations in the United Kingdom.

There is evidence of a weak association between alcohol and drug use and workplace performance, including absenteeism and productivity – which is strongest for alcohol.

But, in the view of the IIDTW, this is far from being a compelling argument for alcohol or drug testing, for at least four reasons.

- 1 *Effectiveness*: there is the issue of whether drug testing at work *works*. Does it *actually* reduce those forms of drug and alcohol use that could affect performance? In his literature review for the IIDTW, Ross Coomber argues that it is not clear from the evidence how effective drug testing is when it comes to reducing drug and alcohol use.
- 2 *Appropriateness*: even if drug and alcohol testing were effective in this sense, there would be the wider question of its appropriateness. The evidence suggests, for example, that problem drinking can have a greater impact on performance at work than illicit drug use. But is testing the *best and most appropriate* way to identify and engage staff who are developing serious alcohol problems?
- 3 *Ethical issues*: the leisure activities of employees can have a negative impact on performance at work. But employers are not entitled to expect staff to live in such a way that they will be *maximally* productive at work. As the previous Information Commissioner Elizabeth France has commented: 'employers are not enforcers of the drug laws and must respect an individual's right to a private life'.¹⁹ In this

context, the IIDTW was told that London Underground (LU) forbids its employees buying or consuming alcohol outside work hours if they are in LU uniform or are wearing any insignia identifying them as its employees. There is a genuine public confidence issue here, but this rule shows the difficulties of drawing appropriate boundaries between work and private life.

- 4 *Costs*: any performance benefits need to be weighed against costs. As Peter Francis and colleagues from Northumbria University point out: ‘the introduction of workforce drug testing, far from addressing lowered employee productivity, may well further negatively affect the performance and productivity of employees. It may adversely affect employees’ attitudes towards the organisation, damage industrial relations and, as a result, decrease productivity and cut profits.’ For example, an employee whose relationship with her employer involves a high level of surveillance and control may be less inclined to work creatively and productively, and less committed to the organisation. In this way, a drug-testing regime could result in a diminution, rather than an enhancement, of productivity and performance.

The relevance of many of these points will depend on the particular *type* of drug testing that is under consideration.

A hair test as part of a pre-employment screening may indicate the presence of drugs that an applicant has used, some months – or even years – earlier. A breath test could show that a heavy goods vehicle driver has turned up for work under the influence of alcohol.

Random testing may be adopted as a general means of deterring staff from using drugs and alcohol. Post-accident testing may be more a matter of having proper procedures in place for investigating incidents at work and ensuring that the lessons are learnt. Unless the arguments are to become impossibly complicated and convoluted, it is difficult to avoid generalisations in identifying and evaluating the rationales for drug and alcohol testing. But it is important, nonetheless, to keep in mind that these *are* generalisations and that the applicability of many of the arguments varies from case to case.

3.3 More on costs

Outside of the safety-critical industries, the benefits of drug and alcohol testing are unclear. In addition, any benefits will need to be balanced against a whole range of cost factors. These include financial costs; impact on staff morale and industrial relations (including any negative effect of drug testing itself on productivity and discipline); and human resource costs (for example, where well-qualified and able candidates fail pre-employment drug tests).

3.3.1 Financial costs

The first, and most obvious, cost of drug testing at work to organisations is the financial cost.

Drug-testing companies have a legitimate business interest in seeking to persuade employers to drug test. In the United States, workplace testing grew, in the space of two decades, into a multi-billion-dollar industry.

The IIDTW heard evidence from a number of drug-testing companies that said that

workplace testing was a major area of expansion in the United Kingdom. For example, Tricho-Tech – a company that specialises in hair testing – has been conducting drug tests and analysing the results in the United Kingdom since 1993. While 80 per cent of Tricho-Tech’s work still comes from the courts, a representative told the IIDTW that it had experienced a significant increase in demand for pre-employment screening and workplace drug testing. This is now the fastest growing area of Tricho-Tech’s business. The IIDTW heard a similar story from LGC Ltd (formerly known as the Laboratory of the Government Chemist). Since the LGC was privatised in 1996, the Inquiry was told, the company as a whole has expanded from 200 to 600 employees and its total annual turnover is approximately £50 million. A dedicated team within the company carried out in excess of 175,000 workplace drug testing samples annually, with a significant proportion coming from military testing.

The cost of drug testing at work to organisations will vary depending on the type of testing, the numbers of employees who are being tested and the prices charged by a particular drug-testing company. For example, the drug testing company Altrix told the IIDTW that it charged between £30 and £35 for an initial screening or test, and an additional £52 for confirmation of a positive result.

It is important that employers know the *full* costs of *legally defensible* tests. A witness from the LGC explained to the Inquiry that drug testing is a more complicated business than many employers realise. For example, what is called ‘presumptive testing’ – where the initial body fluid sample shows positive by a change in colour on a dipstick – may be comparatively

cheap, but it is not legally defensible in isolation. Samples need to be sent on to a laboratory for proper scientific analysis following a positive result and this will add to the cost. The LGC witness emphasised that it is extremely important to ensure that drug-testing companies that are selling ‘presumptive’ products are explaining to prospective purchasers that they need to follow up on positive results.

A cognate issue is the accreditation of laboratories that are carrying out drug tests. The IIDTW heard evidence from the United Kingdom Accreditation Service (UKAS), which is the sole national accreditation body that is recognised by the Government for the assessment of laboratories, including those providing drug testing – and related – services.

Accreditation involves UKAS assessing adherence to European and International standards for testing laboratories (ISO 17025). These standards relate to testing laboratories in general and are not specific to those carrying out workplace drug tests. To fill this gap, Guidelines for Legally Enforceable Workplace Drug Testing have been developed by a steering group representing UK analytical laboratories and other interested parties. Laboratories undertaking workplace drug testing are advised to use the Guidelines as a template in applying for accreditation. The Guidelines go beyond questions of laboratory practices and quality assurance to cover matters such as the dignity of the employee from whom the sample is to be taken, recommended cut-off levels, below which the result of a test should be treated as negative, and a recommendation that tests should be performed only in the context of an established policy on drug testing agreed between the

employer and employees. Adherence to the Guidelines, however, is not a condition of accreditation. Although, as a set of rules voluntarily adhered to, these Guidelines are the beginning of a self-regulatory system, there is no mechanism for monitoring or for enforcing compliance.

In most sectors, adherence to European and international standards is voluntary, although legislation sometimes makes it a legal requirement. Companies that are accredited are permitted to advertise the fact to potential buyers of their services with the crown mark. This acts as a version of the 'kite mark'. Its efficacy in driving companies that are not accredited from the market rests on purchasers choosing only accredited companies. Companies are regularly inspected and subject to reaccreditation every four years.

UKAS has accredited approximately 1,500 laboratories, of which approximately 12 are involved in drug testing. It told the IIDTW that it was concerned about the number of non-accredited bodies that were providing drug-testing services, and that these concerns were shared by the Department of Trade and Industry. 'There are undoubtedly labs that are not accredited', the IIDTW was told, 'they might be very good but one cannot be sure. That is why we recommend that people use accredited labs.'

The IIDTW was also told that the financial cost of accreditation may be a barrier for some organisations. For a new applicant, the cost of initial assessment is as much as £750 per day, with the accreditation process possibly taking between five and seven days. Achieving accreditation can therefore cost in the region of £4,000 to £5,000. If successful, the laboratory is accredited for four years, with an annual visit to

ensure that it is maintaining its systems properly. The cost of these annual visits, and of the reassessment visit every four years, is charged at £524 per day, with a typical visit costing in the region of £2,000 to £3,000. The IIDTW believes that it is unlikely that laboratories will submit themselves to a voluntary accreditation process at all unless they are fairly confident that they will be successful, but failure to seek accreditation does not necessarily show that there is a problem with a laboratory, as this will often be purely a commercial decision.

However, UKAS told the IIDTW that customers were increasingly requiring laboratories to hold the relevant UKAS accreditation if they were to be awarded contracts to analyse samples from drug tests. It was claimed that the demand for accreditation was increasing as industry became more aware of the process and its benefits. This is recognised in the Health and Safety Executive's guidance document for employers, which clearly recommends that analysis should be subcontracted to UKAS-accredited laboratories.

3.3.2 Staff morale and industrial relations

A number of businesses that gave evidence to the IIDTW felt that drug testing had damaged relations with their employees. For example, Southern Water felt that testing had done 'more harm than good', explaining that staff had reacted negatively. The United Kingdom Atomic Energy Authority said that there had been resistance to testing at some of their sites, as 'some were more human rights conscious than others'. The Inquiry also heard from the trade union representative for Amicus²⁰ at a large French company operating in Ulster who felt

Drugs testing in the workplace

that the company's testing regime had had a very damaging impact on industrial relations, largely as a result of the high-handed manner in which he felt the testing programme had been implemented. The union was concerned that employees could be bullied, harassed and embarrassed by the operation of this policy, and feared that any accidents might be concealed from supervisors by staff who were anxious about drug tests.

