Submission to an independent review into the employment outcomes of drug or alcohol addiction, and obesity

Release is the national centre of expertise on drugs and drug law. The organisational staff include a team of qualified lawyers who provide legal assistance and representation directly to those who use drugs problematically. This service is delivered in eleven drug treatment centres in the London area and is currently accessed by approximately 1700 clients a year. Release lawyers are specialists in every aspect of welfare law and represent clients at Social Security Tribunals.

We welcome the opportunity to respond to this call for evidence. Our submission will not be limited to the specific questions posed, and will focus mainly on Question 7, 'What are the legal, ethical and other implications of linking benefit entitlements to take up of appropriate treatment or support?', with reference to other issues.

There are a number of legal, ethical and practical implications of linking benefit entitlement to drug and alcohol treatment. Essentially, we assert that any such practice would be unlawful, unethical, unworkable and unnecessary.

Any system which creates a financial incentive for engaging with drug and alcohol treatment is essentially permitting coercive treatment. Compelling someone into treatment by making this a condition of receiving welfare benefits, and applying sanctions where a claimant is said to have failed to comply does exactly this. This violates the principle of informed consent and we submit that this engages Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998[1] which provides that everyone has the right to respect for their private and family life, their home and their correspondence. It is a broad ranging right, covering a variety of situations including "protection for the individual against compulsory medical treatment and provides guarantees in respect of the disclosure of medical information."[2]

Whilst Article 8 is a qualified right which can be restricted in certain circumstances, this is only if it is:

- in accordance with the law; and
- is necessary in a democratic society; and
- satisfies a recognised legitimate aim

As stated by the Joint Committee on Human Rights when considering similar proposals under the Labour Government's Welfare Reform Bill 2009,[3] any restriction "should include evidence of a rational connection between the interference and the aim and that the interference is not disproportionate to the steps taken towards that aim."[4] Whilst it may be argued that protection of the economic wellbeing of the country is being legitimately pursued, there is no evidence to support that

[1] http://www.legislation.gov.uk/ukpga/1998/42/schedule/1

[2] House of Lords & House of Commons, Joint Committee on Human Rights Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill, Fourteenth Report of Session 2008-09 at page 68 (http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/78/78.pdf)

[3] http://www.publications.parliament.uk/pa/cm200809/cmbills/008/2009008.pdf

[4] House of Lords & House of Commons, Joint Committee on Human Rights Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill, Fourteenth Report of Session 2008-09 at page 18 (http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/78/78.pdf)

conditionality and sanctions will encourage people back into employment or reduce drug use. In fact "There is also little, if any, evidence to demonstrate that compulsory treatment of this nature is effective in meeting the aims of drug treatment. Indeed, there are studies that have demonstrated the failure of compulsory treatment to meet these aims in various countries, including the USA,[5] Sweden,[6] and the Netherlands,[7] as well as unconfirmed reports from China of relapse rates of 98% after compulsory treatment."[8] This is a view which was supported by the Royal College of Psychiatrists when treatment as conditionality of benefits was proposed previously:

> *"The issues affecting people with addictions will not improve treatment compliance or the chances that people will obtain and remain in work. On the contrary, they may drive people deeper into poverty and marginalisation. Being coercive in nature the provisions have the potential to undermine the therapeutic relationship between clinician and client."*[9]

This also raises the issue of who will be responsible for identifying claimants who use drugs problematically. This is obviously not relevant for Employment and Support Allowance ('ESA') claimants who declare drug or alcohol dependency as part of their claim. But for those who haven't stated this, and for Job Seekers Allowance ('JSA') claimants, this role of identifying substance use as a problem can only be performed by the claimant's GP or Jobcentre Plus staff. This is particularly significant for those people who have had a Work Capability Assessment ('WCA'), been deemed capable of work and had their ESA claim terminated, and then had to apply for JSA whilst a mandatory reconsideration of the decision is undertaken.

