

# DOES CANNABIS OIL AFFECT DRUGS AND ALCOHOL TESTS?

## Introduction

TSSA has received several enquiries from members about the use of cannabis oils and medical products and how they might adversely affect the outcome of drugs and alcohol testing that are in place in railway companies, as well as in Transport for London and other organisations that TSSA organises within.

## What is cannabis oil?

According to the NHS' Website, cannabis oil is not the same thing as medical cannabis.

Medical cannabis is a broad term for any sort of cannabis based medicine that can only be prescribed by a specialist hospital doctor to relieve the symptoms of epilepsy, MS and the side effects of chemotherapy.<sup>1</sup>

Cannabis Oil, also referred to as CBD (cannabidiol) Oil or Hemp Oil, is claimed to be a medical product but, as the NHS' Website points out, "there's no guarantee these are of good quality or provide any health benefits."

It should also be remembered that whilst cannabis based products like CBD Oil can be bought without prescription over the internet, they are likely to be illegal to possess (or supply) and could be unsafe to use because of the THC<sup>2</sup> (the chemical in cannabis that makes you high) content.

Some types of CBD Oil products can be bought legally as a food supplement from health food shops but it is possible that even

in these products there may be small traces of THC, with American reports suggesting quantities of up to 0.3%. However, other reports<sup>3</sup> suggest that many of these products do not contain the level of CBD promised on the labels and as such are no more than a scam.

## Would CBD Oil affect a drugs and alcohol test?

Transport for London would answer this question very clearly as they did in response to a Freedom of Information Request on the subject in 2018:

"The safety of employees and customers is of paramount importance. A major factor in this respect is the ability of those who work for us to carry out their jobs safely, effectively and to the best of their ability. As part of this, employees working for TfL are subject to the TfL drug and alcohol policy. Employees who had been using cannabis oils would test positive during a drugs and alcohol test and the use of these products would not provide a valid reason to excuse the positive result."<sup>4</sup>

It is also clear that the national railway drugs and alcohol testing protocols are designed to pick up the use of a range of drugs including cannabis.<sup>5</sup>

It should be noted that Appendix "A" of the RSSB's Railway Industry Standard RIS-8070-TOM "Testing Railway Safety Critical Workers

for Drugs and Alcohol” defines drugs as meaning:

“...a ‘controlled drug’ as defined in the Misuse of Drugs Act 1971 and its subsequent modification orders, or other substance that could affect a person’s ability to carry out safety critical tasks safely. The term also includes medication, either prescribed by a medical practitioner or purchased over the counter, which can have similar effects.”<sup>6</sup>

It is worth emphasising that this definition covers a broad range, including prescribed medicines and legitimately purchased products that could include CBD Oils.

The Railway Industry Standard at Paragraph 2.3, however, describes what constitutes a positive – or failed – drugs test for safety critical workers as:

“The presence of drugs for which there is no legitimate medical need for either their use or the quantity of their use.”

The key term here is that of “legitimate medical need” and whilst the Standard does not elaborate on that, many employers will have a process in place whereby safety critical workers have to inform their supervisor or manager if they have:

- been prescribed drugs for a medical condition;
- bought an over the counter flu or cold remedy – or pain killer;
- taken a homeopathic remedy.

This list is taken from Network Rail’s policy<sup>7</sup> which requires safety critical workers to notify their supervisor or manager should any of these instances apply. It is then the supervisor or manager’s responsibility to decide whether to seek advice from the Medication Enquiry Service about potential side effects that could affect safety critical work.

The policy actually advises that for homeopathic remedies the supervisor or manager may need to make a management referral to the Occupational Health Service in case there is any concern over an employee’s suitability to perform their duties due to an

underlying health condition.

Network Rail’s policy also clearly states that the Medication Enquiry Service will not advise on sports or body building supplements and goes on to warn employees that:

“you need to be mindful when buying these products, particularly from the internet, as they may contain drugs that may show up on a drugs and alcohol test.”

It is also worth bearing in mind that employers usually adopt a zero tolerance approach when enforcing their drugs and alcohol policies.

## **What does this mean for someone who is thinking about using CBD Oil?**

The clear advice is not to because of the risk that you will test positive, with the consequences associated with such a finding.

It should also be remembered that whilst the material explained above applies to safety critical workers,<sup>8</sup> employers also apply drug and alcohol testing to all staff on a “for cause” basis if they suspect someone is under the influence at work.<sup>9</sup>

## **What do other employers do?**

If you don’t work for Network Rail and are unfamiliar with the details of the drugs and alcohol policy operated by your employer, please make sure you obtain the latest version of their protocol. Undoubtedly, it will be very similar to the Network Rail policy described here because it, too, will be based on the Rail Industry Standard and underpinning legislation but if the policy is unclear in any area, you should seek clarification so that members know what they can and can’t do.

## **What is the law in this area?**

The railway adopted drug and alcohol testing with the passing of the Transport and Works Act in 1992. This stipulated at Section 27 that:

“those involved in train movement or in maintenance, repair or alteration will be

guilty of an offence if they are unfit to carry out that work through the use of drink or drugs.”<sup>10</sup>

Employers are equally culpable when incidents occur unless they can show that they have exercised “due diligence” to prevent the commission of an offence under section 27.

As the ORR guidance notes:

“The existence of a drug and alcohol policy can be used by an employer to demonstrate it has taken steps to prevent the commission of such an offence by its employees.”

