

KNOW YOUR RIGHTS: MEDICAL CANNABIS

A patient's guide to understand your legal rights concerning your **cannabis-based medicine**

By Gabriela Holt Garcia, Giulia Esteves Pasotti, Salma Jouaneh, Stephanie Mcclymont, Lois Butler-Kettle's, James Bunn and Joseph Lord



Office gives go-ahead for rule change

profile cases including that of Alfie Dingley, Billy Caldwell and young epilepsy sufferer Murray Gray from Edinburgh, whose mother Karen ran a campaign to have the

CONTENTS

IMPORTANT NOTE FOR READERS	1
<hr/>	
WHAT ARE CANNABIS-BASED PRODUCTS FOR MEDICINAL USE (CBPMS)?	2
<hr/>	
THE EQUALITY ACT 2010	4
<hr/>	
1. An Introduction to The Equality Act 2010 and Reasonable Adjustments	5
<hr/>	
2. Forms of Discrimination	6
<hr/>	
TRANSPORT AND PUBLIC USE	7
<hr/>	
1. What if a CBPM patient is pulled over while driving a motor vehicle and their THC/Blood ratio is above the legal limit?	8
<hr/>	
2. Are patients allowed to use their CBPMs on public transport?	10
<hr/>	
3. Are patients allowed to travel internationally (outside of the UK) with your CBPM?	10
<hr/>	
4. Are patients allowed to enter the UK with a medical cannabis product?	11
<hr/>	
5. What documentation is required to prove that a patient has a legal medical cannabis prescription?	14
<hr/>	
EMPLOYMENT	15
<hr/>	
1. Are patients obligated to disclose their medication to their current/ prospective employer?	16
<hr/>	
2. Are you able to work with Children if you have a CBPM prescription?	17
<hr/>	
3. What happens if a patient is drug tested at work and cannabis is a prohibited substance in that workplace?	18
<hr/>	
4. Are medical cannabis patients able to continue operating workplace transport and/or heavy machinery?	20
<hr/>	
HOUSING	21
<hr/>	
1. Are patients allowed to consume their medication in their own home?	22
<hr/>	
2. Are patients able to vape their CBPM in temporary accommodation like an Airbnb or a hotel?	23

IMPORTANT NOTE FOR READERS

This information is provided as a guide for educational purposes only. Whereas every effort has been made to ensure its accuracy, it is important to understand that is not legal advice, and the information must not be relied upon as such. This is because the information set out herein is not nearly detailed or tailored enough to address all the legal considerations that may arise in any specific circumstances. Some information has been paraphrased and additional legal topics have been omitted for ease of reading, as have many exceptions to the rules set out herein. We would therefore encourage anyone facing issues of a legal nature to contact [Mackrell Solicitors](#) or another suitably qualified law firm for bespoke advice.



WHAT ARE CANNABIS-BASED PRODUCTS FOR MEDICINAL USE (CBPMS)?



CBPMs are medicinal products which are or contain cannabis (and some constituent forms, such as cannabis resin), and which are produced for medicinal use in humans. CBPMs can (though do not always) contain THC, the main psychoactive component in cannabis.

In practice, CBPMs can be broken down into three forms^[1]:



Unlicensed CBPMs: Products that can be prescribed but have not yet been assessed by the medicines regulator. These include products such as Tilray's T series, and Bedrocan's "Bedrolite", and "Bedica".



Licensed CBPMs: Products granted marketing authorisation by the medicines regulator (the MHRA). There are currently no such products available in the UK^[2].



Licensed cannabis-based medicines: Products which are defined separately in legislation from CBPMs. Currently, these are Epidyolex, Nabilone, and Sativex; all are for the treatment of severe epilepsy, the side effects of chemotherapy, and/or MS.

Cannabis is a Class B controlled drug under the Misuse of Drugs Act 1971, and a Schedule 1 drug under the Misuse of Drugs Regulations 2001 ("the 2001 Regulations").

In 2018, the 2001 Regulations were amended to create a new category of medicinal cannabis products in law known as "Cannabis-based Products for Medicinal Use in humans" or CBPMs. From that point onwards, CBPMs were controlled as Schedule 2 drugs instead of the previous, more restrictive, classification of schedule 1 drugs. This allows CBPMs to be prescribed in line with a range of other medications. Patients who have been properly prescribed a CBPM may possess it without committing a criminal offence.

To obtain a CBPM, you must either be a participant in a clinical trial, or have a prescription. For unlicensed CBPMs, only doctors on a [GMC specialist register](#) can prescribe them. CBPMs are not available from your GP, and are almost impossible to get at the moment through the NHS. CBPMs are overwhelmingly prescribed through private clinics.

In the five years since the law changed to enable the more widespread prescription of medicinal cannabis as CBPMs, a number of CBPM patients have found themselves in difficulty. We hope this short guide can help patients navigate some of these problems.



THE EQUALITY ACT 2010



Why are you reading about the Equality Act? In practice, it is the Equality Act that gives people using medical cannabis some rights to use their medicines when others might try to prevent them. These rights and the circumstances in which they apply are set out below.

1. An Introduction to The Equality Act 2010 and Reasonable Adjustments

The Equality Act 2010 is a UK law that prohibits discrimination against individuals with disabilities. This is useful for medicinal cannabis users as the conditions which medicinal cannabis is prescribed for can fall under the definition of a disability. One of the key provisions of the Act is the duty to make reasonable adjustments to accommodate disabled people in various contexts.

