



Meeting	Forensic Services Committee
Date	7th May 2024
Location	Via MS Teams
Title of Paper	Drug Driving Update
Presented By	Alastair Patience, Head of Function
Recommendation to Members	For discussion
Appendix Attached	No

PURPOSE

To provide members with an update on progress on the Drug Driving Toxicology Service.

1. BACKGROUND

- 1.1 In October 2019, Section 5A of the Road Traffic Act 1988 came into force in Scotland. This legislation set out a specific offence of driving with a specified controlled drug above a prescribed limit. In addition, Section 4 of the Road Traffic Act sets out an offence of driving while impaired or unfit to drive. Section 4 offences are significantly more difficult to prove in court for a range of reasons including the subjectivity of the roadside field impairment test. Police Scotland carry out roadside testing which can indicate the presence of certain drugs, if this is positive, blood samples are taken and then passed to Forensic Services for evidential analysis.
- 1.2 Forensic Services carry out toxicology analysis on samples recovered by Police Scotland in relation to both Section 5A and Section 4 offences. In Section 5A cases the 17 specified drugs set out in the Act are tested, and a report is provided stating the level of identified drugs and whether this exceeds the limit. In Section 4 cases the toxicology analysis is more complex, and tests are undertaken for an increased range of drugs. The results of the analysis in Section 4 cases are considered alongside other evidence (such as impairment tests) to determine if the case should proceed to prosecution.
- 1.3 Within legislation a statutory time limit is set out that requires any proceedings taken by COPFS to be started within six months of the incident date. During COVID additional legislation allowed for the increase of the statutory time limit to 12 months.
- 1.4 In 2022 it became clear that 447 drug driving cases had been unable to proceed to prosecution due to delays in the analysis of toxicology samples in the laboratory, which resulted in insufficient time to initiate any proceedings. The root cause of this related to insufficient capacity being available within the laboratory to meet the level of demand, caused by an underestimation of the prevalence of drug driving on the roads in Scotland. In April 2023 HMICS reported on their ['Assurance Review of Scottish Police Authority Forensic Toxicology Provision'](#) and set out 25 wide-ranging recommendations in relation to drug driving toxicology analysis. Progress in discharging these recommendations is subject to a separate report to the Forensic Services Committee.
- 1.5 Following the issue with the cases unable to proceed to prosecution, further funding was secured from Scottish Government to outsource