As the manager of treatment services at London Underground explained to the Inquiry, 'no matter how good the service and the policy, if you don't have the buy in from the work force, it won't work'. If it doesn't work, then this will have significant cost implications for the organisation. Along similar lines, a witness from BT explained that it was difficult to reconcile drug testing with the organisation's values, which emphasised 'trustworthiness'. 'Trustworthiness goes both ways, so we have to trust our people – they're our interface with our customers', the witness explained, adding: 'to bring in something that shows we don't trust them questions their honesty. It would be counter-cultural for our organisation.'

The potential for tension between employers and employees is confirmed by the research. Peter Francis and his colleagues explained to the IIDTW that:

... the research literature suggests that difference in perspectives between employers and employees toward drug-testing programmes can be expressed as competing interests between the employer's right to a drug-free workplace and the employee's right to privacy. While employers who test their respective workforces for substance use see workforce drug testing as a

reasonable course of action, research indicates that some employee groups, worker organisations (including trade unions) and researchers tend to see workforce drug-testing programmes as intrusive and unnecessary.

Drug testing can affect the attitudes and behaviour of employees, producing negative attitudes towards the company and creating a climate of suspicion, resentment and mistrust. This will tend to have a negative impact on turnover, absenteeism and productivity – precisely those things that drug testing is intended to benefit. As London Underground explained in their evidence all drug testing systems can be subverted, and this will be a particular problem where they are resented by employees.

However, the message from research is that employees will tend to accept drug testing where it is introduced in the right way and for what they recognise as good reasons. Employees' attitudes vary significantly depending on their assessment of the fairness of particular drug-testing programmes.

In part, this is about procedural fairness and transparency. Drug-testing programmes are more likely to be acceptable to employees where trade unions – and other worker organisations – have been involved in their development and implementation. In its evidence to the IIDTW, for example, British Energy said that its policy had been generally well received by staff, and that it felt that this was due to its extensive consultation with employees over a long period.

Research shows that most employees will tend to be supportive of drug testing where they can see that there is a clear justification – and it is not simply about policing their behaviour. This is

particularly true for safety-sensitive areas of work. Reputable studies from the United States and Canada have shown, for example, that employees are much more favourably disposed to 'for cause' testing than random testing.²¹ The acceptability of testing to employees may also depend on how extensively it is carried out across the organisation – for example, if senior staff are not being tested, or a particular group of employees feel they are being 'singled out', this may be a source of resentment. (The CBI survey conducted for the IIDTW received responses from 15 companies that tested staff for drugs. The Inquiry was told that none of these companies had restricted testing to particular grades or levels of seniority and only five restricted testing to staff with specific trades or functions.)

Drug testing will be costly for organisations if it has a negative impact on staff morale, commitment and motivation. These costs are likely to be high if testing is introduced without proper involvement of employees, and particularly so where there is no clear justification for testing that is acceptable to staff themselves. As London Underground told the IIDTW:

... it is very difficult to do drug testing well ... you have to decide why you are doing it and what you are going to do with the results ... you have to explain to people what you are doing ... where are your policies? How can you defend what you are doing?

3.3.3 Recruitment and human resource costs

Pre-employment drug testing is a way of identifying candidates who have used illicit drugs, usually with the aim of *not* offering jobs to these applicants. Organisations that randomly test employees often dismiss staff

who fail tests. The assumption that lies behind the use of drug testing at work in these circumstances appears to be that organisations will perform better if they do not employ drug users.

Is this true?

On the contrary, the exclusion of illicit drug users may constitute a substantial *cost* for many organisations. Many recreational users are highly educated and trained people, and will often be put off from applying for jobs if they anticipate being tested for drugs.

Nearly three-quarters of the young people who responded to the *MixMag* survey said that they had used ecstasy in the last month (69.8 per cent), almost two-thirds cannabis (63.1 per cent) and approaching half cocaine (42.7 per cent). Of this group, 30 per cent said that they had 'A' levels, 9.2 per cent had City and Guild qualifications, 12 per cent diplomas, 21.4 per cent first degrees and 4.3 per cent a higher degree. These young people were also asked if they would be discouraged from applying for a job if the employer tested them for drugs. Over a quarter (28.3 per cent) said that they *would* be and over half of the remainder (41.2 per cent of the total) that they *might* be. Over half of these young clubbers said that, if their current employer introduced drug testing, then they would be more likely to look for work elsewhere.

The *MixMag* findings are supported by a body of international research evidence that shows that drug testing – especially pre-employment – can have a negative impact on recruitment. Recent developments in the United States are salutary for British employers who are considering testing. In 2000, the American Civil Liberties Union was openly complaining that testing made it harder for employers to

attract qualified candidates.²² This problem has been so serious in the United States that some firms are reported to have suspended pre-employment testing in tight labour markets.²³

Employers are within their rights in taking disciplinary action against staff who are intoxicated, and they have a legitimate interest in knowing whether job applicants have serious alcohol or drug problems that might affect their work. But, to repeat, drug tests are not an effective measure of impairment, and people who have used drugs months, or even years, earlier may fail pre-employment tests. With over a quarter of young people in Britain (28 per cent) telling the *British Crime Survey 2002–2003* that they had used illicit drugs in the last year, the wisdom of adopting expensive testing procedures in an attempt to exclude these illicit drug users from employment is doubtful, given the human resource that this represents for employers.

3.3.4 Other costs

If businesses are not careful in their approach to drug testing, they could also face legal action, and all the costs that this entails for the organisation – both financially and in terms of its reputation. As noted in an earlier section of this report, the application of data protection principles will have a significant effect on drug testing by employers who ‘will have to be much clearer as to the purpose of drug testing and be able to justify that testing in the light of how it affects their workers and their right to respect for private life’.

Other costs were less obvious. For example, many safety-critical industries test staff after any incident or accident. This seems reasonable as part of investigative procedures. But the

IIDTW heard some anecdotal evidence that this form of testing could be counterproductive, as it could prevent staff from reporting incidents. If there is no investigation, then this increases the risks of more serious accidents later on.

Many of these costs were explicitly acknowledged by businesses responding to the IIDTW’s MORI poll. Over a third (37 per cent) agreed that drug and alcohol testing in the workplace sent out the wrong messages to staff and nearly a third (32 per cent) felt that it impinged on employees’ human rights.²⁴

The employees

The evidence to the IIDTW from employees is no more than suggestive, as the Inquiry did not have the time or resources to talk to more than a small number of individual employees about their views and experiences. It is interesting, however, that those employees that the IIDTW did speak to consistently expressed resentment at what they viewed as intrusive drug testing that blurred the established boundaries between their professional and private lives. (All names have been changed.)

Janine

Janine is a successful and confident woman in her late-twenties who is working in the telecommunications industry. She told the IIDTW:

As long as you do your work ... are good at your work ... that should be the issue ... This would get employers involved in your private life, not just your work life. Personal recreational

(continued)

enjoyment shouldn't have anything to do with the company ... There are already enough rules about work, without invading my private time ... random testing, in particular, is blurring the line between work time and private time.

She continued:

If random testing was introduced, I would look elsewhere. I would definitely choose a job that did not drug test. If there was pre-employment testing, I would abstain, then take the test ... I would totally refuse random testing.

Bill

Bill is in his early thirties. He is a doctor who does not use drugs. He told the Inquiry that he 'wouldn't want to work in any environment that policed my lifestyle'. He agreed that his employers had a right to know if he was intoxicated in work hours, as he was 'renting out my body for so many hours a week', but thought testing would be acceptable to him 'if it could be only about the "now", rather than a lifestyle thing'.

3.4 Conclusion

There are organisational costs to drug testing and – at least, outside of safety-critical environments – its effectiveness and appropriateness are far from clear. Employers have a legitimate interest in knowing whether members of their staff are turning up for work unable to perform or regularly taking sick leave because of alcohol or drug problems. They then have the options of addressing this as a health or welfare matter, or as a straightforward disciplinary issue. But people's privacy should be respected by the organisations that employ them, and it is inappropriate for employers to arrogate investigative powers for their own sake and assume a law-enforcement role.

4 Conclusion and recommendations

Over an 18-month period, the IIDTW has heard extensive evidence from a wide range of individuals and agencies – including employees and employers, trade unions and business organisations, drug-testing companies and regulatory authorities, scientific experts, lawyers, philosophers and social scientists. Drug testing at work is a complex topic, and evidence heard by the Inquiry has often defied assumptions and preconceptions. The IIDTW believes that there can be a limited role for drug and alcohol testing in some circumstances. But drug testing at work is not a quick and easy fix. The Commissioners are deeply concerned about its unexamined expansion in Britain and about the potential for further growth in the future.

