



Alcohol and Substance Misuse Policy

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1.0 Scope

This policy applies to all employees irrespective of grade, full-time or part-time, temporary or permanent and also covers agency staff and contractors.

2.0 Purpose

The purpose of this policy is to ensure that employees are not under the influence of drugs or alcohol whilst they are working for the Council which could put themselves or others at risk.

3.0 Aims and Objectives

To provide a clear framework against which to deal with the use and effects of drugs and alcohol in the workplace in a fair and consistent manner, with due regard to equality of opportunity.

This policy aims to:

- Ensure that Broxtowe Borough Council complies with its legal obligations to provide a safe and healthy working environment for all staff in accordance with relevant health and safety legislation;
- set out restrictions on the use of illegal and prescription drugs and/or alcohol at work;
- raise awareness of the dangers and penalties associated with the use of illegal drugs or alcohol in the workplace;
- provide assurances to staff that arrangements are in place to ensure so far as reasonably practicable that their work environment will be free from the effects of drug and/or alcohol abuse;
- provide support to staff whose lives are or have been affected by the misuse of controlled drugs or alcohol;
- protect employees from the dangers of controlled drug and alcohol abuse;
- support employees with drug or alcohol related problems.

4.0 Regulatory Code and Legal Framework

- Health and Safety at Work Act 1974
- Management of Health and Safety at Work Regulations 1999
- Road Traffic Act 1988
- Human Right Act 1988
- Corporate Manslaughter and Corporate Homicide Act 2007

5.0 Policy Outline

Broxtowe Borough Council is committed to ensuring the health, safety and welfare of its employees and those affected by its activities. It will take all reasonable steps to reduce, if not eliminate, the risk of injuries or incidents at work occurring due to individuals suffering from the effects of alcohol or substance abuse (The term substance misuse will be known as drugs from this point). Consequently, the Council reserves the right under this policy to exercise alcohol and drug testing of its employees.

The Council is committed to raising employees' awareness of the dangers of alcohol misuse, the recommended sensible drinking limits and fully supporting and encouraging employees who are affected by alcohol and drug misuse, to seek help.

Where the term "employee" is used, this means anyone employed by the Council regardless of grade, full-time or part-time, temporary or permanent and also covers agency staff and Councillors.

This policy and procedure is based on the following principles:

- a. No employee shall attend for work in an unfit state due to the misuse of alcohol or drugs. An unfit state may include, but not be limited to cases where:
 - The individual is over the legal alcohol limit stipulated for driving (i.e. 35mcg/100ml of breath alcohol concentration).
 - In the opinion of management, the employee's performance is impaired. In respect to alcohol, this may be less than the legal limit stipulated for driving.
 - In the opinion of management, the employee's behaviour may cause embarrassment, distress or offence to others.
- b. Employees are prohibited from misusing drugs in the workplace, whilst undertaking the business of the Council, or immediately prior to or during a break in a working shift.
- c. Employees are prohibited from drinking alcohol in the workplace and this includes during any breaks taken throughout the day. Drinking alcohol during a working day (even during a lunchtime break) does not reflect the image the Council wishes to present. At all times **ALL EMPLOYEES** must be within legal driving limits for alcohol whilst they are at work irrespective of being a driver or not.
- d. The Council expressly prohibits the use of any controlled or prescription drugs by employees that has not been prescribed for the user or are drugs which are not being used in the manner described in the prescription.
- e. It is a criminal offence to possess, use or supply illegal drugs. Possession of illegal drugs on Council property is not permitted.
- f. An employee will not store drugs (except prescription drugs for personal use) or alcohol (unless in unopened bottle(s)) in personal areas such as lockers, vehicles and desk drawers; or attempt to sell or supply drugs or alcohol to any other employee or other person on Council premises, in Council vehicles or at any time during work time.