In terms of the GP carrying out this function, this would involve disclosure of information contained within medical records which would be a breach of patient confidentiality and again Article 8. Fear of disclosure to other parties will deter people from asking for help and push them further from treatment, not towards it. As held by the European Court of Human Rights in the case of *Z v. Finland:*

> *"Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection those in need of medical assistance may be deterred, when revealing such information of a personal and intimate nature as may be necessary in order to receive the appropriate treatment, from seeking such assistance thereby endangering their own health but, in the case of transmissible diseases, that of the community. The domestic law must therefore afford appropriate safeguards so there may be no such communication or disclosure of personal health data as may be inconsistent with the guarantees of Article 8 of the Convention."*[10]

The use of Jobcentre Plus personal advisers in identifying claimants who use drugs problematically formed part of the previous Government's Welfare Reform Bill 2009. There was significant criticism of this proposal; not least because this is not the role required of personal advisers in relation to other

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[5] James A Inciardi, 'Compulsory Treatment in New York: A Brief Narrative History of Misjudgement, Mismanagement, and Misrepresentation', 18 Journal of Drug Issues 547

[6] Wolfgang Heckmann, 'Schwedische Gardinen": Zur Tradition der Zwangsbehandlung Suchtkranker und -gefährdeter in Schweden', 43 Sucht Zeitschrift für Wissenschaft und Praxis.

[7] Hedda van 't Land and others, Opgevangen onder dwang procesevaluatie strafrechtelijke opvang verslaafden, Trimbos Institute, 2005.

[8] Stevens, A. *Human Rights and Drugs, Volume 2, No. 1, 2012* at Page 11

[9] Memorandum submitted to the Joint Committee on Human Rights on the Welfare Reform Bill by the Royal College of Psychiatrists, House of Lords & House of Commons, Joint Committee on Human Rights Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill, Fourteenth Report of Session 2008-09 at page 109 (http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/78/78.pdf)

[10] *Z v. Finland (1997) 25 EHRR 371*

disabilities, and it was considered that their position could be compromised by having to undertake such an activity. The Social Security Advisory Committee ('SSAC') identified that trust between a personal adviser and a claimant was "seen as central to the success of Jobcentre Plus employment programmes".[11]

Furthermore, the introduction of this requirement could lead to complaints of racial or disability discrimination under the Equality Act 2010,[12] where someone who does not use drugs is identified initially as doing so because they present in a certain manner. The potential for this problem was apparent within the Department for Work and Pensions ('DWP') draft guidance to aid Jobcentre Plus staff in their identification role; this highlighted a number of factors which may indicate that someone was dependent on drugs or alcohol, including: Failing to sign on at the correct time; Sanctioned for missing appointments; High volume of crisis loan applications; Incoherent answers to questions; Unkempt appearance / hygiene issues; Signs of injecting / infection; Disorientation / Poor mental functioning; General drowsiness.[13]The issues with this were highlighted in Release's submission to the SSAC, where we identified that:

> *Unkempt appearance/ hygiene issues or disorientation/poor mental functioning could be indicative of either mental or physical health problems. General drowsiness could be caused by medication. Issue of race discrimination could be engaged in respect of language barriers which may result in 'incoherent answers to questions'…it is problematic that personal advisers are being required to carry out such assessments which are clearly outside their professional remit.*[14]

To expect people to declare drug use to a personal adviser shows a failure to understand the fundamental nature of addiction. In our experience, those who use drugs problematically, and who are not engaged in treatment, will go to extreme lengths to hide their addiction from others. Many will be concerned about the risk of their confidentiality being breached if they were to disclose - this is especially true of parents who use drugs. Issues such as this are very sensitive and need to be balanced carefully, otherwise they can push people further away from mainstream society. We take the view that Jobcentre Plus staff are simply not equipped to deal with these situations.

Recommendations to help people with a history of drug or alcohol dependency into employment

We recognise that this is a difficult and controversial area for the DWP. However, the SSAC has previously undertaken a review of sanctions and has found "that there is a lack of convincing evidence that sanctions influence the behaviour of more vulnerable claimants, who often fail to understand how the sanction regime operates."[15] Instead of operating a penalty system, we would recommend that the Government incentivises claimants to access treatment and as far as possible, avoids the threat of sanctions.