Overall, the IIDTW concludes that there is no justification for drug testing as a way of policing the behaviour of the workforce, nor is it an appropriate tool for dealing with most performance issues. Drug testing can have an important role in safety-critical and other occupations where the public is entitled to expect especially high levels of probity, safety and security. Even here it should be approached with caution and, if the technology is available, direct testing of impairment will generally be preferable to drug testing, and the importance of the culture of an organisation cannot be overstated. Nor are drug testing systems infallible. The technology is imperfect and there are ways of subverting them. One of the strongest themes to emerge from the evidence heard by the IIDTW over an 18-month period is 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 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.

The principal conclusions and recommendations of the IIDTW are set out below.

1 Keeping things in perspective

The use of illicit drugs is widespread in Britain, as are unhealthy patterns of alcohol consumption. For example, the latest sweep of the *British Crime Survey* reported that over a quarter (28 per cent) of 16 to 24 year olds had used illicit drugs in the last year, and recent Home Office research reports that over a third (39 per cent) of 18 to 24 year olds could be classified as ‘binge drinkers’. More recently, in March 2004, the Government published its long-awaited *Alcohol Harm Reduction Strategy for England* (Prime Minister’s Strategy Unit, 2004), which claims that alcohol misuse is now costing £20 billion each year through crime and disorder, injuries and illness, and lost productivity in the workplace. There is legitimate cause for concern at the levels of drug and alcohol use by the population at large, but this becomes a problem for employers only if it is having an adverse effect in the workplace. There is no conclusive evidence that this is a significant problem at work.

The survey evidence considered by the IIDTW was mixed and equivocal. Over half (58 per cent) of nearly 250 respondents to a TUC questionnaire felt that someone they knew had performed less effectively at work because of drugs or drink. Twenty-three per cent of respondents to a self-responding *MixMag* survey said that alcohol had made a difference

to their performance at work and 63.9 per cent that illicit drugs had done so. The IIDTW also heard evidence that levels of drug and alcohol use are high in the catering and entertainment industries – with significant safety implications in the former case.

However, the majority of employers who gave evidence to the IIDTW about their experiences of drug and alcohol testing reported very low levels of positive results. The IIDTW is confident that the overwhelming majority of employees in safety-critical work are conscientious and behave responsibly.¹ The furthest that a recent research survey from the Health and Safety Executive (HSE) is prepared to go is to say that ‘recreational drug use *may* reduce performance, efficiency and safety at work’, and witnesses from the HSE told the Commissioners that ‘incidents where people act outside of what would be normally competent behaviour are very, very, few’ (adding that ‘Health and Safety Inspectors do not find a massive problem with drug abuse in the workplace’). Similarly, Ross Coomber, Professor of Sociology at the University of Plymouth, concludes his literature review for the IIDTW by saying that:

... the evidence for clear-cut deleterious effects of drug use on business is equivocal. What is less so is the belief by the business sector of the harm that drug use, and alcohol consumption in particular, causes to British industry’.

Overall, 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.

The IIDTW has not been able to determine to its own satisfaction the impact of drug use in

the workplace or trends in the development of drug testing as a practice among British employers, although it has considered evidence that gives a good indication of the current state of affairs. The IIDTW concludes that there is a need for continuing monitoring and analysis of trends, located within the Health and Safety Executive, and with the close involvement of the Confederation of British Industry, Federation of Small Businesses and Trade Union Congress.

The IIDTW would welcome the regular publication of an official statistical and research bulletin on health and safety at work that monitors the impact of drugs and alcohol in the workplace, the reporting of adverse events and the use of drug testing by employers, alongside other factors that can affect performance and safety. This work could be led by the Department of Health, working closely with other relevant government departments, including the Department of Trade and Industry.

The IIDTW notes that the Government is currently consulting on a strategy for public health that ‘will involve working with a number of organisations within industry on how they can improve employees’ health’, and that a White Paper on Public Health is anticipated later this year. This provides an ideal opportunity to promote best practice in dealing with alcohol and drug issues in the workplace, and to ensure that this comes to be seen as a mainstream health and welfare matter, linked to other work-related public health issues (such as excessive hours and stress).

The IIDTW believes that a fruitful line of inquiry for future research is the relationship between drug and alcohol problems among employees and different management philosophies within organisations.

2 Performance at work

The IIDTW notes that a wide range of things can affect an individual's performance at work – including prescription drugs, moderate alcohol consumption, poor diet, late nights, tiredness and stress, child-care responsibilities, divorce and bereavement. Employees should not be required to live their lives in such a way as to be maximally productive at work. However, if an employee's private activities or problems have a sufficiently serious impact on work performance, then what are ordinarily private matters can become a legitimate concern for employers. The relevant thresholds are difficult to specify with precision and depend on both the *intensity* and *frequency* of the effect on performance. Paradoxically, if these thresholds are being exceeded then it is likely that the employee's problems will be sufficiently evident that there will be no need to resort to drug or alcohol testing.

The IIDTW concludes that employers have a legitimate interest in drug and alcohol use among their employees in a restricted set of circumstances only. These circumstances are where:

- 1 employees are engaging in illegal activities in the workplace
- 2 employees are actually intoxicated in work hours
- 3 drug or alcohol use is (otherwise) having a demonstrable impact on employees' performance that goes beyond a threshold of acceptability
- 4 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

- 5 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).

3 Employment and private life

Employers therefore have a legitimate interest in the private behaviour of their employees only where it is having a serious impact on their capacity to work, and then only in a limited and specific set of circumstances. A distinction between professional and private life is a fundamental value of our society and the IIDTW would be extremely concerned about any erosion of this boundary. The IIDTW is concerned that drug and alcohol testing at work could potentially transform businesses into quasi-law enforcement agencies and agents of a particularly virulent form of 'nanny statism'. There is a danger of slipping inadvertently into a situation where employers are routinely investigating the private lives of employees (and potential employees), and effectively imposing extra-judicial penalties for illegal – or undesirable – behaviour. The IIDTW found that the overwhelming majority of British employers who gave evidence have no desire to police the private lives of their staff.

The IIDTW concludes that employers have no direct interest in the private behaviour of employees and prospective employees as such and that investigation of an employee's private life simply for its own sake is a serious invasion of personal liberty.

This means that drug and alcohol testing can never be justified as a means of policing the

private behaviour of employees or potential employees and in the absence of legitimate safety or performance concerns (which include concerns about 'reputation' and 'probity' in some professions). This means, for example, that organisations should not be conducting pre-employment tests simply as a way of investigating the 'character' of applicants. Nor should people be turned down for jobs, dismissed or disciplined as a form of extrajudicial punishment for using drugs, and independently of any impact on performance at work.

The IIDTW notes that many drug tests do not measure current impairment or intoxication at all, but that they do reveal that somebody used drugs days, weeks or months previously. This information is unlikely to have a direct bearing on performance or safety at work and this sort of testing is therefore rarely appropriate.

4 Legality is not the key issue

It is natural to assume that the legal status of different drugs will have an important bearing on arguments about drug testing at work. Employers have a legitimate interest in whether their staff are breaking the law in the workplace, and this is a particular concern in professions that have a law-enforcement role. More generally, where staff are using illicit drugs at work, their employers could face criminal proceedings if they were to turn a blind eye. This aside, however, the distinction between licit and illicit substances is largely beside the point for the debate about drug testing at work. What matters is impairment, performance and safety. The Code from the Information

Commissioner (who oversees the implementation of the Data Protection Act), published in November 2003, states that testing should be used only to 'detect impairment at work rather than illegal use of substances in a worker's private life'.

Relatedly, the experience of the IIDTW was that many witnesses with managerial and occupational health responsibilities accepted that alcohol was more of a problem than drugs if the question was explicitly posed by the Commissioners. However, most of these witnesses proceeded to focus on illicit drugs in presenting their evidence. Aside from its legal status, what appears to be a more tolerant attitude to alcohol probably reflects the fact that managers are more familiar with, and therefore less anxious about, alcohol use, and that they are confident in their ability to recognise and respond to alcohol-related problems without recourse to drug testing or to formal disciplinary procedures. As a witness from the company NORCAS, which provides a range of drug and alcohol services to organisations, explained:

... employers can be of an older generation and, whereas they think they can deal with alcohol as an issue, because they know the effects of alcohol for themselves, they don't know how to deal with drugs.

Some of the evidence presented to the IIDTW suggests that alcohol consumption is a greater cause for concern than illicit drug use. The Commissioners also note that the Alcohol Harm Reduction Strategy, published in March 2004, claims that alcohol misuse is a cause of increased absenteeism, early retirement and premature death that costs the UK economy up

to £6.4 billion a year in lost earnings for individuals, lost profit for employers and lost productivity for the country. The IIDTW believes that there should be further investigation of public behaviour and attitudes with regard to drinking at work as part of the Alcohol Harm Reduction Strategy.

