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Yes, but what does that all mean to the ordinary hard-working ADI... and what have Viagra tablets got to do with it...?

This month we are highlighting how our representation services helps members – using a recent case study that may both surprise and amuse you.

The MSA carries out two distinct forms of representation. We represent the views of members to the DVSA and other Government bodies, and we also represent individual members with free legal advice and help if they get into difficulties, particularly regarding their ADI registration.



The case study outlined here is an example of the latter. In it the member's name and his location have been changed to protect his identity. However, the rest of the story is documented and shows the many pitfalls that await ADIs, and how MSA officials can represent members when they get in to difficulties.

DUNCAN, who has been an ADI for many years, was looking forward to a night out. He was off to a party where he was due to meet up with friends and in particular meet a new lady who he had previously only communicated with via the internet.

He had arranged to meet up with the lady in a local Gloucestershire car park so that they could travel to the party together. On arrival at the meeting point Duncan could see that there was a bit of a kerfuffle going on involving a number of police and several young people.

Rather than risk getting involved he drove off the car park and stopped in the car park of a nearby pub where he sent a text to his friend advising her of the revised meeting point.

He had just finished texting when a police car pulled into the pub car park and a police officer approached Duncan's car. She tapped on the window and asked Duncan why he had driven off the previous car park when he saw the police officers there. Duncan explained that he was just keeping out of the way but

the officer did not seem satisfied with his explanation and invited Duncan to step out of his car.

It was a cold, dark winter's evening with drizzle in the air and Duncan was not keen to alight from his warm vehicle, not least because his only clothing was a bow tie and a pair of shorts.

You see, Duncan, a single gent in his mid-sixties, enjoys the 'swinging scene' in his local area, and the get together he was going to was a fancy dress party for his fellow swingers.

However, he thought it best to comply with the officer's instructions. While he shivered the officer demanded an explanation of his clothing – or rather, the lack of it – and then asked if he was carrying anything he shouldn't?

Duncan explained where he was going and that apart from some cash he also had some Viagra tablets. The officer demanded to see the tablets and Duncan showed her a small plastic bag with a number of broken blue tablets. He explained to the officer that he did not

always need to take a full tablet in order to achieve the desired effect.

Asked if he was intending to give or sell any Viagra to anyone else Duncan told the police that the lady he was meeting had expressed an interest in trying out the drug and that if she asked he would, of course, give her a piece of tablet to try.

The police promptly arrested Duncan under The Misuse of Drugs Act which states that it is an offence to possess a controlled drug with intent to supply, to supply a controlled drug, or offer to supply a controlled drug (even if it is given away for free), and Viagra is a controlled drug.

The officers took Duncan to the local police station where he was held in a cell while his car was searched. At interview he admitted that he had the drug which was prescribed for him by his doctor and that he would, if asked, give some to a lady he had intended to meet that evening. Duncan was returned to a cell while police went to search his home, where they found nothing incriminating.

He had first been approached by police at about six in the evening; around midnight he was introduced to the duty solicitor and the police explained to him that if he admitted to possession of a controlled drug with intent to supply they would caution him and he would be allowed to go home. The duty solicitor advised him that would be the end of the matter.

Knowing that he had, truthfully, admitted that he would have been happy to give away some of the drugs provided

to him for his personal use, he saw little alternative than to accept the caution.

Duncan eventually made it home at about three in the morning. Those to whom he later confided in about his experience generally felt the police had been a bit over zealous in the matter, perhaps preferring to spend time interviewing Duncan in a warm police station rather than rounding up drunks on a cold and rainy Friday night.

Worn-out and emotionally drained by the whole experience Duncan comforted himself that at least the matter was now concluded.



So where did the MSA come in? It did not occur to Duncan that he needed to inform the ADI Registrar about his caution, despite having signed up on renewal of his registration to be responsible for notifying the Registrar (within seven days) of any change in his personal circumstances which affected his entitlement to become or remain an ADI, including any caution or conviction, either motoring or non-motoring.

A couple of weeks later the DVSA wrote to Duncan, having received details of Duncan's caution from the police under the Notifiable Occupations Scheme. The letter stated that the Registrar was considering

removing Duncan's name from the ADI Register on the basis that having been cautioned for possession of a controlled drug with intent to supply he was no longer a fit and proper person to be on the register.

It was at this stage that Duncan contacted the MSA. The MSA obtained expert opinion that suggested that if Duncan had refused the caution it was unlikely that the prosecution service would have proceeded with a prosecution as it would probably not have been seen to be in the public interest. This was a complicated matter. The Registrar had in the past been sympathetic to instructors or those wishing to become instructors who had received cautions for possession of small amounts of controlled substances held for personal use.

However, in this case the admission of guilt, which is what a caution indicates, of intent to supply controlled drugs would normally be seen as a good reason for removal from the ADI register and the Transport Tribunal have rejected appeals against removals in these circumstances.

The MSA prepared extensive representations to the ADI Registrar for Duncan and submitted them on his behalf. Following those representations the Registrar agreed not to remove Duncan from the ADI register but warned him as to his future conduct.

A victory for common sense and a livelihood saved – not bad for a £1 a week. The MSA strap line *The support is real – The value excellent* is not just a slogan, it is a reality.