

# Second class citizens

## *How drug users are disadvantaged and discriminated against*

AS IN MOST parts of the world, illegal drug users in Britain are officially defined as either mad (addicted) or bad (criminal). *Mad* means that drug users can legally be categorised by doctors as suffering from the mental disorder of drug dependence. However, the Mental Health Act excludes drug dependence from section 25, under which people can be given compulsory treatment for mental illness.

*Bad* means that drug users found with controlled drugs can be convicted of a criminal offence under the Misuse of Drugs Act, one of the few remaining victimless crimes on the statute books.

The Drug Trafficking Offences Act also gives courts powers to confiscate the money and property of convicted suppliers, with the burden of proof that these are *not* the assets of drug trafficking resting on the defence, reversing a fundamental principle of British law. Under the new Criminal Justice Act courts can make compulsory treatment orders, meaning it is now possible to define drug users as both mad (or at least, sick) and bad in a single official act.

Discrimination against drug users does not end with those caught up in the 'system'. In at least ten other ways the authorities and other organisations can discriminate against people labelled as criminal or mentally disordered because of their drug use. Drug clinic staff in particular should ensure that, *before* they decide to enrol at the clinic, new clients are aware of the discrimination they may experience as a consequence of registering for treatment.

### **1 YOUR CAREER**

Many employers will not hire people officially defined as drug users, and will dismiss or not renew the contracts of employees found to be drug offenders or addicts. Such actions may not always be justified, and those affected can enforce their rights through the civil courts or through an industrial tribunal.

Employers commonly ask potential

employees to declare any convictions on application forms, and also ask nominated referees to declare any knowledge of the applicant's convictions.

In answering these questions respondents can honestly ignore cautions, as these do not constitute a conviction. Cautions do, however, form part of an offender's criminal record, so should be disclosed if the questions are phrased in terms of the applicant's criminal *record* as opposed to their *convictions*.

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**Staff should ensure that new clients are aware of the discrimination they may experience**

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The most relevant legislation is the Rehabilitation of Offenders Act which deals only with convictions.<sup>1</sup> Its basic principle is that after a set length of time convictions do not have to be declared to potential employers (after this period has elapsed they are

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**Russell Newcombe**

*The author is a research fellow in the Social Policy and Social Work Department of Manchester University.*

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Being recorded by a doctor as a drug user, convicted of a drug offence, or known to use drugs illegally, can have repercussions on a drug user's: eligibility for a variety of jobs; licence to drive; custody of children; tenancy in rented properties; acceptability for life insurance, mortgages and loans; compensation for criminal injury; and ability to travel abroad. There is evidence that some of these repercussions deter people from seeking an HIV test and together they may be considered undemocratic discrimination against illegal drug users.

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known as 'spent' convictions). This rehabilitation period depends not on the type of conviction, but on the type and length of the sentence and whether the offender is under 18 years of age.

Convictions resulting in a custodial sentence of more than 30 months never become spent, whereas, for example, probation orders are spent after a year or until the order itself expires.

Some jobs are excluded from the provisions of the Act and applicants must disclose any criminal conviction, no matter how aged. These posts include any which give substantial access to people under 18 years of age (eg, teachers, youth workers, social workers, probation officers, child carers); legally protected professions (eg, doctors, lawyers, dentists, accountants, nurses, chemists); certain regulated occupations (eg, directors and managers of insurance companies and unit trusts); and posts where national security may be at risk (eg, certain posts in the civil service, British Telecom, Post Office, and the BBC).

A criminal record does not necessarily prevent someone obtaining such posts unless they have been convicted of a serious offence. Drug trafficking is considered a serious offence, even in the often dubious form of possession 'with intent to supply'.

Convictions are not 'wiped' from the record when spent. How long records are kept varies between police forces. Records held on the Police National Computer are generally deleted when people do not come to the notice of police for 20 years after their last conviction. Even then records are retained if the offence involves indecency or homicide, if there is evidence of mental illness, or if there has been a custodial sentence of more than six months.

Less clear is the position of a UK citizen convicted of an offence abroad.