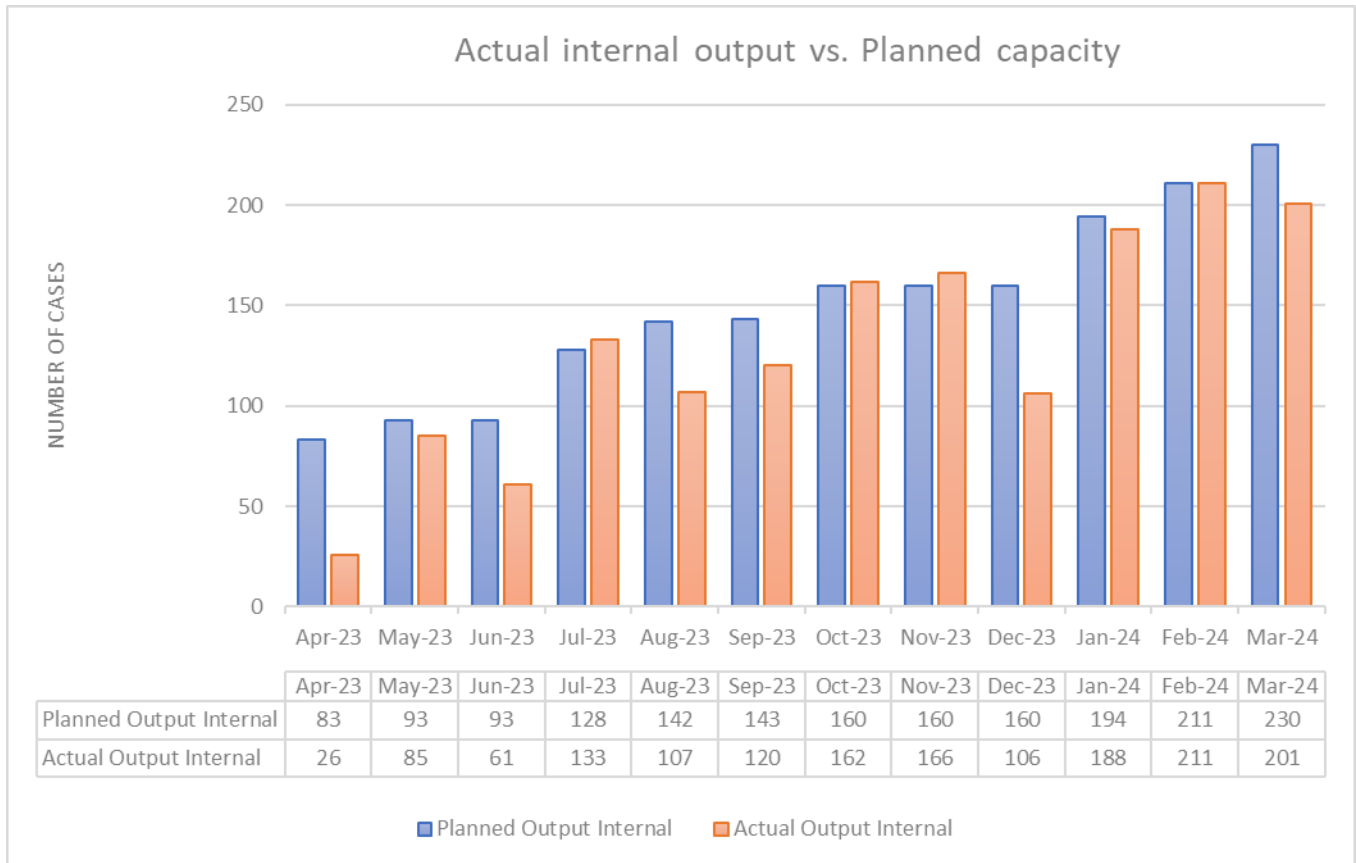
some drug driving toxicology analysis. This allowed Forensic Services to set out a detailed toxicology improvement plan to enhance the internal laboratory capacity through recruitment and training of staff, process efficiency and method development. The plan and subsequent progress against delivery has been reported to the Forensic Services Committee since October 2022.

- 1.6 The statutory time limit extension has been reviewed annually since the pandemic by the Scottish Parliament to consider the appropriateness of continued extension; this was last undertaken in November 2023 where a further 12-month extension to the statutory time limit was agreed.
- 1.7 Forensic Services are working on an assumption that this extension will not be approved further in relation to Section 5A and Section 4 cases and as such any incidents recorded from 1st June 2024 will have a 6-month statutory time limit applied.
- 1.8 A Memorandum of Understanding (MOU) '*Provision of Drug Driving services in Scotland*' has been agreed by Forensic Services, Police Scotland and COPFS. This document sets out the standards required in relation to drug driving cases across the justice system to achieve:
 - Appropriate and timely investigation of crime
 - Management of instruction, necessity for and prioritisation of forensic submissions
 - Efficient use of forensic science resources and improved and properly managed prioritisation of workload
 - A transparent management of the forensic science process across the justice system
- 1.9 Forensic Services are accredited to the international standard ISO17025 for all analysis undertaken on Section 5A and Section 4 drug driving casework. This provides assurance that the toxicology results reported by Forensic Services in these drug driving cases meet required internationally recognised quality standards.

2. FURTHER DETAIL ON REPORT TOPIC

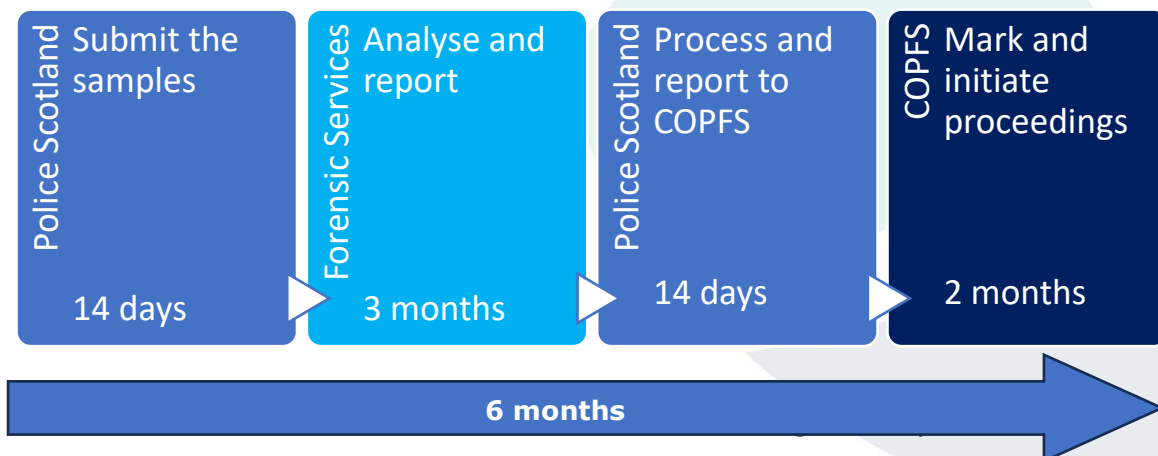
Toxicology Improvement Plan – Building Internal Capacity