The ORR Guidance goes into a lot of other related areas of law, including that related to the Train Driver Licences and Certificate Regulations 2010.

The Equality Act 2010 contains provisions about disability discrimination. However, case law suggests that where there is a conflict between the right not to be discriminated against because of an individual’s disability and the requirements of health and safety, then health and safety takes precedence.

## Acceptance of drugs and alcohol policies

Virtually all workers who are subject to drug and alcohol testing accept that there is a very strong moral case for ensuring that they are fit to carry out their duties safely and as a result are willing to strictly comply with the company policy in this area.

## Reps’ Action

The issue of CBD Oil and how users may fall foul of drugs and alcohol policies is a very recent issue and as such there is no definitive guidance that can be issued.

In this Bulletin we have suggested that reps who haven’t got a copy (or online access to) their company’s drugs and alcohol policy should ask their employer for the latest version of the document, together with any guidance that has been issued.

From there the rep can familiarise themselves with the details, including issues of how prescribed and over the counter medication is taken account of.

In the event there isn’t clarity in these areas, the rep should raise them with their manager or employer.

One of the issues that can also be raised is that of CBD Oil – and whether the company’s testing arrangements would pick up the use of the Oil as with the Transport for London statement quoted earlier – or, whether the employer has announced a policy statement of what their policy is on this issue. What should come out of this is clarity for members so that they know the implications of using CBD Oil.

Where a rep is dealing with a member who is prescribed medication or is using a CBD Oil product brought over the counter, they should tell the member to advise their manager they are using the product and seek their authority to continue to do so.

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### NOTES:

- 1 See: <https://www.nhs.uk/conditions/medical-cannabis/>
- 2 THC: Tetrahydrocannabinol
- 3 The Guardian, 1st July 2019: “Cannabis has great medical potential. But don’t fall for the CBD scam” at: <https://www.theguardian.com/commentisfree/2019/jul/01/cannabis-medical-cannabidiol-cbd-uk-consumers>
- 4 TfL response dated 23rd July 2018 at: [https://www.whatdotheyknow.com/request/drug\\_tests\\_and\\_cbd\\_oil](https://www.whatdotheyknow.com/request/drug_tests_and_cbd_oil)
- 5 Paragraphs 1.16 and 1.18 of RSSB’s “Drugs and Alcohol Module” at: [https://www.risqs.org/application/media/files/risqs\\_ap\\_007\\_\\_dru\\_\\_rev\\_03.pdf](https://www.risqs.org/application/media/files/risqs_ap_007__dru__rev_03.pdf)
- 6 See Page 8: <https://catalogues.rssb.co.uk/rgs/standards/RIS-8070-TOM%20Iss%201.pdf>

- 7 Network Rail Occupational Health Service Users Guide, Version3, July 2017: <https://safety.networkrail.co.uk/wp-content/uploads/2017/07/Network-Rail-OH-Services-User-Guide-v3.0.pdf>
- 8 For a definition of safety critical, see Pages 57-58 of the ORR’s “The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended): A Guide to ROGS” at: [https://orr.gov.uk/\\_\\_data/assets/pdf\\_file/0020/2567/rogs-guidance.pdf](https://orr.gov.uk/__data/assets/pdf_file/0020/2567/rogs-guidance.pdf)
- 9 See unnumbered page 3 of Network Rail’s “Drug and Alcohol’s FAQs” at: <https://safety.networkrail.co.uk/wp-content/uploads/2016/05/DA-FAQs.pdf>
- 10 Page 6, ORR’s “Fitness for Work” (December 2017) at: [https://orr.gov.uk/\\_\\_data/assets/pdf\\_file/0007/26269/fitness-for-work-guidance.pdf](https://orr.gov.uk/__data/assets/pdf_file/0007/26269/fitness-for-work-guidance.pdf)

## **Acknowledgements and further reading**

We acknowledge the use of a number of documents and websites in putting this Bulletin together, all of which feature in the notes on the appropriate pages.

For clarity, reps may wish to look at:

NHS Website:

<https://www.nhs.uk/conditions/medical-cannabis/>

RSSB's "Drugs and Alcohol Module":

[https://www.risqs.org/application/media/files/risqs\\_ap\\_007\\_\\_dru\\_\\_rev\\_03.pdf](https://www.risqs.org/application/media/files/risqs_ap_007__dru__rev_03.pdf)

RSSB's Railway Industry Standard RIS-8070-TOM "Testing Railway Safety Critical Workers for Drugs and Alcohol":

<https://catalogues.rssb.co.uk/rgs/standards/RIS-8070-TOM%20Iss%201.pdf>

Network Rail Occupational Health Service Users Guide, Version3, July 2017:

<https://safety.networkrail.co.uk/wp-content/uploads/2017/07/Network-Rail-OH-Services-User-Guide-v3.0.pdf>

ORR's "The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended): A Guide to ROGS" at:

[https://orr.gov.uk/\\_\\_data/assets/pdf\\_file/0020/2567/rogs-guidance.pdf](https://orr.gov.uk/__data/assets/pdf_file/0020/2567/rogs-guidance.pdf)

ORR's "Fitness for Work" (December 2017) at:

[https://orr.gov.uk/\\_\\_data/assets/pdf\\_file/0007/26269/fitness-for-work-guidance.pdf](https://orr.gov.uk/__data/assets/pdf_file/0007/26269/fitness-for-work-guidance.pdf)