

Prescribed medication, drugs and legal highs: managing insurance risks

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Managing the insurance risk for prescribed medication, drugs and legal highs

- *Duty of care and reducing liability*
- *Policy, testing and managing driver fitness*
- *Insurance gaps and possible legal outcomes*

History



- Early 2000s – 2015, driving whilst impaired through alcohol was considered a higher issue than drugs
- Change to the Road Traffic Act enacted in England & Wales 2015 and Scotland in Oct 2019 to include drug testing at the roadside
- Tests existed for alcohol levels within blood / breath however not for drugs
- Use to have to go through a police doctor system to gather evidence (time consuming)
- Increasingly, use of prescribed / over the counter medication, illegal drugs and legal highs are a major risk for employers and insurers, including driving at work
- How can organisations satisfy that all employees are fit to work / drive?

Police Scotland statistics

Operation Limit 2025 for Police Scotland (1st Dec to 1st Jan)

- 3,500 drink and drug driving tests were carried out by Police Scotland
- 3,021 breath tests (319 offences detected) - 10% positive
- 626 roadside drug tests (398 offences detected) 63% positive
- Onus on an employer to ensure the safety of employees and the public, as the number of drug driving offences is increasing

Legal position: Medication / Driving

HSE: duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all its employees

DVLA requires drivers to be medically fit to drive – but they may still issue class 1/2 licence for Cannabis Based Prescription Medication (CBPM)

Legal responsibilities: [The Drug Driving \(Specified Limits\) \(Scotland\) Regulations 2019](#)

Do we know if our employees / contractors are impacted by medication in our offices / vehicles?

Drug Driving Offences: RTA 1988



- The key sections that apply to drug driving:
- Section 4 – Driving or attempting to drive while unfit through drink or drugs (based on evidence of impairment)
- Section 5A – Driving with a specified controlled drug in your system above the legal limit
- Officers can use the following to evidence the above offences:
- Section 6 – Police powers to carry out roadside or preliminary drug tests
- Section 7 – Requirements to provide evidential samples (such as blood or urine) and offences for failing to do so
- Road Traffic police may carry out a field impairment (sobriety) test and use bodycam / dashcam footage too
- Offences under 4 & 5A carry serious consequences: disqualification (min 1 year), a fine of up to £5,000 and potential imprisonment for up to 6 months
- A conviction will remain on an individuals record for 11 years.

Working (including driving)

Employees (and their decision making processes) can be impacted by

- Prescribed or over the counter medication
- Drugs
- 'Legal highs'

Do your employees (including drivers) share details of anything that could impact their driving / work performance or could you tell from their behaviour/s?

How would you prove it?

Management of a moral hazard – if we are aware that it is used, what are the implications for organisations?

Medication & drugs – limits



- All approved medication and illegal substances have legal limits in place
- Illegal substances: almost zero tolerance / very low levels
 - *it is illegal to have consumed the drug in the first place*
 - *Not 0 to eliminate any potential claims of 'accidental' contact with the drug*
- Prescribed Medications: limits are set within the normal prescription ranges
- Drivers can still be prosecuted as the main umbrella that sits over all the levels including alcohol is impairment
- Impairment can vary from person to person – how to measure?

NICE: over the counter / prescribed medication

Examples which can impair include (but are not limited to):

- Painkillers (eg cocodamol)
- blood pressure meds
- anti depressants

Medication approved by NICE: available through pharmacy / supermarkets or prescribed by GPs

What impact could that have – do drivers inform you?

Pharmacists do not usually ask about role or driving

Risk: private GPs can also prescribe drugs that are not approved by NICE (eg cannabis)

Legal Highs (“poppers”)

- Captured under the [Psychoactive Substances Act 2016: guidance for retailers - GOV.UK](#)
- Not traditionally supported by NICE
- Illegal substances
- Can be part of a testing regime with the right tests that focus on them

Illegal drugs

- [Drugs and driving: the law - GOV.UK](#) has the list of the 17 illegal and controlled drugs
- This list includes cocaine, cannabis, heroin, ketamine, LSD, MDMA (ecstasy), Speed (amphetamine), Meth (methylamphetamine)

Cocaine

- Seen as a 'social' drug – impact may be longer than a night out / weekend
- Reduces decision making ability
- Impairs judgement
- Can slow reaction times and impact co-ordination
- Recent fatality: A7 in August 2023
- Driver took cocaine the day before
- Jailed for 6 years

Cannabis – CBD - Cannabidiol

- Supplement (not prescription) with zero or almost zero THC content
- Uses include anxiety, inflammation, pain, depression
- Can be bought in a variety of forms (vape / drinks etc)
- Available in health food shops, supermarkets, chemists etc
- CBD is non impairing and will not register / trigger on a DrugWipe / drug test