- g. The Council will provide reasonable assistance and support where an employee advises that they are suffering from drug or alcohol dependency. This may include Occupational Health Service, therapy or to follow a treatment schedule. Agencies will be expected to provide assistance and support to their own employees. Support will be provided to other employees affected by this where necessary.
- h. Where an employee has a dependency that has an impact on their normal work, or which prevents them undertaking some or all of their duties, they will be managed within the capability framework. Should the employee not be able to demonstrate that the drug or alcohol use is no longer an issue in relation to their work within this timescale, an employment decision will be taken about the employee's suitability to continue and the outcome may include redeployment or dismissal from the Council.
- i. With regards to agency staff, the person will be given the opportunity to take a test(s). If the person refuses, that person will be removed from their duties. The recruitment agency will be contacted and asked to forward a copy of the employment contract between them and the person (The Agency may remove the person at this point). The contract should state that the person must comply with the Council's policies and procedures. This will then provide the recruitment agency the opportunity to remove the person to act as an agency worker for the Council. If the Agency person does take the test(s) and the result identified that the person is under the influence of alcohol and/or substance misuse, he/she will be immediately dismissed from the Council's employment. A report will be provided to the agency.
- j. Absences relating to this dependency or its treatment will be dealt with under the Council's Absence Management Policies as appropriate.
- k. Loss, damage or accidents arising as a result of an employee whilst under the influence of alcohol or drugs will be investigated and dealt with appropriately through the Council's Disciplinary Procedure as will occasions when an employee has taken part in safety-critical work whilst being under the influence of such substances. This will be the case whether or not any dependency had previously been declared.
- l. Failure to comply with this policy may be treated and investigated as a matter of potential misconduct under the Council's Disciplinary Procedure (or appropriate procedure for agency staff).
- m. Information from testing will be processed by the Health and Safety team, it could be used as part of the disciplinary procedure or to show compliance to the Alcohol and Drug Policy. Information is stored in line with the Health and Safety Retention Policy, negative results are used for statistical purposes'.

5.1 With-cause alcohol and drug testing

A manager may require an employee to be tested for alcohol and drugs in cases where they have had any involvement in a workplace accident, near miss or in an incident that has caused or could have caused a danger to health or safety.

Testing may be carried out where a manager has grounds to believe or suspect that the employee is or may be under the influence of alcohol or drugs. The decision to carry out a with-cause test will be approved by a second manager and documented on the Alcohol and Drug Testing Forms.

A manager may also require an employee to undergo a programme of regular monitoring following a declaration from the employee of drug or alcohol misuse, or following advice from a medical professional. The period of further monitoring will be agreed on a case by case basis.

Any employee who notices signs of alcohol or drug abuse in a colleague should report their observations or suspicions in confidence to the employee's line manager.

Testing may be carried out as a follow-up action from a previous positive result.

For alcohol, the employee will be asked to give a sample of breath and a reading will be taken. The process for this test is explained on the screening form and the flow chart in the Appendices.

5.2 Random alcohol and drug testing

Random alcohol and drug testing will be carried out on employees who work in safety-critical jobs. Safety critical roles are defined as:

- working with machinery / tools / equipment
- driving fleet vehicles
- working in potentially dangerous environments
- working on the public highway

Management will determine the timing, frequency and sample size of random testing exercises. Up to 3 employees will be selected at random each month. The random selection will be witnessed by a member of the Human Resources or Health & Safety Team. Management reserves the right to increase the number of monthly random test if deemed appropriate

The Council reserves the right to carry out occasional random testing on any employees who position has designated user status and drive on Council business, irrespective of grade or status. These tests will be completed during the employees' working time.

5.3 Screening on Appointment/Transfer

Screening for drugs and/or alcohol on appointment or transfer may be required, as determined by managers following the completion of a risk assessment for the post. Should this be the case the employee will be advised of the Council's Alcohol and Drug Misuse procedure and the requirement to be tested when invited for interview.

5.4 Carrying out tests

Asking an employee to undergo alcohol and drug testing does not necessarily indicate that there is any suspicion of wrongdoing.

Alcohol and drug testing will be carried out only by trained and competent persons. Tests used will be industry standard and will be reliable, credible and safe. Tests are carried out with the least possible intrusion into employees' privacy. Test results will be held securely in the employee's personal file and treated confidentially in accordance with the Data Protection Act (2018).

5.5 Alcohol Testing

Alcohol – employees will be tested by a meter that is Home Office approved and is calibrated every six-months.