5 A private matter

It has been suggested by some people that the use of drug testing at work is a private, contractual matter between employee and employer, and is not the state's business. The IIDTW rejects this argument for two reasons. First, the inequality in the bargaining positions of employers and employees will often mean that 'consent' to drug testing at work is merely nominal. Second, the IIDTW has been impressed by the evidence that a significant expansion of drug testing at work could have profound economic and social costs for the community at large (for example, by effectively barring people from productive employment). Drug testing by business is everybody's business.

The IIDTW is persuaded that drug testing at work cannot be dismissed as a 'private', contractual matter between individuals and organisations, but should be viewed as a public policy issue and subject to a full public debate and to appropriate regulation by the state.

6 Drug testing and the law

The IIDTW found the legal position on drug testing at work somewhat confused, largely because there is no direct legislation, and important legal questions hinge on interpretation

of a whole range of legal provisions in health and safety, employment, human rights and data protection law. If the IIDTW found the legal situation unclear, despite the considerable legal expertise at its disposal, it is unlikely that the law is well understood by many employers, employees or the public at large.

The principles behind the legal or self-regulatory provisions that exist appear to be as follows:

- that people are entitled to a private life
- that employers are required to look to the safety of those affected by the work of their employees, both other employees and members 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.

We heard that recent developments in data protection law appear to have created a more secure framework to ensure these rights. Thus the combination of the first three data protection principles and the draft guidelines issued by the Information Commissioner (Part 4 of the *Employment Practices Data Protection Code* on health information of employees) cover the right to private life and the right to safety at work. In addition, the guidelines lay down procedural requirements to ensure proper standards of evidence where testing is justified.

The Information Commissioner's guidance, however, while welcome, remains just that. The final result of the consultation on the draft guidelines is due out in July 2004. We do not know that it will remain as drafted. If, after its

publication, there remained any ambiguity, the IIDTW would welcome greater certainty about the law and in particular a confirmation from the Government that drug testing outside safety-critical occupations and those where there are other special confidence issues is not legal. In addition, the IIDTW believes it should be made clear that data processed in breach of the requirements of the Act (as interpreted by the Information Commissioner's guidelines) is not admissible in disciplinary proceedings or court proceedings for dismissal.

In respect of ensuring the quality of evidence, the Information Commissioner's guidelines appear to overlap with the safeguards provided by the use of an accredited laboratory that also abides by the Guidelines on Legally Enforceable Workplace Drug Testing. However, the accreditation system that applies to drug laboratories covers only a very small part of the industry. Only around a dozen laboratories are accredited. And the Guidelines for Legally Defensible Workplace Drug Testing is an unsatisfactory attempt at self-regulation. Although the IIDTW welcomes the rules in the Guidelines themselves, which flesh out the Information Commissioner's guidelines, there are no monitoring or enforcement mechanisms.

The IIDTW does not believe that this situation is satisfactory. Since the results of tests can have a significant effect on the rights of individuals whose results are found positive (refusal or loss of employment or disciplinary proceedings), substandard laboratories are not acceptable. Those laboratories that are not accredited should be given three years either to bring themselves up to UKAS-accredited standards or to form an equivalent self-regulatory system that ensures: adherence to the

requirement that tests are based on reliable scientific evidence; that specimens are collected and kept under proper conditions; and that test results are interpreted only by qualified and experienced staff.

The effectiveness of such a scheme should be reviewed after three years and, if it is not working satisfactorily to ensure employers and employees are protected from unscrupulous or substandard service providers, the Government should act to introduce a legal requirement that all laboratories and testing systems meet the standards set by the UKAS accreditation system and equivalent standards to those set by the Guidelines for Legally Enforceable Workplace Drug Testing.

In the meantime, the Steering Group that developed the Guidelines for Legally Enforceable Drug Testing should consider the feasibility of setting up an inspection system for laboratories that claim to adhere to the Guidelines or means of incorporating them within a European and /or international accreditation system.

The IIDTW also calls on the Government to produce clear and definitive guidance on the legal and other issues around drug testing at work, and to finance a major communication initiative to ensure that this information is accessible to all employers and employees. This information should include a recommendation that companies that carry out drug testing that is justified under the Data Protection Act should ensure that workplace tests that are relied on in disciplinary or dismissal proceedings are robust in quality and should promote the use of accredited laboratories.

In addition, the Commissioners strongly support the call from the All-Party Parliamentary

Drug Misuse Group for more general government guidance for employers on drug and alcohol policies backed up by a new National Support Service. The IIDTW notes that official guidance is not always accessible or fit for purpose, and would welcome the production of a set of user-friendly resources for organisations, including a decision tree for employers who are contemplating the use of drug testing.

The IIDTW notes that the recently published Alcohol Harm Reduction Strategy for England (Prime Minister's Strategy Unit, 2004) states that the Department of Health will set up by the first quarter of 2005 a website for employers to provide advice on the warning signs of alcohol misuse and how to handle employees with an alcohol problem. The IIDTW feels that this site would be a natural vehicle for providing employers with balanced information on both drug and alcohol testing.

The IIDTW also welcomes the pledge in the Alcohol Harm Reduction Strategy to extend the Home Office's National Workplace Initiative, which trains company representatives on handling drug use in the workplace, to include alcohol. However, the IIDTW is concerned about mixed messages if this initiative is led by the Home Office, as there is a danger that this will result in the issue being seen as a law enforcement and not a health and safety matter.

7 Safety-critical industries

The role of drug and alcohol testing in safety-critical industries is rarely questioned. In fact, the evidence presented to the IIDTW by representatives from safety-critical industries often raised some genuine questions about the usefulness or appropriateness of testing even in

these environments. In most industries, accident rates were 'virtually zero' and – with one or two exceptions – those organisations that were drug testing their employees reported very low numbers of positive results.

Drug and alcohol testing is not a quick fix. But the IIDTW was nonetheless satisfied that it *can* have a role to play in safety-critical environments. First, it is apparent, from what we know about the psychological effects of various drugs, that intoxication can impair performance, with serious health and safety implications, and it is also a reasonable supposition that testing could deter and detect drug use in some circumstances. Second, even if this deterrent effect is extremely marginal, the IIDTW is acutely conscious that, in some occupations, the consequences of a single error could be very grave indeed. Third, the IIDTW has been advised that it is difficult – if not impossible – to prove a deterrent effect anyway due to the very wide range of variables acting on a situation (so, it is unlikely that any deterrent affect will ever be conclusively established one way or another by the research evidence).² And, finally, while some of the evidence presented to the IIDTW suggests that drug testing in safety-critical industries is more about maintaining public confidence than having a demonstrable impact on behaviour, the Commissioners recognise that the confidence of the public is an entirely valid consideration in its own right.

The IIDTW accepts that there is a case for drug testing in safety-critical industries. But direct testing of impairment is better suited to health and safety purposes than drug testing – which is an indirect and unreliable measure of impairment. The further development of impairment-testing techniques – and, in

particular, testing that can target only those forms of impairment that are relevant to a particular task or job – could potentially undermine the arguments for drug testing in safety-critical occupations. The IIDTW heard that there is ongoing research into impairment testing, but no conclusive evidence that it will necessarily improve sufficiently. If this form of testing is successfully developed, a review conducted in five or ten years may struggle to make a case for drug testing even for safety-critical workers.

The IIDTW also notes that testing in safety-critical industries should be one part of a comprehensive drug and alcohol policy. Furthermore, a focus on drugs and alcohol should not divert attention or investment from other health and safety priorities – for example, poor working practice, communication failures, stress and excessive tiredness. Any guidance or advice for employers should also present alternatives to drug testing and provide objective criteria for assessing their relative merits.

8 Implementation issues

If the benefits of drug testing are uncertain, then the costs should not be underestimated either. Some employers from safety-critical industries who provided evidence to the IIDTW said that testing had been divisive and damaging to industrial relations. There can also be a large disparity between the good intentions behind a drug-testing policy and the implementational reality on the ground. The IIDTW heard of cases where testing procedures that appeared to be more or less foolproof had been subverted. In particular, the IIDTW heard evidence of managers and staff colluding to subvert testing

systems out of friendship or a sense of loyalty to colleagues, to avoid losing a trained employee or because a positive test could reflect badly on their team or part of the business. The Inquiry also heard of cases where employees had not reported incidents, with possibly serious health and safety implications, for fear of triggering drug testing and disciplinary procedures against themselves or colleagues.

The majority of witnesses to the IIDTW saw drug and alcohol issues as a health and welfare matter, and not simply – or primarily – as a disciplinary issue. This is surely right. It follows that organisations should not be drug testing unless they have appropriate systems to deal with staff identified as having drug or alcohol problems.

