

MEMORANDUM



To: the House of Commons Work and Pensions Select Committee
From: The UK Drug Policy Commission
Date: 13 February 2009

Re: The current inquiry "The Equality Bill: What steps should DWP take to achieve greater equality?"

1 Introduction/Summary

1.1 The **UK Drug Policy Commission (UKDPC)** is an independent non-campaigning body providing objective analysis of evidence related to UK drug policy. We aim to improve political, media and public understanding of drug policy issues and consider the options for achieving an effective, evidence-led response to the problems caused by illegal drugs. A list of our Commissioners is attached. We welcome the opportunity to submit this memorandum in the light of recent research conducted for the Commission relating to the employment of people with drug problems.

1.2 This memorandum invites the Work and Pensions Committee to consider:

- Whether the definition of disability as understood through the disability discrimination legislation should be clarified so as to explicitly include substance misuse addiction.
- The issue of fairness and equality for those who experience unequal treatment and discrimination on the grounds of their substance misuse addiction or dependence and how this is acknowledged in the proposed Equalities legislation and statutory guidance.

2 Background

2.1 The UKDPC has recently completed a review looking at how to get recovering problem drug users ("addicts") into jobs.¹ As part of this we commissioned research examining (i) social security and relevant aspects of employment law and policy and (ii) barriers to employment for this group.²

2.2 At the heart of our concerns is the conclusion that, unlike mental health and physical disabilities, society at large and legislation does not yet consider substance addiction sufficient grounds to warrant its inclusion in the various "protective" and enabling legislation to address unequal treatment and

¹ UKDPC (2008), *Working Towards Recovery: Getting Problem Drug Users into Jobs*, London: UKDPC.

² Harris N. (2008), *Social Security and Problem Drug Users: Law and policy*, London: UKDPC.
Spencer J. et al. (2008), *Getting Problem Drug Users (Back) Into Employment*, London: UKDPC.

discrimination. (Yet legislation *does* exist that singles-out drug users for additional requirements and conditions. The Welfare Bill currently going through parliament looks set to add to this.) The scale and nature of substance addiction suggests a review of this exclusion is overdue.

- 2.3** A concern is that if this group is not explicitly recognised by the legislation, it may reinforce and even heighten the inequalities they already face. Drug misusers (especially those dependent on heroin and/or crack cocaine) are a group which are more likely to suffer from a range of health and social inequalities including social deprivation, poor physical and mental health, poor housing and education and employment opportunities.
- 2.4** Furthermore, the legislation risks having a differential negative impact on particular sections of the community who we know are more likely to develop serious drug problems. Young men who live in areas of social deprivation are particularly at risk, as are certain ethnic communities.

3 Single Equality Act: How does Disability fit in a single Equality Act? Should the 'social model', or 'medical model' apply for disability?

3.1 We are aware there has been much debate about the definition of disability. We are not sufficiently competent nor do we have sufficient evidence to comment on the merits or drawbacks of placing substance addiction into either the 'social' or 'medical' model. In reality, consideration of substance addiction has been excluded from either perspective and hence is not considered in any discussion about unequal treatment and discrimination. In part this is due to the complicating factor of criminality, particularly associated with some illegal drug addiction.

3.2 As the United Nations and World Health Organization have commented³:

"The notion that drug dependence could be considered a "self-acquired disease", based on individual free choice leading to the first experimentation with illicit drugs, has contributed to stigma and discrimination associated with drug dependence. However, scientific evidence indicates that the development of the disease is a result of a complex multi-factorial interaction between repeated exposure to drugs, and biological and environmental factors."

Furthermore:

- a range of 'impairments' are associated with drug addiction, which is medically classified as a mental and behavioural disorder⁴;
- it has been estimated that between 40-60% of an individual's vulnerability to addiction is attributable to genetics.⁵ Other risk factors will include various social and environmental ones such as deprivation, etc;

³ United Nations Office on Drugs and Crime and World Health Organization, *Discussion Paper - Principles of Drug Dependence Treatment*, 2008.

⁴ World Health Organisation, *The ICD-10 Classification of Mental and Behavioural Disorders*, 2007.

American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (DSM-IV)

- the Academy of Medical Sciences has examined evidence about brain science and addiction and has concurred with the view that addiction is now considered to be a “*chronic relapsing brain disorder*” with associated neurobiological changes or differences in the brain.⁶

3.3 Many people incorrectly assume that the disability discrimination legislation does in fact cover drug addiction. Even the recent Impact Assessment for the Welfare Reform Bill states, “*Problem drug use is an internationally recognised mental illness, so all problem drug users are covered under the Disability Discrimination Act. Therefore this policy will be targeting a proportion of the disabled client group*”.⁷

3.4 Nevertheless, the disability discrimination regulations explicitly state that “*addiction to alcohol, nicotine or any other substance is to be treated as not amounting to an impairment for the purposes of the Act*”.⁸ Of course some impairments which may come as a consequence of addiction (e.g. other mental or physical ill-health) are covered by the legislation. However, substance addiction *per se* is excluded. (Although, an anomaly of the regulations is that addiction originally caused by prescribed drugs *is* covered, and is therefore legally recognised as a disability).