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[11] Social Security Advisory Committee, Report of the Social Security Advisory Committee made under section 174(2) of the Social Security Administration Act 1992 on the Social Security (Welfare Reform Drugs Recovery pilot scheme) regulations 2010, June 2010, at Paragraph 4.9 (http://ssac.independent.gov.uk/pdf/SSAC-drugs-pilot-report.pdf)

[12] http://www.legislation.gov.uk/ukpga/2010/15/contents

[13]DWP correspondence to SSAC regarding The Social Security (Claimants Dependent on Drugs) (Pilot Scheme) Regulations 2010, at Paragraph 61 (http://webarchive.nationalarchives.gov.uk/20131002112547/http://ssac.independent.gov.uk/pdf/press_21.pdf

[14] Release, Release's Response to the consultation: The Social Security (Welfare Reform Drugs Recovery Pilot Scheme) Regulations 2010, at Paragraph 1.17 (http://www.release.org.uk/sites/default/files/pdf/publications/Response%20_to_the_consultation_The_%20Social_Security_Regulations_2010.pdf)

[15] Social Security Advisory Committee (2006) Sanctions in the Benefit System: Evidence review of JSA, IS and IB sanctions. Occasional paper No 1.

We submit that entirely the wrong approach has been taken by focusing on treatment as the biggest obstacle to employment for people who use drugs and/or alcohol problematically. Instead, improving employment opportunities and take up within this community needs to be targeted further upstream, with emphasis on the true barriers to employment for this group, including:

Criminal records

Many people with a history of drug use will have a criminal record that will affect their ability to gain any employment at all, or at the very least limit the type of role they can apply for. As the UK Drug Policy Consortium identified, "In some sectors, a criminal record is a major impediment from an employer's perspective (Sutton et al., 2004:8). Again, like health status, this may raise generic concerns, this time about honesty or safety, but it may also raise concerns more directly related to the job in question. The whole question of disclosures is a complex one."[16]

Gaps in employment history

People who have been out of the employment market for a lengthy period are faced with a difficult decision when applying for jobs and having to explain large gaps in, or perhaps a non-existent, employment history. They must choose between being honest and risk being stigmatised, judged and lose the job, and trying to be creative with their reasoning and risk being found to have been deceptive at a later date. The latter is particularly problematic in relation to criminal records and disclosure of these. If cautions and convictions are spent under the Rehabilitation of Offenders Act[17] and so not disclosed at the time of application, but an enhanced Disclosure and Barring Service check is required and information is released under this, the employer may feel that an individual was trying to avoid them becoming aware of the information.

Stigma

People who use drugs problematically are heavily stigmatised as a group, which leads to them being marginalised and causing difficulties with reintegration into the community even once they have stopped using substances. This is partly due to the criminalisation of drugs, rather than focussing on drug use as a health issue – until the balance is shifted in favour of a health-based approach stigma will continue to exist. "Therefore, if the Government and society are serious about recovery and a 'rehabilitation revolution', they need to get serious about tackling the obstacle of stigma in all its many forms."[18] Past experiences of being judged for using drugs or alcohol, whether in an employment context or other situations, is damaging to a person's self-esteem and causes them to believe that this will continue to occur. This disincentivises them from seeking assistance in future, whether that is in relation to treatment, employment, or other interventions. We endorse the submission of Blenheim CDP in relation to client experiences of stigma both in employment and in relation to accessing the Jobcentre Plus.