Thus, BT explained to the IIDTW that ‘as with any problem, [we] ... support the individual in dealing with it’ (i.e. a drug or alcohol problem). And Rolls-Royce plc told the IIDTW that it had issued all its managers with a guide to mental health that clearly stated that alcohol and drug abuse should be treated as a health problem, and addressed by providing appropriate support and counselling to employees. As noted earlier, while London Underground takes a ‘tough’ line when staff test positive for drugs and alcohol, it also offers plenty of support to staff who proactively come forward with problems.

The arguments for treating drug and alcohol misuse as essentially a health and welfare issue are not only ethical ones, there is also a strong business case for supporting staff who develop problems. Failure to do so can mean losing trained and able staff, it can be divisive, may be open to legal challenge and could have a negative impact on the company’s reputation

with employees, potential employees and customers.

The IIDTW believes that the key to successful implementation of a drug and alcohol policy is that it is conceived as an aspect of health and welfare policy and not exclusively as a disciplinary matter. A drug and alcohol policy will be effective only if it is accepted and owned by staff across the organisation (although the IIDTW acknowledges that, in some occupations, working while intoxicated by drugs or alcohol is highly irresponsible behaviour and is a serious disciplinary matter).

The IIDTW concludes that drug testing at work should be introduced only in specific circumstances where there is a demonstrable benefit, and should not be introduced in the absence of proper consultation and involvement of trade unions and/or other staff representatives.

The acceptability of testing is also about the approach that is taken to alcohol and drug problems among staff.

The IIDTW believes that, where staff in safety-critical roles are found to have drug or alcohol problems, this is a health and welfare issue and should not be a basis for automatic dismissal or for automatically triggering disciplinary procedures. Wherever possible, employees with safety-critical functions should be redeployed in other roles and given appropriate help and support. Aside from the welfare arguments, if a drug policy including testing is clearly a health and welfare initiative, it is far less likely to be undermined and subverted, and will fulfil its safety function far more effectively.

The IIDTW accepts that, if companies do drug test staff, there is a good case for restricting

testing to staff in safety-critical industries who have a direct safety-critical role, but notes that this is a very difficult line to draw. The IIDTW also notes that many individuals will have safety-critical jobs although they are not employed in safety-critical industries, and this needs to be recognised in developing policy and guidance.

The IIDTW is concerned that responsibility for safety in the workplace is not 'downwardly delegated'. The decisions of senior staff can have as great a consequence for public safety as the actions of, say, a train driver or a miner. Drug and alcohol policy should not be something that is imposed on employees by managers – for example, through unnecessarily invasive testing regimes – but must be even-handed and non-discriminatory. The IIDTW believes that it is unacceptable, for example, if an organisation is drug testing junior staff where senior management are themselves involved in a culture of drinking in working hours. All those affected by drug policy need to be involved in its formation. If policy is not seen to be fair, then drug testing will be a source of conflict and an 'us' and 'them' mentality, which will undermine the effectiveness of any workplace drug and alcohol policy.

9 Drug testing in its place

The IIDTW would emphasise that management structures should *routinely* pick up on staff who are not performing at work or are frequently on sick leave *anyway*. For the most part, it is unclear that anything can be achieved through drug and alcohol testing that could not be done better through other managerial and supervisory processes.

Precisely this point was made by a number of businesses that gave evidence to the IIDTW. Southern Water told us that drug testing had added little value, and that, in future, they would deal with drug and alcohol issues by good routine management. Transco told us that good, high quality management made drug testing less of an issue. And a representative from the Engineering Employers' Federation said that drug and alcohol use was a basic management issue:

... do you raise the fact that someone is under-performing and instead of dealing with it in a sensible 'people management skill' way – by asking questions such as 'what is happening?', 'how are you doing?' – go down the route of drug testing and just say 'we are thinking of drug testing you'.

This point was made with force and clarity in a personal written submission to the Inquiry from Andrew May, Chair of the Chartered Management Institute Working Party on Drug and Alcohol Abuse in the Workplace. He commented:

... a relationship based on trust and open communication between managers and staff is essential to identify and cope with abuse problems. It is equally important for dealing with staff problems arising from family problems (illness, divorce) or other addiction problems (gambling, eating disorders). It is not just drug abuse that affects performance, and over-emphasising this abuse risks ignoring others with equally serious consequences ... Early recognition and supportive policies minimise the adverse effects of abuse to the benefit of individuals and the organisation.

The Commissioners fully endorse these comments.³ Where testing is carried out in house, it will generally be the responsibility of occupational health departments. The London Chamber of Commerce convened a round-table discussion for the IIDTW in 2003 at which it was made clear to Commissioners that some occupational health managers fear that the relationship of trust with staff may be damaged by their involvement in drug testing.

The IIDTW finds that drug testing is no alternative to good management practice, and, if not sensitively handled, can damage relations of trust between managers and staff.

The IIDTW notes that an unhealthy and/or excessively stressful work environment can contribute to substance problems, and that all organisations have a responsibility to address the causes as well as the consequences of drug use.

10 The responsibilities of employees

While the evidence presented to the IIDTW suggests that the majority of staff behave responsibly in Britain, it would be wrong to conclude this report without a reference to the responsibilities of employees. It is unacceptable for anyone to arrive at work in a state of intoxication that could place their colleagues, members of the public or the reputations of organisations at risk, or – in general – means they are unfit to do the work that they have been employed to do.

Notes

Introduction

- 1 Richardson, A., Budd, T., Engineer, R., Phillips, A., Thompson, J. and Nicholls, J., *Drinking, Crime and Disorder*, Findings 185, Home Office, London, 2003.
- 2 Parker, H., Williams, L. and Aldridge, J. 'The normalisation of "sensible" recreational drug use: further evidence from the North West England longitudinal study', *Sociology*, Vol. 36, No. 4, 2002. Additional material from 'Young make drugs part of everyday life', *The Guardian*, 25 November 2002. The issue of alcohol and drug misuse at work has also been highlighted by a succession of big media stories, such as the dismissal last year by London Underground of five track workers after a large quantity of alcohol was allegedly found in a mess room at Farringdon station (see, for example, 'Tube strike threat after staff sacked over alcohol', *The Guardian*, 3 December 2003). Or the recent investigative newspaper report that claimed that 'soaring stress levels among commercial airline pilots are leading to an alarming rise in drinking problems' ('Stressed pilots turn to drink', *The Observer*, 28 December 2003). Media stories of sports men and women, actors and actresses and other celebrities seeking help for drug and alcohol problems are routine, and it is a reasonable assumption that these problems are not peculiar to these professions.
- 3 Since 1997, there has been a massive extension in the use of testing by the police, prisons and other criminal justice agencies. A new system of mandatory and voluntary drug testing operates throughout the prison

estate. A new community sentence, the Drug Treatment and Testing Order was introduced by Sections 61 to 64 of the Crime and Disorder Act 1998. The Criminal Justice and Court Services Act 2000 gives the police the power to drug test detainees in police custody and courts the power to order drug testing of offenders under the supervision of the probation service.

- 4 See, for example, 'Plan for drug tests on police', *The Guardian*, 6 September 2003.
- 5 There are obvious difficulties in getting employees to discuss substance use at work 'on the record' and a detailed and systematic investigation was beyond the scope and budget of the IIDTW. While interviews of employees were comparatively small in number and not necessarily representative, they were at least suggestive of what is happening on the ground.

Chapter 1

- 1 The IIDTW is grateful to a number of people who prepared reviews and other evidence for the Inquiry, which have informed the discussion of these key issues in this – and subsequent – chapters.
- 2 Thus, Kevin Morris, President of the Police Superintendents' Association, claimed that police officers were 'ethically bound' to accept random drug testing in the service, because of their role as enforcers of drug laws. He commented: 'we owe it to the public to show it quite clearly and categorically that the police do not take illicit drugs' (quoted in 'Plan for drug tests

