

**Submission from the Medical Officer of Health
Received 14th February 2018**

With reference to the email below, as a member of the Misuse of Drugs Advisory Council, I have been offered the opportunity to comment to the Scrutiny Panel individually on the questions raised by HSS Scrutiny Panel Chair, Deputy Renouf, in his letter (as attached) addressed to Ms Jane Finlay of the Drug and Alcohol Service.

My comments are as follows:

Regarding the wording in the draft Regulations, under ' 5 Schedule 1 amended, and a new paragraph 8, subsection (7):

(7) Addiction to alcohol, nicotine or any other substance is not a disability, unless the addiction was originally result of the administration of medically prescribed drugs or other medical treatment.

- My comment is that it seems sensible to have a general exclusion (from protection under the new Regs) of **ongoing** addiction. However the 'unless' clause, as worded, I found surprising and potentially confusing, particularly the use of the word 'originally'. It may be intended to refer to individuals on medically prescribed pharmaceutical medicines with addictive properties, including those with a past history of illegal opiate misuse but who are now engaging in a methadone treatment programme, but by using the word 'originally' may inadvertently exclude such people from (appropriate) discrimination protection – an individual's past history should not be a reason for them to be 'tainted' indefinitely (e.g., for consideration for employment)

Impairment in the workplace is a separate matter, which (for whatever reason it may be) needs to be considered as a fitness for work / occupational health matter.

I have looked into the approaches taken in some other jurisdictions.

The UK (except Northern Ireland) Equality Act 2010 allows an exception from discrimination protection, of "Addiction to, or dependency on, alcohol, nicotine or any other substance (*other than in consequence of the substance being medically prescribed*)" (my italics). That would cover the people receiving medical treatment for addiction (which itself may have addictive properties), as well as people with many other painful medical conditions (including cancer) for which they are prescribed medication which may have addictive properties (e.g. opiate and opioid analgesics as pain management) . Perhaps the clause above in the draft Jersey Regs is intended to have a similar meaning, but I think the UK wording is easier to understand.

It seems to me that it is the US which has a sensible and more logical (as well as clearer) approach in its Americans with Disabilities Act (ADA). The information I have gleaned is from guidance on the Act readily available online. From this I have learned that the ADA does not protect those with an addiction to illegal drugs. It provides that any employee or job applicant who is 'currently engaging' in the illegal use of drugs is not a 'qualified individual with a disability'. However, 'qualified individuals' under the ADA include those individuals:

- Who have been successfully rehabilitated and are no longer using illegal drugs, or
- Who are currently participating in a rehabilitation programme and are no longer engaging in the illegal use of drugs, or
- Who are regarded, erroneously, as illegally using drugs.

Former casual users of illegal drugs, who are now no longer using drugs, cannot benefit by being regarded as having a disability: only when the past addiction was recognised as an impairment, and a treatment programme provided, and either completed or ongoing.

All of that seems very reasonable to me, appropriately protecting from discrimination individuals who have completed a rehabilitation programme and no longer need medical treatment for addiction, as well as those who are currently on a medically supervised rehabilitation programme (e.g. a methadone- or Subutex-based treatment programme) , whilst excluding from any discrimination protection those who are currently *illegal* drug misusers.

Illegal use of drugs, and use of alcohol in the workplace are, under the terms of the ADA, grounds for denying (firing, or not hiring) employment. Employers are also entitled to test job applicants, or current employees for substance abuse, which includes alcohol or illegal drugs.

I do hope this is helpful to the Panel's deliberations.

My best wishes,

Medical Officer of Health