Process: The employee must give consent, if not it may be seen as an admission of guilt. Checks should be made for any medical conditions such as Asthma or Diabetes which could be an issue during the testing process.

The employee who is to deliver a breath test should be supervised in a room/area where he/she cannot have access to food, drink or be allowed to smoke/vape for 15 minutes before the test is carried out, this will allow the mouth to cleanse itself. If the reading is above 35 mg/100ml (drink drive limit) the employee will be required to take a second test after a further 20 minutes has elapsed. If the reading is still above 35 mg/100ml, the employee will be suspended.

If the reading is between 1 – 35mg, this will indicate alcohol in the body. The employee is once again supervised in a room/area where he/she cannot have access to food, drink or allowed to smoke/vape for a further 20 minutes. A second test is then conducted and if the reading is still between 1 – 35mg/100ml, the employees Manager must remind the employee of the requirements of the Alcohol and Substance Misuse Policy. This process must be conducted in the presence of an independent witness. The readings must be recorded, a photograph of the meter should be taken and a signature is required by the tester, employee and witness to verify that the recorded reading is identical to the reading(s). Follow flow chart in Appendix 3 if a positive result is recorded.

5.6 Drug Testing

Alcohol and drug testing will be carried out only by a qualified and competent person. Tests used will be industry standard and will be reliable, credible and safe. Tests are carried out with the least possible intrusion into employees' privacy.

If the test provides a positive result, the employee will be quarantined. One of the independent people administering the drug test will remain in the room with the employee at all times pending further tests. Further test will then be taken by a representative from a reputable UKA registered laboratory. This person will then assume responsibility for conducting a urine sample using the "Chain of Custody Collection Process". See Appendix 4. The results from this test will be provided within five working days and will confirm a positive or negative result. If positive, the

result will confirm the type of drug consumed and the concentration. Follow flow chart in Appendix 3.

The person will be suspended on full pay whilst waiting for the results of the test.

Employees who are tested will be notified of the result before this is disclosed to their line manager. Immediately after this notification to the employee, the line manager will be notified of the results of testing.

The employee must undertake testing as a failure to do so could be seen as an admission of guilty and considered as a misconduct issue, potentially gross misconduct and dealt with under the Council's Disciplinary Procedure.

Statistical information regarding the numbers of employees tested will be submitted to Directors/Heads of Service, the Unions and to the Safety Committee to ensure fairness and transparency of the testing regime.

5.7 Action after a positive test

If a test proves positive and the employee has been engaged in safety critical activities at the time of the test, or the test has been conducted because of an accident or other similar event or near-miss, the employee will be required to take part in an investigatory interview as defined within the Council's Disciplinary Procedure. This may lead to a formal hearing and appropriate formal action being taken which may include dismissal.

If work performance appears to be adversely affected by the use of drugs or alcohol the employee will be managed within the capability framework in which specific improvements within defined timescales will be made clear. Failure to meet these required improvements may lead to redeployment or dismissal.

It may be appropriate to establish a more regular drug or alcohol monitoring programme with an employee over an extended period of time to ensure that use of these substances is not affecting work performance.

Generally, a result will be considered "positive" where the presence of alcohol above 35mcg/100ml of breath alcohol concentration is detected or where there is the presence of controlled drugs. The drug testing should not detect levels of prescription drugs if they are being taken at a level prescribed by a healthcare professional. A urine test will be taken to confirm that the positive drug test is accurate and is not due to a prescription drug being taken at the prescribed level.

Note: Restrictions on drinking or being under the influence of alcohol whilst at work - relevant legislation Section 4 (1) Road Traffic Act 1988 states:

"A person who, when driving or attempting to drive a mechanically propelled vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence".