- for police', *The Guardian*, 6 September 2003). More recently, it was reported in the magazine *DrugLink* that 'In October, Home Secretary David Blunkett was handed guidance by the Police Advisory Board (PAB) recommending drug tests for all new recruits, for those entering specialist jobs and as a response to specific incidents and behaviour. Already four forces – Merseyside, Greater Manchester, West Midlands and Grampian – have tested officers. But this could be the thin end of the wedge which some experts predict would have a disastrous effect on recruitment and officers' morale and health. The PAB wants the Home Secretary to consider random testing of all Britain's 130,000 officers in late 2005, a policy which has the strong backing of the Association of Chief Police Officers (ACPO) and the Police Superintendents' Association (PSA)' (Max Daly, 'Passing out parade', *DrugLink*, Vol. 19, No. 1, January / February 2004).
- 3 'Chain of custody is a legal term that refers to the ability to guarantee the identity and integrity of the specimen from collection through to reporting of the test results. It is a process used to maintain and document the chronological history of the specimen. (Documents should include name or initials of the individual collecting the specimen, each person or entity subsequently having custody of it, the date the specimen was collected or transferred, employer or agency, specimen number, patient's or employee's name and a brief description of the specimen.) A secure chain of custody, together with the analytical techniques used by the Regional Laboratory for Toxicology to confirm the identity of drugs present in a specimen, leads to the production of a legally defensible report' (www.toxlab.co.uk/coc.htm).
 - 4 Indeed, one witness pointed out to the Inquiry that for some drug users – including those being treated with substitutes like methadone – *not* using drugs could impair performance (this would obviously apply to many prescription drugs too, and – arguably – to nicotine).
 - 5 In sport, this issue is further complicated by the fact that some of the substances that athletes are prohibited from taking are derivatives of substances that are produced naturally in the human body and the extent to which the body produces these substances varies significantly from one person to another. Paradoxically, the exertion of sporting activity itself can push naturally produced testosterone and nandrolone levels up close to – or sometimes beyond – prohibited levels.
 - 6 For example, skier Alain Baxter had an Olympic bronze medal from the 2002 Salt Lake City Winter Olympics withheld when he failed a drugs test. He later explained 'they had found traces of what appeared to be the banned substance methamphetamine in my urine sample, so were going to take my medal away. Eventually, we worked out that the positive test was caused by a Vicks Nasal Inhaler I had bought in the US and was using to clear my sinuses. I had always used the same decongestant in the UK and assumed it was safe. But the American

- version contained a tiny amount of levamfetamine, a mild form of the banned substance' ('Triumph and despair', *The Observer*, 18 January 2004).
- 7 In what follows, the IIDTW is particularly grateful for the detailed, considered and illuminating discussion of the legal issues provided in 'An expert legal opinion for leading barrister Michael Ford', which was submitted to the IIDTW in November 2003 and a report entitled 'Drug testing at work: a legal perspective', which was prepared for the Inquiry by Gillian Ferguson LLB (Hons), LL.M (Cantab.) of Matrix Chambers. These reports will be made available to the public in due course. The Commission would also like to thank the practising lawyers with particular expertise in employment law from legal practices across England and Wales who gave evidence to the Inquiry, and participants in the Plenary Session at the Industrial Law Society on 12 September 2003 on 'Drug testing at work: legal and ethical issues'.
 - 8 To be more precise, there is an implied term in every relationship that an employer will not 'without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee'. As Michael Ford pointed out to the IIDTW, leaving aside the interpretation of this implied term '[it] will not override express terms ... including, in the present context, express terms of contract which give the employer the right to require its employees to undertake drug testing'.
 - 9 If a case for unfair dismissal is successful, then an employee is entitled to an award to compensate for financial loss (the maximum award is currently set at £52,600). Significantly, this award may be reduced if the 'blameworthy conduct' of the employee is judged to have caused or contributed to his or her dismissal.
 - 10 But, if adopting a fair procedure would have led to dismissal in any event, the compensatory award is likely to be restricted to the period it would have taken for a fair procedure to take its course – normally no more than a few weeks.
 - 11 Where the use of illicit drugs has given rise to a criminal record, the disclosure of this information is subject to a set of statutory rules, notably under the Rehabilitation of Offenders Act 1974.
 - 12 See, in particular, Section 2 and Section 3(1) of the Health and Safety at Work Act.
 - 13 The Management of Health and Safety at Work Regulations are SI 1999/3242. See, in particular, Regulation 3.
 - 14 See Sections 27 and 28, Transport and Works Act.
 - 15 Concerns about compliance with the Transport and Works Act apparently played an important part in London Underground's decision to include drug testing provisions in its substance abuse policy. For an illuminating discussion, see Palmer, M., 'Workplace monitoring: taking the drink and drugs high ground?', *Employment Law Journal*, No. 20, May, 2001, pp. 22–4.

- 16 Sex Discrimination Act 1975, Race Relations Act 1976 and Disability Discrimination Act 1995. The prohibition on discrimination on the basis of trade union membership is contained in the Trade Union and Labour Relations (Consolidation) Act 1992.
- 17 The fact that drugs may mask or remove the disability is not relevant to assessing whether someone is disabled or not. The effects of any treatment are factored out in assessing disability.
- 18 The exclusion of drug and alcohol dependency in the Disability Discrimination Act 1996 obviously does not apply to health problems that are the result of past substance use – for example, where heavy alcohol use has resulted in liver damage.
- 19 On this matter, see *X v. Commission of the European Communities* [1995] IRLR 320.
- 20 In his evidence, leading barrister Michael Ford notes, for example, that the adoption of a ‘reasonable expectation of privacy’ test in the USA ‘has largely left management prerogative unscathed in the sphere of drug use and testing’. By contrast, in France, where there is a right to private life at work, the courts have required much more stringent justification of drug and alcohol testing – holding, for example, that only health and safety reasons are sufficient to justify tests.
- 21 It is worth noting that a recent Employment Appeal Tribunal ruling, while rejecting an argument based on Article 8, did express concerns that a company’s drug policy effectively meant that ‘no drugs having certain persistent detectable characteristics could be taken by employees in their private time without probably jeopardising employment’ (*O’Flynn v. Airlinks*, EAT/0269/01).
- 22 He continues: ‘For what they are worth, my views are that O’Flynn and Whitefield (*Whitefield v GMC* [2003] IRLR 62) accord too little importance to the impact of drug testing on private life; that testing for prescription drugs which therefore reveals information about an individual’s health will require particularly compelling justifications; and that in future tribunals are likely to demand a clearer link between off-duty drug use and performance at work than the traditional approach has demanded (though they will probably tend to find a link more readily if drugs are criminalised)’.
- 23 In her evidence to the Inquiry, Gillian Ferguson of Matrix Chambers explains: ‘it is clear that certain public sector employers, such as government departments or the police, are public authorities. These types of bodies are pure public authorities and all acts of such bodies, including workplace drug testing, are caught by the Human Rights Act. However, the position is less clear in relation to bodies that have a combination of public and private functions, such as a privatised utility with mixed commercial and regulatory functions or a professional association with a regulatory role. These types of bodies are sometimes termed “hybrid public authorities”. It is only those acts of hybrid public authorities that are of a public nature, which are caught by the Human Rights Act.’

- Since drug testing is arguably a private act within the inherently private employment relationship, workplace drug testing by a hybrid public authority is likely to fall outside the scope of the Human Rights Act. However, where the functions that render an employer a “public authority” relate to health and safety, drug testing is arguably a public act and therefore covered by the Human Rights Act.’
- 24 See the ILO Inter-regional Tripartite Experts’ Meeting on Drugs and Alcohol Testing in the Workplace, 10–14 May 1993, Oslo.
- 25 This is because the principal remedies of the Act are administrative, not criminal.
- 26 Information Commissioner, *The Employment Practices Data Protection Code: Part 4: Information about Workers’ Health*, 2003, at para. 3.4.1.
- 27 Information Commissioner, *The Employment Practices Data Protection Code: Part 4: Information about Workers’ Health*, 2003, at para. 3.4.4.
- 28 Information Commissioner, *The Employment Practices Data Protection Code: Part 4: Information about Workers’ Health*, 2003, at para. 3.4.4.
- 29 Information Commissioner, *The Employment Practices Data Protection Code: Part 4: Information about Workers’ Health*, 2003, at para. 3.4.6.
- 30 Information Commissioner, *The Employment Practices Data Protection Code: Part 4: Information about Workers’ Health. Supplementary Guidance*, 2003, para. 3.4.1.
- 31 Information Commissioner, *The Employment Practices Data Protection Code: Part 4: Information about Workers’ Health. Supplementary Guidance*, 2003, para. 3.4.2.
- 32 Amicus-AEEU told the IIDTW that an action was being pursued in the civil court.
- 33 The *Fortune* magazine ranks the largest companies in the United States in an annual Fortune 500 list. Essentially, *Fortune* magazine lists the US-based corporations with the largest revenue in the past year. Fortune 500 companies are among the biggest, most profitable and most powerful companies in America.
- 34 One of the employees who spoke to the IIDTW – a young woman working in the telecommunications field – made the point about the distinction between private and work life with particular force and clarity. ‘As long as you do your work ... that should be the issue’, she argued. ‘Drug testing would get employers involved in your private life. Personal recreational enjoyment shouldn’t have anything to do with the company ... random testing, in particular, is blurring the line between work time and private time ... if they insist on random testing, I’d query their motives. It is just too invasive. I’m contracted to work between 9.00 and 5.30 – that is the time I put in. Any other time is my own.’
- 35 Miller, D. (ed.), *The Blackwell Encyclopedia of Political Thought*, Blackwell, Oxford, 2004.
- 36 Although, incidentally, as a matter of fact, it is the *possession* of drugs and not their use as such that is legally prohibited under the Misuse of Drugs Act 1971.