Lack of flexibility

The benefits system, and the process of transitioning from this into employment, are too rigid for this group of people who face a number of additional issues aside from substance use. No consideration is given to the external factors which are present in their lives and affect their ability to engage effectively. In our experience, most people who use drugs problematically have experienced some kind of trauma, whether that is sexual/physical/emotional abuse, bereavement or another disturbing life event. Once they stop using drugs, those experiences still remain and impact on their daily

[16] UK Drug Policy Commission, 'Getting Problem Drug Users (Back) Into Employment', December 2008, at Page 16 (http://www.dldocs.stir.ac.uk/documents/Part_Two_Background_Research.pdf)

[17] http://www.legislation.gov.uk/ukpga/1974/53/section/1

[18] UK Drug Policy Commission, 2010, Getting Serious about Stigma: the problem with stigmatising drug users – An Overview, at Page 1 (http://www.release.org.uk/sites/default/files/pdf/publications/Getting%20serious%20about%20stigma%20-%20the%20problem%20with%20stigmatising%20drug%20users%20%28August%202010%29.pdf

functioning. As the UK Drug Policy Commission highlighted, "It may be that these operational practices do not provide assistance into work for PDU clients. For example, are they flexible and accessible enough in terms of opening hours and other aspects of their operation?"[19] Likewise, more flexible working options would be preferable for someone moving into work, particularly after a long period outside of the labour market.

We submit that investment is needed in educating not only Jobcentre Plus staff and those delivering the DWP Work Programme, but also employers, about the issues that are faced by people who use drugs and alcohol problematically. This will have positive practical consequences, and will also ensure a move away from the current environment of stigmatisation. Nothing will change until the attitudes of employers change, and this is where resources should be directed for maximum impact. The value of this is demonstrated by a 2 year experimental project in Portugal – "InPAR was an Experimental Project at national level in the area of Social Reintegration aimed at employment/training reintegration of people who use drugs, with close cooperation between Harm Reduction and Social Reintegration."[20] It is cited as a best practice example by the European Monitoring Centre for Drugs and Drug Addition (EMCDDA), and one of the project's key recommendations was:

> *"Attracting employers (or setting up a production unit) should be a nuclear action, because it determines the entire methodological approach based on the principle "working first"; this articulation is also important to ensure that drug users receive congruent stimuli from various actors with whom they have contact (public and private institutions of social, local authorities, businesses, educational institutions, local community, police, etc.) and to ensure an integrated monitoring (health, housing, social support, employment)."*[21]

Additionally, consideration should be given to incentivising employers (perhaps through tax relief or other financial benefit) to provide jobs to those who have had a history of problematic drug/alcohol use, as a way of encouraging them to give proper consideration to these applicants. Successful treatment by itself is not sufficient to ensure that someone gains employment – "If recovery really is to be the ambitious 'new' goal of drug treatment, then politicians and policymakers will have to look carefully at the question of stigma and how they and others can shift society towards a more compassionate approach to this deeply stigmatised group."[22]

It is our opinion that this approach would be more effective in engaging people into employment and would not result in the risks associated with overt sanctions. Those risks include increased crime and driving people towards the fringes of society. This is particularly problematic for the Government in terms of the cost of dealing with these likely outcomes where there would be greater pressure on the police and on the health service.

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[19] UK Drug Policy Commission, 'Getting Problem Drug Users (Back) Into Employment', December 2008, at Page 8 (http://www.dldocs.stir.ac.uk/documents/Part_Two_Background_Research.pdf)

[20] Marques, J., Mora, S., Santos, A., Queiroz, J., Terra, S., Borges, M., Parodi, L. (APDES), Working First: An Experience of Reintegration of Drug Users as Peer Workers in Portugal, 2011 (http://correlation-net.org/correlation_conference/images/Presentations/WS3_Marques.pdf)

[21] European Monitoring Centre for Drugs and Drug Addition (EMCDDA) Best Practice Portal (http://www.emcdda.europa.eu/html.cfm/index52035EN.html?project_id=01PT10&tab=results)

[22] Lloyd, C. (2010). *Sinning and Sinned Against: The Stigmatisation of Problem Drug Users*. London: UK Drug Policy Commission (http://www.release.org.uk/sites/default/files/pdf/publications/Sinning%20and%20sinned%20against%20-%20the%20stigmatisation%20of%20problem%20drug%20users%20%28August%202010%291.pdf)