Where a disabled person is put at a substantial disadvantage in comparison with a person who is not disabled, there is a duty to take reasonable steps to avoid that.

If you are a medicinal cannabis user and have a disability, you may be entitled to reasonable adjustments under the Act. Here are some practical tips to help you understand your rights and how to request reasonable adjustments:



Understand your disability: To request reasonable adjustments, your disability must meet the legal criteria, which defines disability as a lasting impairment significantly affecting daily activities. A valid prescription for medicinal cannabis can serve as evidence.



Identify the barriers to accessing goods, services, or facilities: Think about the challenges arising from your disability. For instance, if you rely on medical cannabis to control symptoms and encounter an entity with a no-controlled substances policy, it might hinder your daily activities.



Request reasonable adjustments: Spot access barriers, request adjustments from the relevant authority, possibly seeking permission for medicinal cannabis or an acceptable alternative. Put it in writing, and provide disability evidence and adjustment necessity.



Be flexible and willing to negotiate: Reasonable adjustments can be complex, possibly requiring negotiation. Be open to suggesting alternatives if your first proposal doesn't work, and aim for a solution that suits you without causing undue hardship to others.



Seek legal advice if necessary: If an agreement can't be reached or you suspect the facility or organization isn't meeting its legal obligation for reasonable adjustments, you may need legal counsel to enforce your rights under the Equality Act 2010.

You are not necessarily entitled to the adjustments that you would like. For example, an employer is not required to make adjustments that would cause undue hardship to them, such as significant financial or logistical difficulties. However, if a request for reasonable adjustments is refused, a clear and justifiable reason for doing so must be provided.

In summary, if you are a medicinal cannabis user with a disability you may be entitled to reasonable adjustments under the Equality Act 2010, and it is important to understand how to go about seeking them and the extent of the adjustments that you are entitled to.

2. Forms of Discrimination

In the context of disability, there are two main forms of discrimination: discrimination on the basis of disability, and discrimination arising from disability.

Discrimination on the Basis of Disability

Discrimination on the basis of disability takes two forms: direct discrimination, and indirect discrimination.

For direct discrimination, a person ('A') discriminates against a disabled person ('B') if, because of a disability, A treats B less favourably than A treats or would treat others. If this is established, there has been discrimination regardless of any attempt by A to justify it.

A clear example in the employment context would be paying disabled employees less than non-disabled colleagues, or removing certain benefits from them, simply because of their disability.

For indirect discrimination, A will discriminate against B if A applies to B a 'provision, criterion or practice' which is discriminatory to the disabled. A 'provision, criterion or practice' is a broad term, covering rules, policies, practices or requirements used (whether formally or not) by a person/organisation.

In short, if the rule, policy (etc.) is applied to everyone but puts you as a disabled person at a substantial disadvantage compared to a non-disabled person, that will be indirect discrimination unless A can justify the rule, policy (etc.) as a proportionate means of achieving a legitimate aim (see below).

Discrimination Arising from Disability

Here, A must treat B unfavourably because of something arising in consequence of B's disability. In our context, the 'something' could be your CBPM medication: the unfavourable treatment could be preventing the use of a medical vapouriser to consume the CBPM.

However, this will not be discrimination unless A was aware of your disability. Whether they were aware will be a question of fact but broadly, the fact that you have not disclosed your disability does not necessarily mean that A can deny any awareness of it.

As for indirect discrimination above, it must also be the case that A cannot 'justify' the unfavourable treatment.

Justifying Unfavourable Treatment: A Proportionate Means of Achieving a Legitimate Aim^[3]

A legitimate aim might involve safeguarding individuals' health and welfare or ensuring smooth business operations. However, the approach must be proportionate, meaning it should be appropriate and necessary. If less discriminatory alternatives exist, it becomes harder to justify discrimination.



TRANSPORT AND PUBLIC USE



1. What if a CBPM patient is pulled over while driving a motor vehicle and their THC/Blood ratio is above the legal limit?

If you have a THC/blood ratio above a specified level, you will need to rely on evidence of your medication (and evidence that you have followed prescription instructions) to avoid criminal liability. Even if your THC/blood ratio is below that specified level, you may still be guilty of an alternative offence of driving while unfit if there is evidence that you were impaired while driving, although you may avoid disqualification depending on the circumstances and your driving history.

THC/Blood Ratio above a Certain Level

The Drug Driving (Specified Limits) Regulations 2014 ('the 2014 Regulations') detail the amount of a controlled drug that a person can have in their system and still be driving lawfully. For Delta-9-Tetrahydrocannabinol ('THC', the main psychoactive ingredient of Cannabis) the amount is 0.2 microgrammes per 100 millimetres of blood. It is important to note that frequent users of CBPMs will have a store of THC in their system that can re-release, so you may exceed this limit even if you have not dosed recently. An unreasonable refusal to provide a sample is a separate offence. Failing to provide a sample could result in 10 points on your licence, a discretionary disqualification, a fine of £2,500- or three-months imprisonment.

