



LawCare Ltd.
Health Support and Advice for Lawyers

RETURNING TO WORK AFTER RECOVERY



Helplines

For Solicitors, Law Students and Legal Executives in England and Wales:
0800 279 6888

For Solicitors, Advocates and Law Students in Scotland, Northern Ireland
and the Isle of Man: 0800 279 6869

For Barristers, Barristers Clerks and Judges in England, Wales and Northern Ireland:
0800 018 4299

For Solicitors in the Republic of Ireland: 0800 018 4299

PO Box 147 • BENFLEET • SS7 3WX

www.lawcare.org.uk / www.lawcare.ie

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Introduction

At LawCare we are faced daily with lawyers in crisis. Stress at work may have led to mental illness, most commonly depression; many have turned to alcohol or drugs for solace and developed a dangerous addiction. We provide the necessary support, information, advice and referral and with the help of our volunteers, we guide the caller through the process of recovery. It is immensely rewarding to receive that call, email or letter which tells us that the suffering lawyer is fully recovered and eager to take a full role in the profession once more.

Full and lasting recovery often requires long periods away from the workplace.

- Many treatment centres for alcoholism or drug addiction involve a minimum twelve-week stay.
- Anti-depressants take between two weeks and a month to begin working, and it is often three months or more before the effects are noticeable enough for the patient to return to work.

Frequently the patient has given up work before going for treatment. In the case of alcoholism the lawyer may well have been dismissed. Those suffering from depression or other mental illnesses often do not have the energy, motivation, clarity of thought, concentration or self-belief to work, and may have drifted into unemployment or long-term sick leave. Once their recovery is complete and established, these professionals face the daunting task of returning to the legal profession after a long break.

Christina¹ is a LawCare client who is in recovery² from alcohol addiction. After contacting LawCare for help two years ago she has successfully detoxified and has been attending AA daily for some time. She is enthusiastic and determined in her recovery, and confident about her future. Unfortunately a job offer with a small firm was suddenly withdrawn when she told them about her former problems with alcohol. The Senior Partner defended his change of heart by explaining that even Alcoholics Anonymous says “Once an alcoholic, always an alcoholic.” “That may well be true,” Christina countered “But it doesn’t mean I’ll be drinking. Surely the strength of character I’ve shown in beating my addiction must count for something.”

One in four people will suffer from a mental illness during their lifetime, and anti-depressants are the most commonly prescribed medication. Yet as widespread as these illnesses are, they are often poorly understood by, and appear frightening to, the non-medical public. Unfortunately many LawCare clients are finding that their history of mental illness or addiction, and the awkward gap in their CV, become a barrier to their post recovery employment.

The 1996 Disability Discrimination Act (UK) makes it illegal to discriminate on the grounds of mental health, but despite this, 47% of people with past mental health problems report that they have experienced discrimination and difficulty getting a job because of it. In a 1998 survey, 200 personnel managers were asked to assess the employment prospects of two (fictional) job applicants. The applications were identical except that one applicant had diabetes, and one had recovered from depression. The applicant who had recovered from depression was seen as “significantly less employable” than the applicant who had diabetes. Statistics bear this out. 33% of people with long term physical health problems such as diabetes and MS are in employment, as against only 13% of those with mental health problems.

¹ Name has been changed.

² Members of Alcoholics Anonymous – and thus most alcoholics – will never say that they are “recovered” since they recognize that they will never be able to drink alcohol normally, thus they can never be “cured”. They use the term “recovering” or “in recovery” instead, even when they have been sober for twenty years or more. Recovery is a lifelong process, and use of the term does not mean that treatment is in the early stages, or somehow incomplete.

The Employer

Employers are naturally wary of what they do not know or understand. In today's competitive and strictly regulated profession, they need to be certain that their staff are reliable and competent. With no medical qualifications or knowledge, they may view an unexplained gap on a CV, or the admission of the applicant that they took time out of the workplace for health reasons, as a sign to steer clear. A better understanding of certain health issues on the part of employers could benefit hundreds of lawyers who find themselves regarded with suspicion because of past problems. Those recently recovered from addiction, depression or other mental illness need to be treated with fairness and understanding, and given every opportunity to rebuild their lives and careers.

The employer who turns down an otherwise ideal candidate based solely on his medical history may be showing short-sightedness for several reasons.

- He may be passing up the opportunity to have an employee with the freshness, enthusiasm and desire to prove himself of someone being given a second chance.
- In some cases a lawyer of many years PQE may apply for a junior post, with a lower salary than he previously commanded, because he is aware that his absence from the workplace puts him at a disadvantage. Such a colleague would clearly be an asset to any firm.
- He may be laying himself open to claims of discrimination.
- It is worth remembering also that an employer may turn down an alcoholic in recovery due to his drinking history, and then unknowingly offer the job to an alcoholic in denial. Those who drink to excess rarely advertise the fact on their CV, unlike those who have shown the strength and courage to achieve sobriety and thus have a period of absence from the workplace to account for. One in ten of the adult population abuses alcohol, and lawyers are fourth in the league table of deaths from cirrhosis of the liver; in other words, there are plenty of alcoholic lawyers seeking employment, being passed from firm to firm – often with a glowing reference from a firm desperate to get rid of them.