In November 1991 a European convention on mutual legal assistance in criminal matters came into effect. Article 22 states that the UK Home Office should be informed of all criminal convictions of its



citizens in countries which have implemented the convention. The Home Office says this information will not be used to create or add to someone's criminal record.<sup>2</sup>

The 1992 Transport and Works Act makes it a criminal offence to operate transport equipment under the influence of alcohol or drugs. Following the lead of the USA, more UK organisations are introducing drug screening programmes for employees (usually involving urine tests).<sup>3</sup> Since August 1991 British Rail has screened all new recruits to jobs in safety-sensitive areas, such as train driving, and is developing plans for unannounced testing of all employees, including clerical staff.

Petrol companies, particularly those with staff on safety-sensitive North Sea oil platforms, are also asking potential recruits to agree to urine tests. Esso and Texaco also randomly urine-test existing employees in safety-sensitive posts. Shell is introducing 'with cause' testing; staff are given two hours notice of a test if the company suspects drug use. Refusing the test is regarded as serious misconduct and anyone testing positive faces dismissal.

Other organisations considering screening staff for drug use include supermarkets and banks. Medscreen, one of the largest UK drug screening companies, carried out over a quarter of a million tests in 1991. This January a Health and Safety Executive booklet for employers supported drug screening in certain key jobs, such as drivers, pilots, and some machine operators.<sup>4</sup>

Screening people whose jobs involve risk of injury to others is probably acceptable if carried out within formal procedures. More contentious is the screening of staff whose jobs do not involve such risks and the absence of any legal framework for drug screening (covering, for example, the confidentiality of test results).

## **2 YOUR DRIVING LICENCE**

Most drug users know it is illegal to drive while under the influence of drink or drugs, even if there is no evidence that driving is affected (reliable evidence of drug-related deficits in driving ability is available only for alcohol, cannabis and tranquillisers). Excluding alcohol, the German government estimates that 100,000 drugged drivers are on the road every day in their country, causing 4000 injuries and 150 deaths each year.<sup>5</sup> In the UK, the Road Traffic Act of 1991 introduced the offence of causing death by careless driving while under the

influence of drink or drugs, with a maximum sentence of five years imprisonment.

Drug users should also be made aware that they can be banned from driving if they become a client of a drug service or are convicted of a drug offence. Over the last three years, several hundred people reported as drug users to the Driver and Vehicle Licensing Centre (DVLC) have been refused driving licences unless they submit to a blood test. If a driver tests positive, they can lose their licence for six to 12 months, and may have to undergo a medical examination to get it back.

Many of DVLC's informants are likely to be the alleged drug user's acquaintances or neighbours rather than drug or welfare agencies, but GPs and other doctors may also notify drug using patients to DVLC "in the public interest" under guidelines laid down by the General Medical Council.

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### **Hundreds have been refused a driving licence unless they submit to a blood test**

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These release the doctor from the duty of confidentiality when "failure to disclose appropriate information would expose the patient, or someone else, to a risk of death or serious harm".<sup>6</sup> Interpreting this, the General Medical Council says these conditions "might apply where patients unfit to drive persist in doing so ... in such cases doctors may be justified in informing an appropriate authority".<sup>7</sup>

Some sources claim people being prescribed tranquillisers are under-represented among the drug users acted against by DVLC, even though there is evidence that some benzodiazepines (eg, Valium) significantly decrease speed of reaction. The average person driving at 70 m.p.h. on a standard dose of Valium needs 335 feet to brake compared to 325 feet for someone at the legal limit of alcohol. A study by the UK Road Research Laboratory found that in one in ten road traffic deaths the driver had taken tranquillisers.<sup>8</sup>

Revoking the driving licences of drug users may sometimes be justified, but DVLC's blood testing policy, like workplace drug screening, effectively discriminates against cannabis users.<sup>9</sup> THC (the active ingredient in cannabis) is not water soluble so may be detected in the blood for several days after a single joint, or several months in the case of regular users.

Most other popular drugs are detectable for only one or two days.

If stopped by the police and urine tested, a motorist who tested positive for prescribed drugs such as methadone could in principle be prosecuted. If they were involved in a traffic accident and their insurers found out about the drug treatment, the company might claim that the drug use invalidates the insurance.

## **3 YOUR CHILDREN**

Under the Children Act 1989 a child can be taken into local authority care only if facing "significant harm" and if making such an order is "better than making no order at all", ie, there are no preferable alternatives which might, for instance, allow the child to stay with parents or other relatives. This should further reduce instances of the unjustified removal of the children of drug using parents.