Although driving with a THC/blood content greater than 0.2mg/100ml is therefore a criminal offence, CBPM users may rely on the statutory "medical defence"^[4] if all three of the stipulations below are met:

- 1 The drug was lawfully prescribed or supplied, for medical or dental purposes; and
- 2 The drug was taken in accordance with the advice given by the person who prescribed or supplied the drug, and in accordance with any accompanying written instructions (so far as these are consistent with any advice of the prescriber, which will take precedence).
- 3 The possession of the drug immediately before its consumption was not unlawful under the Misuse of Drugs Act 1971 because of a medical exemption.

However, this defence will be unavailable where you have not followed the advice of your clinician on the amount of time that should elapse between consumption of the CBPM and driving. Vaporised medical cannabis can cause much higher maximum blood concentrations of THC in a much shorter time than other forms of cannabis. For instance, with the ingestion of cannabis oils, concentrations remain elevated for longer, but at much lower maximum levels.

The Impairment Offence - Unfit Through Drugs

It is also a criminal offence to drive (or be in charge of) a motor vehicle on a road or public place whilst unfit through drugs^[5]. You will be unfit if your ability to drive properly is impaired at that time - the precise THC/blood ratio is therefore not determinative to your liability under this offence. Remember that 'being in charge' of a vehicle will catch stationary vehicles, and even where an engine has not yet been turned on^[6].

To assess impairment, a police officer can require you to complete a series of physical tasks at the roadside. Unless you have a disability or other reasonable excuse, it is a separate criminal offence if you fail to cooperate with these tasks.

If you are convicted, disqualification is mandatory if you were driving (and optional if you were 'in charge'). However, the court has a discretion not to disqualify you if 'special reasons' apply. The consumption of prescription medicine may well be a special reason, but relevant to this will be whether you followed medical advice on dosage; the manner and distance which you drove; and any past driving offences.

Licensing Generally

Please note that The Driver and Vehicle Licensing Agency (DVLA) policies have not yet been updated to cater for CBPMs. The following is guidance for medical conditions generally, and may be subject to change if and when DVLA policies incorporate CBPMs.

The DVLA requires by law that drivers tell the agency about any medical condition that could affect driving, and for certain named conditions, depending on the class of vehicle and details of the condition and treatment, the DVLA must be informed failure to disclose a medical condition can result in prosecution and a £1,000 fine.

The DVLA will make an assessment, which may involve tests or contacting the patient's doctor. They may then revoke or change the duration of the patient's licence or require them to adapt their vehicle. Patients must also inform the DVLA and give up their licences if their doctor tells them to stop driving for three months or more, or if a medical condition affects their ability to drive safely for the same period.

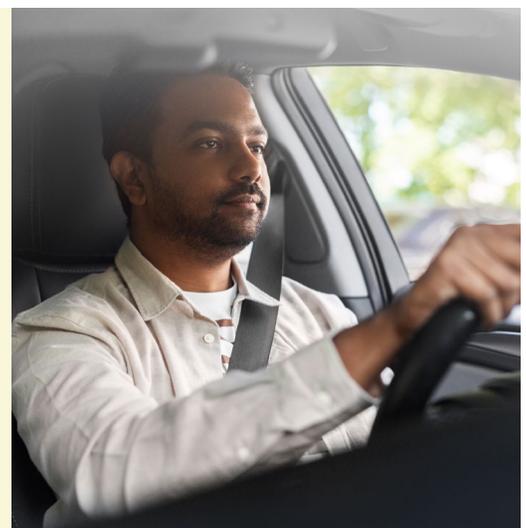
The DVLA produces guidance for medical professionals to help them advise patients on whether to notify the DVLA of a medical condition (DVLA, 2021c). This guidance states that doctors and other healthcare professionals should:

- advise the individual on the impact of their medical condition on safe driving ability;
- advise the individual on their legal requirement to notify the DVLA of any relevant condition; and
- notify the DVLA directly of an individual's medical condition or fitness to drive, where they cannot or will not notify the DVLA themselves.



General Tips

It is helpful for patients to keep evidence with them when they are driving that shows that they are taking their medicine as a CBPM prescription supplied by a healthcare professional and that they have taken it in accordance with the leaflet accompanying the medical product or doctor's instructions, in case they are ever stopped by the police.



2. Are patients allowed to use their CBPMs on public transport?

There is no legislation permitting or prohibiting the use of CBPMs indoors or on public transport. If a CBPM is consumed via a vapouriser, a similar device is an e-cigarette - there is also no legislation prohibiting the vaping of e-cigarettes indoors or elsewhere.

However, many public transport companies have policies that nonetheless prohibit vaping anywhere on their services (for instance, Transport for London). Additionally, other forms of public transport (such as aeroplanes) will prevent vaping on security grounds.

All tubes, buses and trains in London have banned electronic cigarettes. This [website](#) provides a list of all train companies who have explicitly banned vaping on trains and platforms.

While many members of the public may not like the smell of CBPMs when vaped and associate it with illegal activities, it is essential to remember that the vapouriser is a medical device which is necessary to provide medical treatment to an individual with a condition or disability.

Discrimination

If you have not been allowed to travel on public transport because of your CBPM, you may feel that you have been discriminated against in consequence of something arising from your disability.

Before pursuing any complaint or claim for discrimination, you should always obtain independent legal advice to clarify your rights in your particular circumstances. You may wish to refer back to the Introduction to the Equality Act 2010 towards the beginning of this guide.



