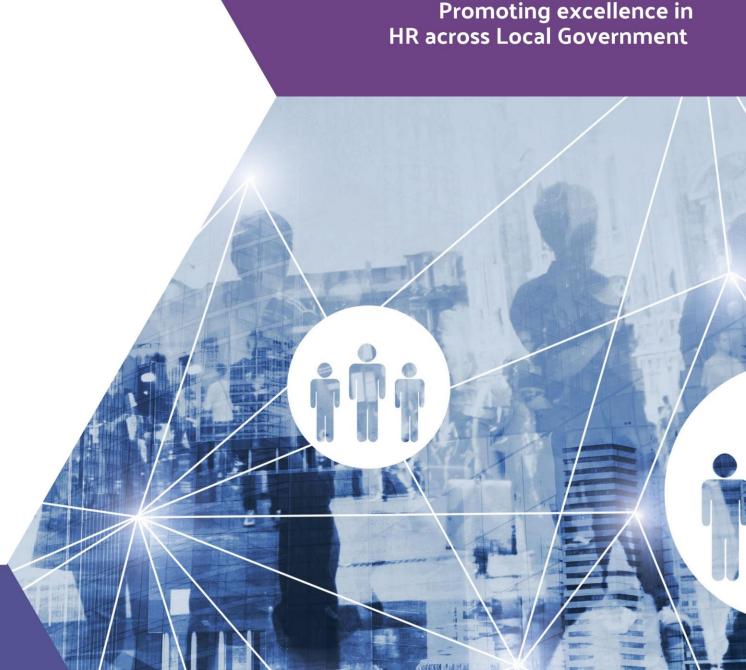


# Workforce Drug & Alcohol Testing

**APSE Session** 



Claire Wallace, SPDS Executive – Employment Law 19 February 2025

## Agenda

- √ Local Authority workforce
- ✓ Current Drug and Alcohol policies
- √ Considerations and challenges
- ✓ Questions/discussion





#### **Local Authority workforce - context**

Society of Personnel & Development Scotland

- Over 250,000 staff across frontline and support services
- Workforce challenges:
  - capacity, skills shortages, ageing profile
  - pay/industrial action and Fair Work agenda
  - rising absence and mental health issues
- Trade Union recognition / collective bargaining:
  - Joint consultative forums
  - Health and Safety Committees
  - Organisational Change
  - Policy reviews and scrutiny
  - Avoidance of Industrial Dispute
- Public sector protection

### **Current policies – Testing (Scotland)**

- Society of Personnel & Development Scotland
- Benchmarking 31 councils plus Tayside Contracts (commercial trading)
- 13 councils have some form of Alcohol and Drug testing
  - 12 'with cause' testing only
  - 4 random testing
- Random testing application
  - Council 1 Ferry Staff only
  - Council 2 Consent based, part of rehabilitation for an individual
  - Council 3 Marine and safety critical only (local provision issues)
  - Council 4 Scope of random testing under dispute
- Several policy reviews underway
- OH shared services review underway
- On-going Heads of HR and SPDS agenda item

#### Challenges/issues

- Practical challenges Local provision, cost/coordination, maintaining knowledge
- Increasingly complex landscape prescription medication, functional usage, thresholds and scope
- Varied appetite for testing across authorities
- TU / staff opposition
- The scope of 'safety critical' posts for testing
- Human Rights Act 1998 public authorities, Article 8
- GDPR
- Samples constitute personal and special category data.
- Must have legal basis for processing special category data
- Constructive unfair dismissal where no reasonable basis for testing



#### **Considerations**

- Proportionate means to achieve legitimate aim
  - Proportionality usually falls within grounds of Health and Safety
  - Evidence that safety is a genuine concern
  - Significantly better evidence of 'impairment' than less intrusive testing methods e.g. assessment of cognitive ability
  - Cost/benefit
- Risk assessment
  - Testing must detect use that could cause impairment
  - Sufficient levels of risk to health and safety of others
  - Not purely reputational or misconduct focus
- Threshold setting
- Disability / health related use
- Contracts expectations and consequences
- Disclosure medication/substances that may impair performance



#### **Next steps**

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- Discuss and understand the risk
- Address key issues
- Achieve a degree of consistency
- Policy reviews



#### **Useful links:**

Being monitored at work: workers' rights: Drug testing - GOV.UK
What if we use medical examinations and drugs and alcohol testing? | ICO

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