A study in Oregon in the USA followed 55 alcoholic lawyers. In the five years prior to seeking help for their problem, these lawyers had 83 malpractice claims filed against them – an annual rate of 30%. In the five years following recovery this fell to 21 claims, or 8%. Interestingly, this was *lower* than for the general population of lawyers. The comparable malpractice rate in the state was 13.5%. Whether these figures are because the general population of lawyers would have included several drinking alcoholics, or because lawyers in recovery are more diligent, hardworking and keen to prove themselves, the overall message is that lawyers in recovery from alcoholism are good lawyers.

Part of the problem facing those with a past history of mental illness is that many people – potential employers among them - associate mental health problems with a tendency to be violent and dangerous, or volatile and unpredictable. The media, which often focuses on dramatic and tragic cases, does little to help this.

In reality mental illness rarely causes this type of behaviour, and the most common form, depression, is typified by apathy, despondency and sleep problems rather than any behavioural disorder. The combination of symptoms such as these with others, including lack of motivation and an inability to concentrate, can make it impossible to work effectively, and further frustrate and depress the impaired professional as he find himself unable to apply himself to his duties. If a previously depressed lawyer is recovered enough to feel that he wants to work, and is able to do so, then the employer should recognise that this in itself is evidence that he no longer has symptoms of the illness. Working effectively once more will reinforce his recovery, provided it is not too stressful. Being flexible regarding hours and the type of work undertaken can help enormously.

If you are faced with a candidate whose skills and experience make him look ideal for the position, but whose medical history gives you pause, there are some things you might do to help you to make a fair decision.

- Ask how long the candidate has been symptom free. Obviously the longer the better. If it is less than six months you might consider offering them a temporary contract instead.
- Ask what steps the candidate is taking to maintain his or her recovery. E.g. if they recovered from addiction through AA or NA, are they still attending meetings and how often? If they have recovered from mental illness, are they still seeing a therapist or taking medication? Is their condition expected to recur? Even if it is, bear in mind that someone who has suffered from a mental illness once can often recognise the early signs of a recurrence and take steps to deal with it before it becomes a problem which might necessitate taking time off work. If there is ongoing aftercare then recognise that attendance at meetings or sessions is important, and be prepared to allow time for the employee to attend.
- Remember that the candidate who has addressed and overcome his alcoholism has shown considerable strength and bravery, especially in an environment where socialising invariably means alcohol. His former problems with alcohol do not have any bearing on his ability to do the job, but his determination and courage do.
- Remember also that mental illness – which has been shown to have a physiological cause - can strike anyone at any time, and does not in any way indicate that the candidate has a “weak” or “nervous” character.
- Consider asking the candidate to submit to a company medical (see below).

A Company Medical

As lawyers, Partners/Heads of Chambers are in no position to make a medical diagnosis or to speculate about the effects of the illness on their employees or potential employees. Offering a position “subject to medical” is the most practical way to assess their state of health, and should conclusively state whether or not the patient is fit to perform their duties, but you should be quite certain that they are the right person for the job, rather than relying on the medical as a “get-out clause”. Bear in mind also that a person’s medical history is private and personal, and they may have other reasons for refusing to submit to an examination. Such a refusal is not necessarily unreasonable. In smaller firms where a medical is not practical, you might ask for a note from the candidate’s doctor stating that he is fit for work. It is not reasonable to ask to see medical notes or a detailed history.

Where previous alcoholism is a factor, arrange for the company medical to include a liver function test. This will show whether a candidate is a habitually heavy drinker even if they have not had a drink for several days. In recovery the liver starts to heal itself, so the results of this test can also confirm the sobriety of a previously addicted applicant. However, bear in mind that some prescription drugs and even genetic make-up, can also result in high GGT levels in the liver, so it is not necessarily conclusive.

For Employees

As frustrating as it can be trying to get a job, only to be overlooked again and again, it is important to retain your self confidence. Remember that you are a highly qualified and capable professional, and that you have shown considerable strength in overcoming your mental health or addiction problem.

It is important that you are sure that you are ready to return to work, and are not doing so for financial or other reasons. Accepting a position too early could compromise your recovery. In addition, you might use this time off to evaluate what you were doing before, and where you would like your career to go in future. Would you prefer to specialise in a different area of law? Is this an opportunity to choose in-house work, rather than the claustrophobic environment of a small firm? Use this time to full advantage in reviewing your career plan and goals. It may be that circumstances – including your health issues – prevent you getting the jobs you want.

Consider having a “back-up” plan – perhaps taking a position as a locum, or in a law centre – while you continue to try to re-establish yourself. If your addiction, or problems connected with your illness, resulted in disciplinary issues, such as conditions on your practising certificate, then you may need to be yet more creative in your future plans. Think laterally about other areas in the legal world where your skills might be valued, should you be unable to find an understanding firm.