Chapter 2

- 1 Martin, P., 'Tackling drug related crime – from warfare to welfare', interview in *Safer Society*, No. 14, Autumn 2002.
- 2 Parker, H., Williams, L. and Aldridge, J., 'The normalisation of "sensible" recreational drug use: further evidence from the North West England longitudinal study', *Sociology* Vol. 36, No. 4, 2002. See also, Parker, H., Aldridge, J. and Measham, F., *Illegal Leisure: The Normalisation of Adolescent Recreational Drug Use*, Routledge, London, 1998.
- 3 See, in particular, Goulden, C. and Sondhi, A., *At the Margins: Drug Use by Vulnerable Young People in the 1998/1999 Youth Lifestyles Survey*, Research Study 228, Home Office, London, 2001.
- 4 Altrix is a drug-testing service that was established in 1998. The Altrix laboratories analyse approximately 200,000 samples a year, involving over 1,000,000 individual tests. Altrix is now the largest specialist oral fluid drug-testing laboratory in Europe, providing services mainly to the drug rehabilitation and criminal justice sectors and also to a number of commercial organisations. It told the IIDTW that workplace testing was as an area for future expansion.
- 5 See DrugScope (2001), 'Charity launches service to ease industry's £2.8 billion drug and drink habit' (press release), which is available at www.drugscope.org.uk.
- 6 Chartered Management Institute, *Managing the Effects of Drugs and Alcohol in the Workplace*, CMI, London, 2003.
- 7 There have been some illuminating studies of specific industries. For example, the *Caterer and Hotelkeeping Magazine* published the results of a survey of catering workers on 9 October 2003. While the results of this survey should be treated with caution, its findings are striking nonetheless: over 97 per cent of those workers who participated in the survey considered drug and alcohol use at work to be a problem; 24 per cent reported having personally drunk to excess at work; 12 per cent admitted using illegal drugs at work; 59 per cent said they had witnessed other employees drinking to excess during working hours; and 40 per cent had witnessed other employees taking illegal drugs during working hours (*Catering and Hotel Magazine*, 9 October 2003).
- 8 The questionnaire was included in *Hazard* magazine, No. 100, 5 April 2004 and the results were analysed by the TUC on behalf of the Independent Inquiry.
- 9 In 1986, President Reagan issued an Executive Order requiring federal agencies to introduce urine testing in order to create 'drug free federal workplaces'. The Drug Free Workplace Act 1988 prohibits the manufacture, distribution, possession and use of controlled substances in the workplace.
- 10 Greenburg, E.R., Canzoneri, C. and Straker, T., *1994 AMA Survey on Workplace Drug Testing and Drug Abuse Policies*, American Management Association, New York, 1994.

- 11 Dalen, P., Beck, O., Bkorklov, P., Finer, D., Garle, M. and Sjoqvist, F., 'Workplace drug testing likely to increase in Europe', *European Journal of Clinical Pharmacology*, Vol. 56, 2000, p. 103.
- 12 Chartered Management Institute, *Managing the Effects of Drugs and Alcohol in the Workplace*, CMI, London, 2003.
- 13 The study was restricted to companies with at least ten employees.
- 14 The breakdown of the number of respondents to the CBI questionnaire by industry is as follows: finance (3), chemical (11), gas (2), utility (10), engineering (11) postal / courier (2), education / research (2), mining / quarrying (2), communications (2), retail (2) and transport (2).
- 15 The Inquiry was told that some offshore drilling companies conduct random tests on all staff, while others reserve random testing for safety-critical workers only.
- 16 Although it was a different story for contractors, who were viewed as a source of a greater potential substance misuse problem, and would generally face immediate dismissal.
- 17 All-Party Parliamentary Drug Misuse Group, *Drug Testing on Trial*, July 2003. Williams, J., 'Tinker, tailor, soldier, smackhead: doctors on heroin, nurses on pills, executives on coke. How serious is drug taking at work', *The Big Issue*, 9–15 February 1998.
- 18 Williams, J., 'Tinker, tailor, soldier, smackhead: doctors on heroin, nurses on

pills, executives on coke. How serious is drug taking at work', *The Big Issue*, 9–15 February 1998.

- 19 Discussed in Moore, D. and Haggerty, K., 'Bring it on home: home drug testing and the relocation of the war on drugs', *Social and Legal Studies*, Vol. 10, No. 3, 2001, pp. 377–95.

Chapter 3

- 1 Until recently, the quarrying industry had the highest rates of industrial accident in the UK. Disturbingly, the IIDTW was told that, if somebody worked for 40 years as a quarryman, they would have a one in ten chance of being killed or seriously injured. This is a working environment that is potentially very dangerous and totally unforgiving of carelessness and mistakes.
- 2 This witness told us that this 'gut feeling' could not be backed up by solid evidence, as, in the past, the industry had not had effective alcohol and drug policies, which would have ensured that workplace accidents and their causes were properly investigated and monitored.
- 3 Although, in such cases, it was difficult to separate out impairment caused by the drug use from impairment due to the underlying fatigue.
- 4 Also, in its evidence, London Underground told the Inquiry that its drug and alcohol policy stated that, if employees were taking medication, then they had a responsibility to find out about side effects that might impair their work performance.

- 5 Kraus, J.F., 'The effects of certain drug-testing programs on injury reduction in the workplace: an evidence-based review', *International Journal of Occupational Environmental Health*, Vol. 7, No. 2, 2001, pp. 103–8.
- 6 'If we wanted the business', it explained to the Inquiry, 'we had to have the policy'.
- 7 Of two young applicants for jobs who tested positive for cannabis, this witness commented that 'it was really quite upsetting ... [and I] ... would not want to go through that again'.
- 8 The wording of the London Underground policy on medication is, as follows: 'all employees are required: when requiring medication, to find out if there may be side effects likely to impair their work performance and safety from the drug or other medication concerned, whether prescribed or available without prescription, and, where this is the case, to seek advice regarding alternatives; additionally to advise their manager when reporting for work'.
- 9 Compared to 30 per cent who did support such a restriction.
- 10 It was pointed out to the IIDTW that testing could even be a cause of absenteeism. People might not turn up for work if there was a risk that they would be drug tested and they had used a drug that could be detected. For example, someone who had taken cocaine at the weekend might not come to work on Monday morning.
- 11 It may be, for example, that young men are more likely to take days off work and more likely to be drug users than middle-aged women, and this will distort the results if all that is considered is the relationship between drug use and absenteeism.
- 12 See, for example, Register, C.A. and Williams, D.R., 'Labor market effects of marijuana and cocaine use among young men', *Industrial and Labour Relations Review*, Vol. 45, No. 3, 1992, pp. 419–34.
- 13 See, for example, Zwerling, C., Ryan, J. and Orav, E.J., 'The efficacy of pre-employment drug screening for marijuana and cocaine in predicting employment outcome', *Journal of the American Medical Association*, Vol. 264, 1990.
- 14 Francis, P. and Wynarczyk, P., 'Regulating the invisible? The case of workplace illicit drug use', in P. Davies, P. Francis and V. Jupp (eds), *Invisible Crimes: Their Victims and their Regulation*, Macmillan, London, 1999.
- 15 For further details of this survey, see 'Drug testing: a bad investment?', American Civil Liberties Online Archive, www.aclu.org/library/bbp5.html
- 16 Kaestner, R., 'New estimates on the effects of marijuana and cocaine use on wages', *Industrial and Labor Relations Review*, No. 47, 1994, pp. 454–70.
- 17 See, for example, Trice, H. and Roman, P., *Spirits and Demons at Work* (Second Edition), Cornell University, New York, 1978.
- 18 Which will, of course, vary depending on the type of drug under consideration and an individual's pattern of drug use.

- 19 In her evidence to the All-Parliamentary Drug Misuse Group.
- 20 Amicus-AEEU is the UK's largest manufacturing union, with 730,000 members in the public and private sectors.
- 21 The key references are Gilliom, J., *Surveillance, Privacy and the Law: Employee Drug Testing and the Politics of Social Control*, University of Michigan Press, 1994 and Butler, B., *Alcohol and Drug Testing in the Workplace*, Butterworths, Toronto, 1993.
- 22 Sullum, J., 'Pissing contest', *Reason*, January 2000.
- 23 See, for example, Spell, C.S. and Blum, T.C., 'Organisational adoption of pre-employment drug testing', *Journal of Occupational Health Psychology*, Vol. 6, No. 2, 2001, pp. 114–26.
- 24 In contrast, 49 per cent did not think it sent out the wrong message to staff and 50 per cent did not think it impinged on human rights.

Chapter 4

- 1 The IIDTW was able to speak directly only to a small number of employees who used drugs, and they will not necessarily be the best judges of the effects on their performance. However, it is interesting that these witnesses did not feel that their drug use had a significant impact on their work

and that some believed that they had worked harder than otherwise to cover up their drug use. In addition, the IIDTW heard evidence from employers that the level of positive results was extremely low, and there was no discernible relationship between the introduction of drug testing and a reduction in accident rates.