6.0 Roles and Responsibilities

6.1 Chief Executive

- Is responsible for ensuring corporate compliance with this policy
- Will support Directors/Heads of Service in fulfilling their responsibilities within this policy

6.2 Directors and Heads of Service

- Are responsible for ensuring that adequate arrangements are made within their service area to enable the policy to be implemented and operated effectively.
- discourage drink-related unacceptable conduct by ensuring that excessive consumption of alcohol does not occur at Council arranged formal events
- Identify safety critical roles that will be placed on the random testing regime
- Undertake the necessary drug and alcohol tests on their employees (if trained to do so)

6.3 Managers (Those who manage employees this may include Supervisory posts)

Have a responsibility to:

- Undertake the necessary drug and alcohol tests on their employees (if trained to do so)
- take steps as outlined in this policy to help and support the employee as soon as they become aware of an employee with an alcohol, drug or substance misuse problem
- create an atmosphere where employees feel able to discuss an alcohol/substance problem with them and should be especially careful of confidentiality
- encourage employees to seek help as soon as a problem is identified
- make it clear to the employee at all times that it is the wish of the Council to assist and support them wherever possible, and that strict confidentiality will be maintained, as far as is practicable
- fully investigate instances of possible intoxication, and implement the screening/testing procedure, where there are concerns about risk and/or safe working
- make a decision immediately following notification of an accident as to whether to implement the screening/testing procedure
- discourage drink-related unacceptable conduct by ensuring that excessive (i.e. within the legal limits) consumption of alcohol does not occur at Council arranged formal events
- review risk assessments to ensure sufficient control measures are in place if an employee informs them that they are taking any prescribed medication that may have an effect on their ability to carry out their work safely
- Take steps to remove individuals from safety critical roles if alcohol, drugs or substance misuse is reported or identified. This may be in the form of a

medical suspension and further action will be taken following further investigation.

6.4 Employees

Under the Health and Safety at Work etc. Act 1974, personal responsibility for all employees irrespective of grade, full-time or part-time, temporary or permanent and also agency staff (not self-employed), is set out as three basic duties:

1. We each have a duty to take reasonable care of our own health and safety and that of others who may be affected by what we do or fail to do.
2. We each have a duty not to neglect, abuse or interfere with anything provided in the interest of health and safety.
3. We each have a duty to co-operate with our employer over matters of health and safety.

In addition, each employee has a personal responsibility to:

- comply with this policy and not allow alcohol or drugs to interfere with their work performance and/or conduct.
- come to work capable of carrying out that work effectively without danger to themselves or others. Those employees who work with plant, machinery tools or equipment, or who drive as part of their duties, have particular responsibility to ensure that they are not affected by drugs and/or alcohol, which impairs judgement and reduces concentration which could result in accidents.
- be aware that being under the influence of alcohol or drugs sufficient to affect their work performance is a disciplinary offence and could potentially be treated as gross misconduct.
- not consume alcohol whilst undertaking the business of the Council, or immediately prior to or during a break in a working shift.
- not consume excessive levels of alcohol at Council arranged formal events resulting in unacceptable conduct. See Code of Conduct Policy.
- seek help and treatment as soon as possible if they feel they have alcohol drug misuse problems. They can do this by approaching their line managers or HR in confidence.
- Inform their line managers if they are taking any prescribed medication that may have an effect on their ability to carry out their work safely and they must follow any instructions subsequently given.
- Inform their manager and Human Resources/Health and Safety Section if they suspect or are aware that a colleague is under the influence of alcohol or drugs. If the colleague is not in their service area they **MUST** still report the issue to someone with managerial responsibilities.
- Advise Manager/Human Resources if found guilty of possessing illegal drugs or drug offences.
- Advise Manager/Human Resources if tested positive by a Police Officer.

6.5 Health and Safety Team

The Health and Safety Team provide advice, support and guidance in the application of this Policy.

7.0 Related Policies, Procedures and Guidelines

The following Council policies may be relevant to this policy and should be referred to where appropriate:

- Absence Management Policy and Procedures
- Disciplinary Policy
- Code of Conduct
- Capability Procedure
- Driving at Work Policy
- Health and Safety Policy

7.0 Review

This policy is subject to change due to legislative or organisation requirements. Significant organisational requirement changes to this policy will be made in conjunction with Trade Union officials as per standard process.

8.0 Appendices

- Appendix 1 – Drug and Alcohol Screening Form
- Appendix 2 – Testing Flow Chart
- Appendix 3 - Chain of Custody Collection Process
- Appendix 4 – Change table

9.0 Document History and Approval

Date	Version	Committee Name
02/02/2023	2	LJCC