It has mostly been opiate users who have been involved in childcare cases, but, in principle, any form of parental drug use can contribute to a decision to take children into care. For instance, in March 1990 a young woman in Warrington had her child removed under a place of safety order.<sup>10</sup> The reasons included possession of a small quantity of cannabis and allowing cannabis to be smoked on her premises. Convicted drug offenders may also find it difficult to foster or adopt children and have sometimes been denied access to children in the care of a separated partner.

## **4 YOUR HOME**

The Misuse of Drugs Act makes it illegal for someone to allow their premises to be used for dealing or for cannabis or opium smoking, but housing authorities have gone even further. Many local councils and private landlords have tenancy agreements which permit eviction if the premises are used for criminal offences, including possession of drugs. Such agreements allow a tenant who has committed a serious offence *off* the premises to stay in their home, whereas a tenant convicted of possessing a drug on the premises will be evicted.

Many local authorities, such as Wirral and Liverpool, also have formal housing policies which result in eviction of suspected or convicted drug offenders. (Wirral council will only evict drug suppliers, excludes those with children, and will rehouse ex-users.)<sup>11</sup>



## 5 YOUR LIFE (INSURANCE)

When someone sees their GP, a psychiatrist or a police surgeon about a drug problem, this is recorded on their medical record. The new health authority database forms ask GPs and others who deal with drug users to record details, including whether they have injected. Although the copy sent to the database excludes the name and address of the client, the doctor keeps the top sheet in the patient's file. So the injecting status of drug users is now automatically entered on their medical record.

The medical record may also contain details of whether a patient has had an HIV test. Although medical records are generally confidential, one exception involves the validation of life insurance claims. Access to medical records in the case of a claim is usually a condition of the insurance.

Many application forms for life insurance now ask if you have ever injected drugs and whether you have ever had an HIV test, or even considered having one. Answering yes to any of these questions may lead (after further questioning) to life insurance being refused.<sup>12</sup>

At least some if not most insurance companies also have an unwritten policy of not giving life insurance to known addicts. Once turned down, the applicant's name will be added to a 'blacklist' and they may be barred from life insurance indefinitely.<sup>13</sup> A Department of Health survey concluded that thousands of people were deterred from taking an HIV test because they believed they would be penalised by insurers.<sup>14</sup>

The Association of British Insurers has formally stated that "having had a negative HIV test will not of itself prevent someone from attaining life insurance ... providing there are no adverse risk factors present".<sup>15</sup> However, the fact remains that later claims may well be invalid if someone fails to disclose that they have injected or had an HIV test on an insurance application form.

## 6 YOUR MORTGAGE

To enter into an endowment mortgage agreement an individual must have life insurance. If someone has been refused life insurance because they had admitted to having injected drugs or having had an HIV test, they will not be able to obtain an endowment mortgage. This could apply even several decades after the test or their last injection, and may effectively exclude them forever from this method of buying their own property.<sup>16</sup> Some companies also advise applicants for repayment mortgages to take out life insurance. Finally, many building societies have an unwritten policy of not giving mortgages to known drug addicts.<sup>17</sup>

## 7 YOUR BANK LOAN

The Drug Trafficking Offences Act obliges banks to cooperate with police inquiries about an alleged trafficker's accounts, which may be 'frozen' pending trial. If the defendant is found guilty and is unable to prove that the funds in the bank account are *not* the proceeds of drug trafficking, then part or all of the money can be confiscated. Recently there have been several cases of bank managers refusing a loan purely on the grounds that the applicant has been convicted of a drug trafficking offence. In Widnes a bank customer whose monthly wages have been paid into his current account for over 12 years, and who has never been overdrawn, said he was refused a small loan last year because of a conviction for supplying cannabis.

## 8 YOUR COMPENSATION

British law permits the victims of a criminal offence which causes physical injuries or psychological problems to claim criminal injuries compensation. This can range from a few hundred pounds for a smack in the

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3. Jameson L. "Drug abuse at work: what should the employer do?" *Independent*, 2 June 1992.

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9. Bowcott O. "Cannabis users face driving ban." *Guardian*, 20 August 1990.