3. Are patients allowed to travel internationally (outside of the UK) with your CBPM?

The Home Office webpage [here](#) recommends that you check with the embassy of the country that you are visiting before travelling with a CBPM.

Remember that some jurisdictions have extremely strict laws on drug use, with no distinction for CBPMs, so it is essential that you check with the authorities before travelling.

4. Are patients allowed to enter the UK with a medical cannabis product?

When entering (or re-entering) the UK, with a prescription medicine you must carry the medicine in your hand luggage and need to take steps to prove that the medicine was prescribed to you.

There are two means of doing so: either through proof of prescription (the prescription can suffice, but the Home Office recommends also carrying a letter from your doctor), or a personal licence^[7].

The 'personal import policy' means that you can bring up to a 3-month supply of a lawfully prescribed CBPM into the country without a personal licence. Anyone with a supply greater than this will need to obtain a personal licence, in addition to the documents and/or steps outlined below.

(1) Habitual Resident Returning to the UK with medicine prescribed in the UK:

- Proof of prescription will be sufficient.
- Furthermore, if your prescription was issued in the UK, you may still receive medical treatment abroad - including the dispensing of your CBPM - without requiring a personal licence.

(2) Habitual Resident Returning to the UK with medicine prescribed overseas:

In addition to proof of prescription, you will also need to contact the Drug and Firearms Licensing Unit ('DFLU', email: dflu.ie@homeoffice.gov.uk) to notify them in advance. The Home Office recommends doing so around 15 days before you travel.

Bear in mind the distinction between prescription and medical treatment referred to above - medical treatment short of prescription will not trigger the need to contact DFLU or obtain a personal licence.

(3) Visitor or Temporary Resident^[ER1]

A personal licence will be required. The Home Office also recommends that you travel with a small supply (up to 3 months), and obtain further supplies from a UK clinician.

You will need to contact the Drug and Firearms Licensing Unit (email: dflu.ie@homeoffice.gov.uk) to ask for a 'Personal License' application form.

Proof of Prescription

For proof of prescription, your doctor's letter must include:

- your name
- what countries you're going to and when
- a list of your medicine, including how much you have, doses and the strength
- the signature of the person who prescribed your drugs.

Personal Licences

When you request a Personal Licence application form, include in your message your full intended travel details and reason for visit, as well as your UK address.

Before emailing, you should also:

- Know the details of your medicine, including dose, strength and quantity

- Have a letter from your doctor including their professional registration number
- Apply at least 15 working days before you're due to travel.

Postage is Prohibited

You cannot circumvent these rules by having prescribed CBPMs posted to you from overseas^[8]. If you do not bring CBPMs in on your person, they will need to be imported by a registered pharmaceutical wholesaler.



Police Interventions

1. CBPMs and the Police: Stop and Search and Liability for Occupiers

As explained in the preface to this booklet, CBPMs are legal to possess and use because of an amendment to regulations. Cannabis itself remains a Class B controlled drug.

A CBPM may be mistaken for illicit cannabis by police or passers-by. Three key points are addressed below: smoking your CBPM; stop and search; and potential liability for occupiers.



Smoking CBPMs

Regulations provide that you cannot self-administer a CBPM by smoking it, unless you are taking part in a clinical trial that specifically permits smoking of the CBPM^[9].

Using a vaporiser for your CBPM does not constitute smoking. Devices such as the 'volcano' or 'mighty medic vaporiser' heat^{[j]2} [ER3] the ground cannabis flower but do not combust (burn) it.

[ER4] Liability for Occupiers (s8(c) Misuse of Drugs Act 1971)

It is an offence for the occupier (or manager) of any premises to 'knowingly permit or suffer' the smoking of cannabis or cannabis resin^[10]. This offence would not apply to the vaping of a CBPM.

In simpler terms, this offence applies to anyone with enough control over a property that they can exclude others from it. In the home, the offence is therefore not limited to the homeowners themselves but could also apply to others who live at the premises. For non-residential property, this might be someone running or organising the premises (such as the landlord of a pub).

To 'knowingly permit' means you must have actual knowledge of the smoking, while 'suffering' is a broader term covering those 'turning a blind eye' to smoking, although not those who merely suspect that it is occurring.

To date we are not aware of any prosecutions under this offence, and whether CBPMs being smoked at a premises would be considered cannabis for the purposes of the legislation. It may also not be in the public interest to bring a prosecution against someone who smoked their medication, however that would be a decision for the prosecuting authorities.

If found guilty of this offence penalties can range from discharge, to fine, and even a custodial sentence depending on the circumstances.

Stop and Search: Seizure of Medication

There are various guides on 'knowing your rights' if stopped and search by police, which can be found online^[11]. You should read these guides as they provide much more detail about your rights when being stopped and searched, the below is largely concerned with the seizure of medications.

A police officer has the power^[12] to search you or your vehicle if they have reasonable grounds to suspect that you are in possession of a controlled drug. They can also seize and detain anything found during that search which appears to be evidence of a drugs offence.

If you have smoked a CBPM using any apparatus other than a medical vaporiser, any device could be seized during a stop and search. Medical vaporisers may also be seized whilst searching a vehicle.

Guidance from The College of Policing states that the smell of cannabis alone is not enough to warrant a stop and search. Scenarios will of course vary, but the smell of cannabis combined with some other behaviour - such as use of a device - may warrant a stop and search.