Before applying for any position, ensure that you are fully prepared. If you are still seeing a therapist, be sure to discuss the issues which arise from your planned return to work. Have your CV checked over by someone experienced or qualified in such matters, and think about what your response will be to any difficult questions asked. Think in particular about the gap in your CV. Although you were taking time off because you were sick, did you do anything else useful in that time? Did you catch up with any professional reading, help look after an elderly relative or become involved with a local club or charity? Any “additional information” you can give to show that you were not entirely idle will reflect well on you.

If your references are not all that they could be – and if you left your previous firm in difficult circumstances then that is possible – bear in mind that references do not have to come only from the most recent employer. The firm where you completed your training contract five years ago, before your illness took hold, might still be singing your praises. Alternatively, if was there a different Partner at your previous firm who might have better knowledge of your abilities, you might try approaching him / her directly. If your illness caused problems with your work, then a reference based on the work you did while suffering from that illness will be inaccurate and should be balanced by one which shows what you are capable of when you are not hindered by an addiction or a mental health problem.

Callers to the LawCare helpline who are facing returning to work following illness frequently ask “Should I tell them?” There is no simple answer; it largely depends on your circumstances. If you are not asked specifically about such issues (i.e. on the application form or during an interview), then you are not obliged, by law, to disclose it. If you are asked specifically about your health, or a gap in your employment history, you are under no compulsion to disclose it unless the job has certain attributes where your illness/ addiction would affect your ability to do the work. In that case, you might be dismissed for deliberately withholding information concerning your current mental / physical state or history if found out at a later date.

The Advantages of Disclosing

- No need to worry about being found out
- No need to explain absences due to visits to a doctor, for counseling or in-house treatment; or possible side effects of any medication.
- You should receive support, understanding and a flexible attitude.
- If your employers knew your situation before employing you, and difficulties subsequently arose, they would find it much more difficult to dismiss you without first discussing the issue with you and making reasonable adjustments.
- Before offering the job, the employers would have had to consider your suitability in the light of your problems and arranged to provide adequate back up and support.
- The employers might have a liability for personal injury if pressure at work could be shown to be responsible for any future illness.
- If you disclose at interview, you have the opportunity to explain why your problems would not prevent you from carrying out the job and to present your experiences in the most positive light possible.

The Disadvantages of disclosing

- You could be subject to discrimination due to lack of awareness of mental health / alcohol abuse issues on the employers' part.
- If you are accepted on condition of passing a medical you could have the job offer withdrawn once that medical report has been read and considered.

If you do decide to disclose, work out a strategy in advance in order to keep some control of the process. Investigate whether health professionals with whom you have been dealing are prepared to provide you with a report or letter supporting your application and stating that from their knowledge of you and your current condition, you are fit / suitable for the post with them.

When looking for vacancies, particularly look out for employers displaying a symbol - Positive about Disabled People. This is given by Jobcentre Plus to employers who have agreed to meet commitments to employ, retain and develop the careers of disabled employees. Whether or not you fall within the definition of "disabled" is something that you will need to check, depending on the current case law under the Disability Discrimination Act.

Remember that your illness is a medical issue, and does not reflect on your character or personality. You may be asked why you have had so much time off. The relevant facts are that you were ill, but now you are better and keen to get back to the work you love and excel at. If you are asked for further details, make sure the potential employer is aware of all the relevant facts about the illness. Stick to the point and de-personalise it. Rather than saying "I was suffering from depression which made me miss deadlines and not get work done" consider saying "I suffered from depression which is an illness which can prevent people achieving their greatest potential at work."

A recent survey showed that 30% of people don't know the difference between mental illness and mental disability – despite the fact that one in four people will experience mental illness at some time. Again, you do not need to go into detail, but be sure that the interviewer is not labouring under any misconceptions about mental or addictive illness. If you think it would be helpful, invite him to contact LawCare for further information, or give him a copy of this document.

Further Information

LawCare's document, "Back to the Beehive", gives guidelines about helping a stressed or depressed colleague back to the workplace after a shorter period of time off sick, and includes further information on integrating the patient back into the office, and ensuring that any conditions or circumstances which might have contributed to their illness do not recur.

LawCare's document, "An Alcoholic in the Firm", includes a sample office policy statement and Partnership agreement which make it clear that alcohol does not mix with the practice of law. There is much to be said for operating a "dry" office, and making staff aware that it is not appropriate for them to drink during their lunch break or at any time when their performance at work might be compromised. Although written to help firms who have an employee or partner who is currently misusing alcohol, some information contained in the document may be of value to those who are employing a recovering alcoholic.

LawCare also publishes "An Alternative Career" which includes a list of 100 other jobs a lawyer could do with little or no further training, and general advice about choosing a new career path, evaluating your skills and thinking creatively about a future in the legal profession.

LawCare produces comprehensive information packs about alcoholism, stress and depression.

All publications are available free from LawCare by calling (00 353) (0)1268 771333 or for download on our websites, www.lawcare.org.uk / www.lawcare.ie