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2 March 1990.

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14. Department of Health. *AIDS and life insurance*. HMSO, 1991.

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16. Parry A. "What'll it be: drug treatment or a mortgage?" *Drugs Forum Focus*: 1991, 3, p.67.

17. Personal communication with a major UK building society.

18. Preston A. *The methadone handbook*. Dorchester: CADAS, 1992.

19. Parker H. *et al. Living with heroin*. Open University Books, 1988.

20. Stewart T. *The heroin users*. Pandora Books, 1987.

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## W AGAINST DRUG USERS

face to several thousand for injuries resulting in hospitalisation or permanent disabilities.

However, victims who themselves have criminal convictions (including for non-violent crimes such as drug offences) can have their compensation reduced. For instance, a Liverpool man who was "mugged" in the city centre and suffered minor injuries had his compensation reduced from £800 to £600 because of a single conviction for possession with intent to supply cannabis over five years before.

### 9 YOUR TRAVEL PLANS

Drug offenders and drug addicts may be refused permission either to visit or to emigrate to some countries, such as Australia and the USA.

Despite having valid passports, people with drug convictions may be refused a temporary visa to enter certain countries for work or even for a vacation. As with life insurance, these restrictions can apply indefinitely, even decades after someone has ceased to use drugs. If someone who has been refused a visa to enter the USA insists that they are no longer a drug misuser, the US authorities may ask them to undergo assessment by an authorised psychiatrist to provide evidence of their 'cure'.

People receiving a prescription of controlled drugs in the treatment of drug dependency may need documentation from their doctor or from the Home Office in order to take their medicine with them into another country.<sup>18</sup> With under 500mg of methadone, no licence is required, but it is advisable to carry a letter from the prescribing doctor confirming that the drug is for medical purposes. A Home Office licence is required for amounts over 500mg, though this provides no guarantee that the country of destination will allow the visitor to bring their methadone in.

In practice there may be relatively few problems in obtaining permission to take prescribed oral methadone into most Western countries. However, people on prescriptions of injectable (including methadone) or stimulant drugs may encounter difficulties in attempting to take these drugs into countries (such as the USA) where such treatment is not medically sanctioned. The most serious problems are likely to be experienced by people on diamorphine (heroin) prescriptions, whether oral or injectable, since outside Britain heroin is absolutely prohibited in the

treatment of addiction.

Britain too exercises similar restrictions. Bob Randall is a US citizen who receives a legal prescription of marijuana cigarettes from the US government for the treatment of glaucoma – excess pressure in the eyes, often leading to blindness. Cannabis reduces this pressure and is one of the few drugs to help some glaucoma sufferers.

Randall was invited to present a paper to an international drugs conference in London in July 1987. On arriving at Heathrow airport his prescription was confiscated by Customs because British drug laws do not recognise cannabis for medical use unless a special licence has been granted by the Home Office. Ironically, if the prescription had been for heroin, cocaine or amphetamine (recognised for medical use), Randall would presumably have encountered no problems in passing through the looking glass between the USA and the UK.

### 10 ASSORTED PREJUDICES

Drug users may also be discriminated against in a variety of ways by a range of professionals.<sup>19,20</sup>

Pharmacists, for example, show marked variation in their response to drug using customers. Some, as in Liverpool, will sell (or even exchange) syringes and needles to drug users who do not have a prescription for injectables; others will not serve known drug users at all, let alone sell them needles or syringes. Many pharmacists will not dispense methadone or other drugs to drug using customers with a valid prescription, or will only do so at certain times or on certain days.

Other complaints include: severe treatment by some police forces (eg, frequent stop and search, internal body searches by police surgeons); harsh treatment by the courts (eg, curfews on bail, prison sentences for repeated drug possession); refusals by some professionals to accept drug users as clients (eg, doctors, solicitors, general psychiatrists); and unfair treatment in prisons (eg, enforced 'cold turkey', pressure for an HIV test).

DRUG USERS, whether mad, bad, or just indifferent, have the same general rights as abstinent citizens. Some controls on drug consumption and intoxication-related behaviour are essential to any rational public health and order strategy, but recent developments in UK drug policies may be overstepping the line between democratic control and undemocratic discrimination. ■