It is always worth having a copy of your prescription to hand. If you have been stopped and searched for possession of cannabis, show the officer your prescription and explain that you have been legally prescribed the medication. Hopefully this will lead to no further action.

You should ask the officer for a copy of the search record or a receipt allowing you to collect or access a copy of the record at a later date. If you are unhappy with the way an officer has handled a stop and search you are entitled to complain.

If your CBPM and/or device is seized, it will usually be held at the relevant police station until investigations into whether you have committed an offence have concluded. Once the officer in charge of the case feels that the items are no longer needed, you should be informed in writing that your property is ready for collection.

If you do not collect your property within a certain time period (usually 28 days), it will be disposed of/destroyed.

If the police do not return your property, you should seek independent legal advice on how you can recover it.



Rights in Arrest

If you are unable to prove that the substance is a CBPM, you may face arrest and/or be charged with an offence. You should always seek legal advice if this occurs, including from any duty solicitor at a police station if you are interviewed.

Remember if you are in possession of a CBPM that has been prescribed to you, and you are following the instructions for use, then you are not guilty of an offence and should not plead guilty.

You are entitled to free legal advice if you are arrested and taken to be questioned at the police station. If you are arrested for this or any other offence, please seek independent legal advice.

5. What documentation is required to prove that a patient has a legal medical cannabis prescription?

The law treats prescribed medicinal cannabis and Cannabis differently, but due to their similarity in appearance it won't always be immediately obvious what type of cannabis someone has.

Possession of your medicinal cannabis is not an offence so long as you've been prescribed it properly (this will be after a consultation with a prescriber). Below are some ways to help evidence your legal possession of your prescription.

Paper Prescription



Your prescription is one way to help evidence your legal right to be in possession of your CBPM and for you to use it as directed by your medical practitioner. While you are not required to carry your prescription with you, it is strongly advisable to do so if you need to prove that it is a CBPM. If you cannot show that it is, it can be harder to demonstrate that you are not committing an offence and confiscation is much more likely.

Label and information Leaflet



Like other medicines, a CBPM will come in a container/ packaging which will include instructions on how to consume the product safely and an explanation of how to store and otherwise handle it. There may also be a label stating the dosage specifically for you as the patient, along with your details.

Although there is no legal requirement to keep a CBPM in its original packaging, again it is strongly advisable to do so to make it easier to prove that it is in fact a CBPM rather than illicit cannabis.



EMPLOYMENT



1. Are patients obligated to disclose their medication to their current/ prospective employer?

The answer will depend partly upon the nature of your role. More safety critical roles may require greater degrees of disclosure. For employed roles generally, non-disclosure of medical information may limit your access to reasonable adjustments. In certain circumstances, your employer can also obtain a medical report on you, although you do have rights that can be exerted in this situation.

You may wish to refer back to the 'Equality Act 2010 Explainer' at [page 4](#). In the employment context, the protections of the Equality Act apply whether you are interviewing for a job or currently working in one. As such, references to an employee/employer include job applicants/ potential employers.

You cannot be forced to disclose information about your medication and/or health conditions. In job interviews, an employer cannot even ask you questions about your health, save where this is to establish whether you can carry out a function intrinsic to the role (e.g., for scaffolders, the ability to climb scaffold towers), or for disability monitoring processes.

However, non-disclosure may have adverse effects in two contexts: first, for your access to reasonable adjustments; and second, when your employer deems it necessary to obtain a medical report.

Reasonable adjustments

For CBPM users, reasonable adjustments may take the form of amended workplace vaping policies/ additional breaks to take medication, or (if you are applying for a job) alterations to an interview or assessment process. However, you are not automatically entitled to reasonable adjustments. In the employment context, three factors must apply before an employer will be required to make reasonable adjustments:

- 1 You have a disability^[14]; and
- 2 Your disability means that a policy, rule or physical feature at work places you at a substantial disadvantage compared to a non-disabled colleague; and
- 3 Your employer 'knows' of your disability.

It is this third requirement that is relevant to questions of disclosing information about your medical conditions and/or medication.

Saying nothing about your medication/disability does not mean your employer can deny all knowledge - the employer needs to show that they could not 'reasonably have been expected to know' about it. For example, if there have been indications that you have a disability - such as physical difficulties at work, or repeated medical appointments/ use of medication - then it may be difficult to deny knowledge of your disability.

For those in work, the [Code of Practice](#)^[15] to the Equality Act 2010 provides that an employer must do 'all they reasonably can be expected to do' to find out if an employee has a disability. What this means will depend on the circumstances - for example, it will be reasonable to expect an employer to explore the reasons for a sudden drop in work performance or punctuality. This may reveal your disability/ medication to be the cause, and (should) lead to reasonable adjustments.