- 2 The IIDTW also notes that it has been demonstrated in other contexts that deterrence is linked to the perceived likelihood of discovery. Drug testing might have to be conducted on a regular and frequent basis (maybe weekly or daily) if it is to have any kind of deterrent effect.
- 3 Andrew May further commented: 'Managers have legal responsibilities for managing people, as well as commercial duties to their organisation. Penalties faced by managers who fail go far beyond loss of office, with imprisonment for corporate manslaughter now a reality. Techniques in risk assessment have been refined to help identify what constitutes risk, and one significant area of risk is employees who behave irrationally. A good "man-manager" minimises risk by knowing their staff and through monitoring their actions. Detecting change in behaviour or performance will spark enquiry into the cause. A manager will need to be able to pinpoint a cause through an awareness of the external signs of behaviour, which, of course, may have no connection with drug abuse.'

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Appendix

Organisations and individuals who gave evidence to the Inquiry

Transport

June Ashton, Human Resources Manager for UK Bus Division, Stagecoach

Lynne Beale, Group Risk Manager, Arriva Group

Dr Olivia Carlton, Head of Occupational Health, London Underground

Nigel Radcliffe, Senior Drug and Alcohol Counsellor, London Underground Support Services

Other Industries

Dr Ian Almond, Senior Medical Advisor, TRANSCO (utility company gas distributor)

John Corden, Head of Health, Safety, Emergency Planning and Security, Southern Water (utility company, water supply and waste)

Dr N.F. Davies, chief Medical Officer, Nuclear Power Generator, British Energy

Liz Eades, Occupational Health Advisor, Seeboard Plc (utility company, electricity distribution)

Paul Fairlamb, Group Safety Manager, UK Coal (independently owned coal mining company)

Rory Graham, Director, Health, Safety & Training, Foster Yeoman (quarrying industry)

Alison Jackson, Safety, Health and Environment Division, UKAEA (decommissioning of nuclear reactors, and other radioactive facilities)

Dr Sayeed Khan, Chief Medical Advisor, Engineering Employers' Federation

Dr I.J. Lawson, Chief Medical Officer, Rolls-Royce Plc (multinational, engineering production for civil aerospace, defence aerospace, the marine and energy sectors)

Dr Paul Litchfield, chief Medical Officer, and Head of Health and Safety, BT Group (telecommunications services)

Andrew May, (personal submission) Chair, Chartered Management Institute Working Party on Drugs and Alcohol in the Workplace

Jane McCourt, Occupational Health Advisor, Citigroup (banking/financial services)

Name withheld, Group Health and Safety Manager, Entertainment Industry

Name withheld, head chef and author, Catering Industry

Statutory Sector

Rob Bettinson, Development Manager, UKAS (United Kingdom Accreditation Service)

Iain Bourne, Strategic Policy Officer, Information Commissioner

Paul McCormack, Psychosocial Issues Unit, HSE (Health and Safety Executive)

Chris Rowe, Head of Psychosocial Issues, Policy Unit, HSE (Health and Safety Executive)

David Smith, Assistant Commissioner, Information Commissioner

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Insurance

Phil Grace, Risk Manager, Casualty, Norwich Union (insurance company)

Tim Humphreys, Manager for Liability Department for GI, ABI (Association of British Insurers)

Lawyers

Richard Arthur, Employment Rights Unit, Thompsons Solicitors

James Davies, Partner, Employment Law, Lewis Silkin Solicitors

Gillian Ferguson, Research Panel, Matrix Chambers

Michael Ford, Senior Council, Old Square Chambers

Gillian Leach, Employment Law specialist, Blake Lapthorn Linnell

Daniel Naftalin, Mishcon de Reya Solicitors

Katie Swaine, Head of Legal Services, Release

Gabriella Wright, Employment & Pension Unit, Charles & Russell

Fraser Younson, Head of Labour and Employment Group, London, Mcdermott Will and Emory

Laboratories/testing companies/policy providers/service providers

Matthew J. Atha, Principal Consultant IDMU (Independent Drug Monitoring Unit)

Keith Burns, Employment, Assistant Director, Promis Recovery Centre

Dr David Caughey, Senior Occupational Physician, Aon Health Solutions (Occupational Health Providers)

Julian Coe, CEO, Altrix Healthcare plc

Simon Floyd, Training and Consultancy, NORCAS

John Franklin-Webb, Principal Director, GSI Grosvenor International Services

Karl Graham, Business Unit Manager Workplace and Prison, Altrix Healthcare plc

Patricia Grant-Wilson, Centre Manager, GSI Grosvenor International Services

Lindsay Hadfield, Policy & Education Services, Medscreen Ltd

Alec Horner, Risk Management Consultant, 'Minimise Your Risk' (education and policy)

Steve Nurdin, Market Sector Manager, Altrix Healthcare plc

Roger Singer, Director, AVOIDD, DDE (drink driver education)

Chris Wakeham, Managing Director and Consultant, Hampton Knight

John Wicks, Managing Director, Tricho-Tech Ltd

Dr Keith Williams, Team Leader, Bioanalysis and Toxicology, LGC (Laboratory of the Government Chemist)

Police

Chief Superintendent Mike McAndrew, 'E' district Secretary, Police Superintendents' Association

Chief Superintendent Kevin Morris, President, Police Superintendents' Association

Social Researchers

Ross Coomber, Principal Lecturer in Sociology, University of Plymouth
Peter Francis, Sociology and Criminology division, University of Northumbria
Natalia Hanley, University of Northumbria
Neil Hunt, Lecturer in Addictive Behaviour, University of Kent at Canterbury
David Wray, University of Northumbria
Trinh Thu, Associate Director, MORI Social Research Institute

Roundtable – health issues

Dr Maureen Baker, Honorary Secretary, RCGP (Royal College of General Practitioners)
Dr Rosemary Field, Director of Primary Care, National Clinical Assessment Authority
David Harding-Price, Chair of Mental Health Practice, Royal College of Nursing
Lady Anne Parkinson, Changing Minds Campaign, D & A Misuse Working Group
Hugh Robertson, Head of Health and Safety Unit, UNISON
Dr David Saunders, Senior Member of College Counsel, RCA (Royal College of Anaesthetists)

Roundtable – occupational health

Bev Cornish, occupational health consultant
Jane McCourt, Occupational Health Advisor, Citigroup
Pauline Lepine, Occupational Health Advisor, John Lewis
Sheila Nursimbula, Occupational Health Advisor, Metropolitan Police
Hilary Philpot, Group Health and Safety Manager, Universal Music Operations Ltd
Mike J. Roberts, Occupational Health Advisor, Department of Transport
Jane Stanton-Humphreys, Corporate Health Services Manager, Citigroup

Roundtable – Industrial Law Society

Membership of the Industrial Law Society Conference, 12 September 2003

Trade Unions

Jim Doneghy, Union Official AMICUS-AEEU

Employees

Ben Goldacre, Journalist, Doctor, DJ
'James', Management Consultant
'Ian', London Underground employee
'P', forklift truck driver
'Janine', Telecommunications

Other Contributors

Transport

Dr Blair Chritchon, Deputy Head of Occupational Health, London Underground
Linda Harwood, Human Resources Policy Manager, London Underground
Dr Tim Norman, Policy Advisor, Department of Transport
Dr Lilley Read, Research Manager, Department of Transport
Mike Stallard, Business Services Manager, London Underground
Les Warneford, Managing Director, Stagecoach Bus and Coach Company

Statutory Sector

Dermot Breem, HSENI (Health and Safety Executive, Northern Ireland)
Adam Brett, Chairman, Northern Ireland Employment Lawyers Group
Trish Newton, Deputy Head of Job Seekers' Division, Jobcentre plus
Dr Delia Skan, Senior Employment Medical Advisor, HSENI (Health and Safety Executive, Northern Ireland)

Prison and Probation Service

Steve Limpkin, Head of Probation Service, National Probation Directorate
John Marsh, Head of Personnel Management Group, Prison Service
Clive Peckover, Head of Personnel Policies, Custody to Work

Research, information and service providers

Dr Angela Gorta, Research Consultant, Police Integrity Commission (Sydney, Australia)
Christine Hayhurst, Director, Public and Professional Affairs, Chartered Management Institute
Anusha Kurunathan, Sales, Frost and Sullivan (international market consultant on emerging high-technology and industrial markets)
William Shone, Head of Marketing, Euromed Limited (diagnostic services provider)
Tony Wallwork, Grendonstar, (training and drug and alcohol policies)
Helen Vangikar, Toxicology Manager, Quest Diagnostic
Alex Wong, Research Analyst, Healthcare, Frost and Sullivan