3.5 ***We invite the Committee to consider the above anomalies and to consider if and how impairment due to substance addiction should be included within the legislation (Equalities Bill and the DDA), including more explicit recognition of this disorder within the definition of disability.***

4 Equality in employment: How effective has DWP been in achieving equality in employment? How would it have to change to achieve greater equality in employment?

4.1 In a major study of people in England seeking help for their drug problem, nearly 80% were found to be unemployed.⁹ With an estimated 400,000 problem drug users (PDUs) across the UK, many with extremely complex needs, the scale of the challenge facing those in drug treatment and employment services is considerable.

4.2 There is much anecdotal evidence that those suffering from substance addiction face considerable prejudice and negative attitudes towards their condition, by employers and others. In the research conducted for us to gauge the attitudes of employers, two-thirds of employers said they would not employ a former heroin or crack cocaine user *even if they were otherwise*

⁵ National Institute of Drug Abuse (US Department of Health & Human Services), *Comorbidity: Addiction & other mental illnesses*, Research Report 2008

⁶ Academy of Medical Sciences, *Brain Science, addiction and drugs*, 2008

⁷ DWP, *Impact Assessment of the Welfare Reform Bill*, 2009, (para 360).

<http://www.dwp.gov.uk/resourcecentre/welfarereform-bill09-ia-intro.pdf> (accessed 13/02/09)

⁸ The Disability Discrimination (Meaning of Disability) Regulations, Statutory Instrument 1996 No. 1455

⁹ Jones A. *et al.* (2007), *The Drug Treatment Outcomes Research Study (DTORS): Baseline report*, Home Office, Research Report 3, London: Home Office.

*suitable for the job.*¹⁰ Although this was a modest sample of 135 employers, it was amongst those voluntarily responding. There is every reason to suspect other employers would have similar if not more discriminatory attitudes.

4.3 There is also misunderstanding and lack of knowledge among employers (and others) about people who are using prescribed medication to help them recovering from substance addiction, resulting in a resistance to employ them. In one Scottish study, those on methadone (used to treat the addiction of heroin and other opiates) came at the top of a list of 'hard to employ' categories in terms of employers saying they would not employ people from that group.¹¹

4.4 The Government and DWP are taking steps through the Welfare Reform Bill to help those with drug problems into treatment and into work. We have an open mind as to the likely results of such measures and await research as to their impact. However, without parallel steps to address negative and unfair employer attitudes and behaviours, our research suggests improved employment outcomes are likely to be limited.

4.5 ***We conclude that the statutory guidance which is likely to accompany the Equality legislation should specifically address the unequal treatment of those suffering/recovering from substance addiction alongside requirements to address inequality experienced through other disabilities.***

5 The Public Sector Equality Duty: How does the Department fare in promoting equality and tackling discrimination? How could procurement be made a more effective lever for equality outcomes?

5.1 Our research carried out into employer attitudes towards employing those with substance addiction problems revealed a handful of respondents claiming that some public contracts specifically and unfairly excluded the employment of those with drug problems and/or certain criminal histories. We do not know how widespread this is or the details. There were also concerns that the new Independent Safeguarding Authority regime might have a disproportionate impact on the drug treatment sector due to the many recovering/former drug users who are currently employed there.

5.2 ***We would urge the DWP along with the Cabinet Office and/or the Office of Government Commerce to undertake a review of the extent to which public procurement/contract requirements unfairly exclude those people with substance addiction histories and/or criminal records and the extent to which procurement policies can support those recovering from drug problems.***

¹⁰ Spencer J. *et al.* (2008), *Getting Problem Drug Users (Back) Into Employment*, London: UKDPC.

¹¹ Scott G. and Sillars K. (2003) *Employers' Attitudes to Hard-to-employ Groups*, Glasgow: Scottish Poverty Information Unit.

UK Drug Policy Commissioners

The UKDPC brings together senior figures from policing, public policy and the media along with leading experts from the drug treatment and medical research fields.

Dame Ruth Runciman (Chair): Chair of the Central & NW London NHS Foundation Trust & previously Chair of the Independent Inquiry into the Misuse of Drugs Act and member of the Advisory Council on the Misuse of Drugs.

Professor Baroness Haleh Afshar OBE: Professor of Politics & Women's Studies, University of York

Professor Colin Blakemore FRS: Professor of Neuroscience at the Universities of Oxford and Warwick and Chair of the Food Standard Agency's General Advisory Committee on Science.

David Blakey CBE QPM: formerly HM Inspector of Constabulary, President of ACPO and Chief Constable of West Mercia Police.

Annette Dale-Perera: Director of Quality at the National Treatment Agency for Substance Misuse

Baroness Finlay of Llandaff: Professor of Palliative Care, University of Wales Cardiff & Former President of the Royal Society of Medicine.

Daniel Finkelstein OBE: Comment Editor at *The Times*.

Jeremy Hardie CBE: Former Chair and trustee of Esmee Fairbairn Foundation.

Professor Lord Kamlesh Patel OBE: Head of the Centre for Ethnicity & Health at University of Central Lancashire & Chairman of the Mental Health Act Commission.

Adam Sampson: Chief Executive of Shelter.

Professor John Strang: Director of the National Addiction Centre, Institute of Psychiatry, Kings College London.

Professor Alan Maynard OBE: Professor of Health Economics and Director of the York Health Policy Group, University of York and Adjunct Professor, University of Technology, Sydney, Australia.