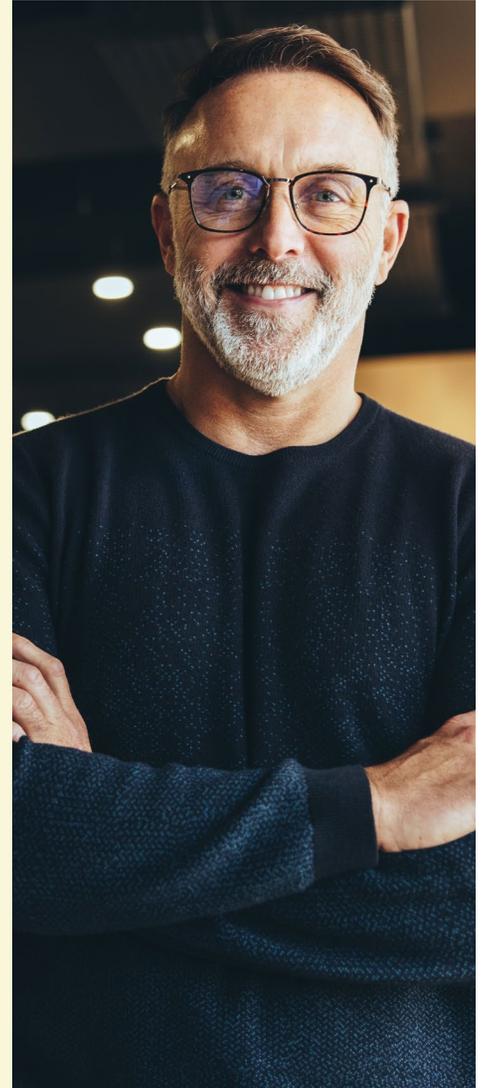
Obtaining A Medical Report

Under the Data Protection Act 2018 ('the DPA'), an employer has the power to obtain a medical report on an employee/putative employee. The specific requirements to do so are detailed in the DPA; in practice, an employer may seek a medical report in order to ensure a safe working environment (e.g., if there has been an accident, or if your work involves particular risks like driving).

You do have the power (from legislation^[16]) to prevent disclosure of the report to your employer, but doing so may limit the roles you can undertake.

An employer's ability to obtain a medical report should not be confused with the use of occupational health reports, which may be conducted through your employer's own occupational health service or an outside agency. Your employment contract and/or workplace policies may detail the circumstances in which an employer can use occupational health (for instance, in determining the correct reasonable adjustments to make).

If your employer seeks to obtain a medical report and you are unclear about your rights, you should always seek independent legal advice on your circumstances.



Your rights once you do disclose information about your medication/ disability

Under the DPA, and the General Data Protection Regulations ('GDPR') that it implements, medical information is classed as 'Special Category Data'. This means that you must either voluntarily disclose this information, or there must be a lawful basis for your employer to have it (see above),

This also means that there are very stringent limits on what your employer can do with that information. Any use of the information beyond that which is strictly necessary - such as disclosing to workers not in a management position - would likely amount to a data breach.

The Code of Practice to the Equality Act also requires employers to ensure confidentiality when information about your disability is passed between people (e.g., from occupational health to management).

2. Are you able to work with Children if you have a CBPM prescription?

Educational establishments in the UK are subject to the Education (Health Standards) (England) Regulations 2003. These regulations are intended to ensure that existing and future teachers have the

health/physical capacity to teach (and will not put children at risk). It is common for schools to have a 'drugs policy' which may require employees to notify a manager if they take medication that could impair their ability to function safely at work.

Your rights and responsibilities in medical disclosure are relevant here (see above).

In the teaching context, the criteria from the [National Education Union \(listed below\)](#) are considered by your employer to decide whether you are 'fit to teach'. Full and frank disclosure about your medication, and any side effects, will make this process simpler and more effective.

- have the health and wellbeing necessary to deal with the specific types of teaching and associated duties in which you are engaged
- are able to communicate effectively with children, parents and colleagues
- possess sound judgement and insight
- remain alert while supervising pupils and/or working with hazardous materials
- respond to pupils' needs rapidly and effectively
- manage classes
- do not constitute a risk to the health, safety or wellbeing of the children who you teach, and
- can, where disabilities exist, be enabled by reasonable adjustments to meet the above criteria

DBS Checks

Content

If you are concerned that a past conviction or caution for illegal cannabis use will preclude you from working with children, there are a number of resources detailed [here](#) which may be of assistance.

Remember that most roles involving children will require an enhanced DBS check. However, penalties such as youth cautions, reprimands and/or warnings are not automatically disclosed. A Chief Constable of a police force can disclose additional information as part of an enhanced DBS, but the circumstances in which this can be done are limited in practice^[7].

3. What happens if a patient is drug tested at work and cannabis is a prohibited substance in that workplace?



If you are concerned about your treatment following a drugs test (whether you are worried about dismissal or not), please seek independent legal advice.



If you are a member of a trade union, they should be able to provide free advice and other assistance (such as accompanying you to any disciplinary meetings).

Rights and Responsibilities in Drug Testing

An employer can only conduct drug testing if you as the employee have agreed to a drug testing policy. Such a policy may be referred to in your contract of employment, and/or included within a staff handbook. This is also the case for any drug testing policy introduced after you commence employment - you would need to accept this change to your contract.

An employer may conduct drug testing on health and safety grounds, particularly where you are employed in safety-critical work such as operating machinery. As many CBPMs contain THC, an employee may therefore test positive for a prohibited substance. Remember that THC can be detected several days after its effects have worn off.

Your rights under the Equality Act 2010 are of great importance here. First is your entitlement to reasonable adjustments. In this context, your employer should take steps such as discussing the effect of your medication with you, and consider moving you to a different role if the presence of THC poses a safety concern.