THC (Delta 9-tetrahydrocannabinol)

- Currently only available through NHS GP for three specific, life limiting categories:
 1. Cancer (almost terminal level)
 2. MS (at a level that would restrict driving)
 3. Epilepsy (that would prevent vehicle use)
- Being prescribed through private GPs for anxiety, depression, pain relief
- Prescribed in vape form
- They cause impairment for a non-specific period of time (as it varies from person to person)

THC (Delta 9-tetrahydrocannabinol)

- Prescription states “do not drive impaired”
- An employee may choose this alternative therapy through a private GP rather than their usual NHS as they don't meet the criteria for NICE
- How long does it last in their system? Night use or daytime?
- Organisations should have clear HR policies to prevent use of drugs or medication whilst driving / working
- The risk of this drug cannot be mitigated for others – insurers likely to refuse cover for a fleet (very few accept it in the personal insurance market)

Medical cannabis defence?



- Key issue is impairment (which is the users responsibility to determine before they work/drive/operate machinery)
- For a section 4 charge (ie impaired) an individual can still be charged for medicinal cannabis, the same way you can be for other medications, alcohol and illicit drugs. Guidance below applies:
- *“If the police had evidence that the individual’s driving was impaired due to drugs, whether prescribed or not, they can prosecute under the existing offence of driving whilst impaired through drugs offence described in section 4 of the Road Traffic Act 1988, for which there is no statutory “medical defence”*
- When it comes to a section 5a conviction, it is more complicated due to legislation that requires modernisation. At present, a driver may have a medical defence for CBPM if they are taking the medication as advised and are not impaired. Evidence of impairment (or a lack thereof) will be required.

Managing fitness to drive

Policy in place relating to employee and driver behaviour – needs to be updated to include all types of drugs

Very challenging to manage the risk of using or driving for the organisation

Balance to be struck as illness and disability are protected characteristics

Even with the best policy in the world, incidents may occur

Need to support drivers to be open / honest about medication / drugs and share the potential outcomes as part of toolbox talks and be part of HR training for all staff

Consider a testing programme: all staff or just drivers?

Insurers expect full management of fitness of employees by organisations, particularly those driving

Testing process

Increase in the number of testing companies operating across the UK

Police use Dtec, considerations for policy / testing should include:

- Least intrusive method
- Speed of test to minimise abstraction from work / potential stigma
- Isolation / supervision in the event of a test
- Who can test who?

Testing process

- Test and lab aspects to include initial saliva/sweat testing (this can evidence that it is still present)
- NB Bladder tests are only showing what has passed through the body
- Does your HR policy address drugs in your system at work (whether office or driving)?
- How would you support / challenge drivers who declare themselves not impaired when using drugs that impair?
- Testing regime (whether with cause or random) is the best approach

Scenario – Motor cover



- An employee is involved in a serious incident in a vehicle (no alcohol involved)
- Driver has not declared any medical issues or consumption of medication
- Testing undertaken by police indicates driver impaired
- Is your organisation automatically covered by motor insurance?
- What happens if / when they return to work post incident?
- Potential impacts for both the individual and the organisation

Insurance: Motor cover issues

If drivers are under the influence of drink / drugs (whether prescribed or not):

- Insurers will not guarantee cover for any element other than Third Party under the Road Traffic Act where driving involved
- Where a driver is charged, this may mean that they have to fund their own defence (as the policy cannot respond)
- Self funding for organisation of any own damage / potential defence costs (insurers will process but organisation will pay separately)
- Impact on future years (insurance cover and excess levels)
- Reputational damage

Scenario – Casualty cover



- An employee is involved in a serious incident in a workplace (no alcohol involved)
- Employee has not declared any medical issues or consumption of medication
- Eye witness reports indicate potential impairment
- Is your organisation automatically covered by casualty insurance?
- What happens if / when they return to work post incident?
- Potential impacts for both the individual and the organisation

Insurance: Casualty cover issues

If employees are under the influence of drink / drugs (whether prescribed or not):

- Insurers will not guarantee cover for claims involving drugs – how will any uninsured costs be met?
- How does your organisation ensure that the workforce is fit and can deliver their responsibilities safely?
- Where an employee is charged, this may mean that they have to fund their own defence (as the policy cannot respond)
- H&S Investigation potential in the event of a RIDDOR reportable incident
- Reputational damage

Summary

- Working / driving / operating machinery is safety critical and employers must manage this
- An employee may insist that they are not impaired but demonstrably be otherwise
- Onus is on an employer to develop, implement and evidence any testing regime
- Scope of testing would need to be agreed with stakeholders (take them on the journey with you)
- Insurance cover impacted and potential for reputational damage where incidents arise
- Need to keep updated with all developments within and outwith NICE to ensure safety of all employees / the public

Questions?