Second is the potential for discrimination. See the beginning of this guide for guidance on 'discrimination arising in consequence of a disability', as this may become relevant if (for instance) your employer is not willing to make adjustments, or treats you differently because of your CBPM.



Testing and Dismissal

There is not yet a precedent involving dismissal for a positive drugs test following CBPM use.

The potential for discrimination referred to above may mean that there are greater merits in a claim for disability discrimination, rather than for unfair dismissal, on the facts of a particular case.

Dismissal must fall within a 'range of reasonable responses' that a reasonable employer might take in the circumstances. A recent appeal case^[18] in which the Appellant employee was dismissed following a positive test for THC (from illegal cannabis consumption) emphasised that an employer must have a reasonable belief that the banned substance is impairing job performance. This belief may come from work records, in combination with the results of a drug test.

A dismissal must also be in accordance with the 'equity and substantial merits' of the situation. For CBPM users, the fact that THC came from a prescribed medicine would be of central importance. Again, the potential for discrimination in this context may mean that this question would not need to be addressed (with any claim focussing instead on whether there was any less favourable treatment).

High-risk Professions

Particular jobs may have very stringent rules governing the use of prescribed medication. For instance, the Civil Aviation Authority has specific guidance for pilots^[19].

If you are in a job with stringent safety requirements, you should liaise with your employer before you start taking the CBPM, and certainly before you operate any machinery or undertake any task at work.

4. Are medical cannabis patients able to continue operating workplace transport and/or heavy machinery?

Your employer will likely need to conduct assessments to check that you are able to do so. You must also ensure your clinician is fully aware that your job involves these tasks, and you must take steps yourself to minimise risks. Questions of criminal liability are addressed elsewhere in this booklet.

As with many medicines, CBPMs can affect your fitness to operate workplace transport and/or machinery.

Although there is no provision specific to CBPMs, Health and Safety Executive webpages^[20] detail the approach employers should take with medicines generally. The key overarching point to note is that a declaration of fitness to work from your GP is insufficient for liability/ insurance purposes - a more detailed risk assessment may be necessary.

The employer will need to undertake an individualised assessment of your fitness to operate your work vehicle(s). The assessment will be more stringent the more hazardous the cargo, or the vehicle (for instance, holders of 'Group 2' licences to operate HGVs and other large vehicles will need a rigorous risk assessment). In these situations, an employer's power to obtain a medical report on you may also become relevant (see above).

Remember that your employer is legally obliged to take these steps - it is not.

Employees should also take steps to ensure safety, including (but not limited to) the following:

- 1 Speak with your prescribing clinician about the potential effects of your medication, and be open with your employer about this.
- 2 Do not try a new medicine for the first time right before you operate machinery or other workplace equipment.
- 3 Be aware that combinations of different medicines can magnify their side effects, or bring entirely new ones. Ask your Clinician (and/or pharmacist) about the interactions between your medications.
- 4 The above information should be considered in conjunction with 'Transport Question 1' below - the criminal law is also relevant to your fitness to drive/ operate workplace machinery.



HOUSING



1. Are patients allowed to consume their medication in their own home?

Yes, patients are allowed to administer their medication on private property that they own. However, please ensure that the CBPM is being consumed as prescribed, i.e., via a vaporiser and not smoked (due to the potential criminal liability if it is smoked, please see previous section on 'Smoking CBPMs').

CBPMs and 'No Vaping' Policies: Rented Accommodation

Many landlords will have 'no vaping' policies inside their properties. If you wish to vape on the premises then you might consider bringing this up with them - although be aware that, should you do this before signing a contract, then, regardless of the law, there is a risk that it will harm your chances of renting the property. It is worth bearing in mind that you have a variety of protections from discriminatory treatment as a tenant which you might struggle to secure before you have signed the contract. It is also not routine for a tenant to have to detail to a landlord the medication they use and method of administration. In practice, if use of your CBPM is reported or noticed as a breach of this policy, an open discussion with your landlord is likely to be far better than a confrontational approach and could make eviction or fines less likely.

If your landlord does seek to take steps against you, remember that you (and people that you live with) have rights under the Equality Act 2010. Discussing the matter at the right time, and prior to an issue arising is almost always the best path.

This Citizens Advice webpage^[21] provides guidance on requesting reasonable adjustments in the housing context, which may entitle you to changes to your property agreement^[22]. Establishing the nature of your property right and your relationship to the 'controller of the premises' (not necessarily your landlord) is key to determining your rights to reasonable adjustments.

Any attempts to evict you in response to requests for reasonable adjustments would be victimisation under the Equality Act 2010, and therefore unlawful. However, you can only challenge a refusal to implement reasonable adjustments themselves by bringing a discrimination claim.

Remember that a refusal to allow you to vape your CBPM indoors is not automatically discrimination. For instance, if there is an outdoor space within the property in which you can use your CBPM, and there is no factor (such as mobility issues) which makes you unable to use that space, it may be difficult to show that the anti-vaping policy places you at a substantial disadvantage.

Your legal rights will always depend on the factual circumstances of your case, and you should seek independent legal advice if in doubt.

Defending Possession Claims

In the unlikely event that your landlord seeks to evict you for CBPM usage, they will need to apply to court to obtain possession of the property. Remember, in almost all circumstances a landlord cannot force you to leave a property without issuing a notice seeking possession, and even then you can remain in the property until a possession order has been made.

This is a complex area of law and guidance from Shelter is available at this [webpage](#)^[23]. Broadly, if you intend to challenge the claim for possession, you must file a defence within 14 days of receiving the claim documents (which will include the claim form, and particulars of claim).

If you do not file a defence in time, you can still put forward a defence at a court hearing but the lack

of a defence may bring costs liabilities (e.g., paying for the other side's legal costs if an adjournment is required to respond to your defence).

As part of your defence, you may wish to bring a counterclaim against your landlord (e.g., for harassment). If you do not file a counterclaim with your defence, you will need the court's permission to raise a counterclaim in the proceedings.

CBPMs and Social Housing: Anti-Social Behaviour

CBPM use may be mistaken for illegal drug use, and reported by neighbours as anti-social behaviour. For persistent anti-social behaviour, social housing tenants have the right to initiate a multi-agency review of their case.

In practice, any enquiries made by your landlord (whether a housing association, or local authority) in response to complaints would hopefully establish promptly that your CBPM usage was not illegal, and defuse any tension with neighbours.

Guidance on the steps that a landlord can take in response to complaints is available [here](#)^[24].



2. Are patients able to vape their CBPM in temporary accommodation like an Airbnb or a hotel?

The position is similar to public transport: although there is no legislation preventing vaping indoors, many hotel chains have no-vaping policies^[25], with smoke detectors capable of detecting vapes installed in rooms.

Airbnb rules provide that guests should not vape inside a property unless they are explicitly permitted to do so.

If you are in the UK, your rights under the Equality Act 2010 will be relevant. Speak to your accommodation provider and discuss how their policies can be amended to cater for your needs.



- [1] ACMD, CBPMs (November 2020). Available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939090/OFFICIAL_Published_version_-_ACMD_CBPMs_report_27_November_2020_FINAL.pdf
- [2] Once a product does receive an MHRA licence, it will be available for prescription in the same way as any other Schedule 2 drug.
- [3] <https://www.citizensadvice.org.uk/law-and-courts/discrimination/check-what-type-of-discrimination-youve-experienced/justifying-discrimination/#:~:text=The%20Equality%20Act%20says%20discrimination,if%20discrimination%20can%20be%20justified>
- [4] Section 5A, Road Traffic Act 1988.
- [5] Section 4, Road Traffic Act 1988.
- [6] If you need to know more about the precise limits of 'being in charge', you should obtain independent legal advice.
- [7] <https://www.gov.uk/travelling-controlled-drugs>
- [8] <https://www.gov.uk/bringing-goods-into-uk-personal-use/banned-and-restricted-goods>
- [9] R.16A(3), Misuse of Drugs Regulations 2001.
- [10] s.8(d), Misuse of Drugs Act 1971.
- [11] From Release (focussing on the controlled drug context): <https://www.release.org.uk/law/stop-and-search>.
From Liberty (on stop and search more generally): https://www.libertyhumanrights.org.uk/advice_information/stop-and-search/
- [12] s.23, Misuse of Drugs Act 1971.
- [13] From Release: <https://www.release.org.uk/law/possession>
- [14] See Equality Act 2010 explainer, [page 4](#).
- [15] Available here: <https://www.equalityhumanrights.com/sites/default/files/employercode.pdf> The Code does not have binding legal effect, but will be taken into account by Employment Tribunals in any discrimination claim.
- [16] Section 1, Access to Medical Reports Act 1988
- [17] Explanatory note on police powers of disclosure: <https://assets.college.police.uk/s3fs-public/2022-04/NPCC-2017-Common-Law-Police-Disclosures-CLPD-%E2%80%93-Provisions-to-supersede-the-Notifiable-Occupations-Scheme-NOS.pdf>
- [18] *Renewi UK Services Ltd v Pamment* [2021] - available here: https://assets.publishing.service.gov.uk/media/6177df4ad3b-f7f5605904184/Renewi_UK_Services_Ltd_v_Mr_Carl_Pamment_EA-2021-000584-DA.pdf
- [19] <https://www.caa.co.uk/media/yh1g4red/appendix-a-medication-guidance-v1-1.pdf>
- [20] <https://www.hse.gov.uk/workplacetransport/personnel/medicalfitness.htm>
- [21] <https://www.citizensadvice.org.uk/housing/discrimination-in-housing/taking-action/asking-for-adjustments-to-help-with-your-disability/#:~:text='As%20the%20landlord%20of%20the,amounts%20to%20disability%20discrimination>.
- [22] The precise nature of your property right - be it from an assured shorthold tenancy, a lease, or something else - will affect your rights in eviction/ termination.
- [23] https://england.shelter.org.uk/professional_resources/legal/possession_and_eviction/possession_process_for_rented_property/tenant_defence_to_a_landlords_claim_for_possession
- [24] <https://www.gov.uk/government/publications/help-with-anti-social-behaviour-for-social-housing-tenants/help-with-anti-social-behaviour-for-social-housing-tenants#who-to-contact>
- [25] Travelodge prevents vaping anywhere onsite; Premier Inn permits vaping only in designated smoking areas.



If you require further support on any of the topics covered in this document, please email info@drugscience.org.uk and we will do our best to connect you with the best person to help with your issue.



@DrugScienceISCD



@Drug_Science



@Drugscienceinfo

drugscience.org.uk