- 2.1 In October 2022 the first version of the Toxicology Improvement Plan was set out; this has been refreshed in Q4 (2023/24) and the outcomes for the latest version (version 3) are set out in this report. These plans are underpinned by an expected level of demand that is set out in the agreed MOU with Police Scotland and COPFS.
- 2.2 The updated plan encompasses a range of work to further develop technical processes and to validate and utilise new instrumentation which is focused on building increased capacity within the laboratory and streamlining the analysis of Section 4 cases. In addition, a focused plan of training and development for staff is under way which ensures that new staff joining the team are trained appropriately and swiftly as well as developing existing staff skills particularly to increase the capacity available to complete the complex reporting part of the process which has been a bottleneck.
- 2.3 Significant progress was made in the delivery of the first version of the plan. Delivery of the plan required toxicology staff to focus on planned improvements alongside providing some internal capacity for casework. To meet agreed levels of service the gap between demand and internal capacity was managed by outsourcing some cases to an external, private forensic services provider in England.
- 2.4 The outcome of the planned activity was to grow the internal capacity within the toxicology team to meet the current agreed level of demand. Targets were set out for internal capacity and the actual output in relation to these is set out in the figure below:



- 2.5 The annual internal capacity was planned to be 1797 cases. The actual output delivered internally last year was 1566, which is 87% of target.
- 2.6 The reason for the variation to target relates to a range of issues including delays in the process to gain accreditation from the United Kingdom Accreditation Service (UKAS) in relation to validation of new instrumentation/change to methods alongside additional time taken to recruit new staff into posts within the team.
- 2.7 The overall demand for Section 5A and Section 4 drug driving cases last year was 2933. This was 6% higher than the planned demand which was expected to be 2760. To improve the timeliness of reporting and remove extraordinary measures that were in place to reduce the risk of cases exceeding statutory time limits, outsourcing was utilised throughout the year. In total 1145 cases were planned to be outsourced last year; the actual cases delivered by our outsourcing partner was 2110. (This includes some cases that would have been submitted prior to April 2023). The total spend on outsourcing was delivered within the budget agreed and supported by Scottish Government.

- 2.8 The total cases completed both internally and externally last year was 3676, which was 25% higher than the overall demand over this period. This has supported the overall reduction in the caseload and the improvement in the timely provision of results.
- 2.9 There have been timeliness performance issues experienced by our outsourcing partner, primarily due to unanticipated fluctuations in demand from police forces in England and Wales. On realisation of the issue, immediate action was taken by Forensic Services to address it. A robust plan of improvement was put in place and significant improvements have been noted. A minority of outsourced cases have been reported closer to the statutory time limit that would be liked, however, this has not resulted in any cases that were unable to proceed to prosecution. Timeliness performance is considered in detail with all partners at the Operation Hitch Improvement Group meeting.
- 2.10 As a result of this work timeliness of the provision of results has improved. Robust performance is being delivered internally for Section 5A cases. However, the Section 4 cases are more problematic due to the amount of sequential analysis that can be involved to identify more unusual drugs which are not part of the standard testing panel used for Section 5A cases.
- 2.11 Through the Operation Hitch drug driving improvement group the MOU has been developed alongside partners in Police Scotland and COPFS to identify and drive forward improvements across the justice system in relation to drugs driving cases. Each part of the process has a target timeframe for completion.
- 2.12 The targets have been set based on the assumption that the statutory time limit will return to six months towards the end of



extension of the time limit, then the six-month overall timeframe (from incident to initiation of proceedings) will start for incidents from 1st June onwards.

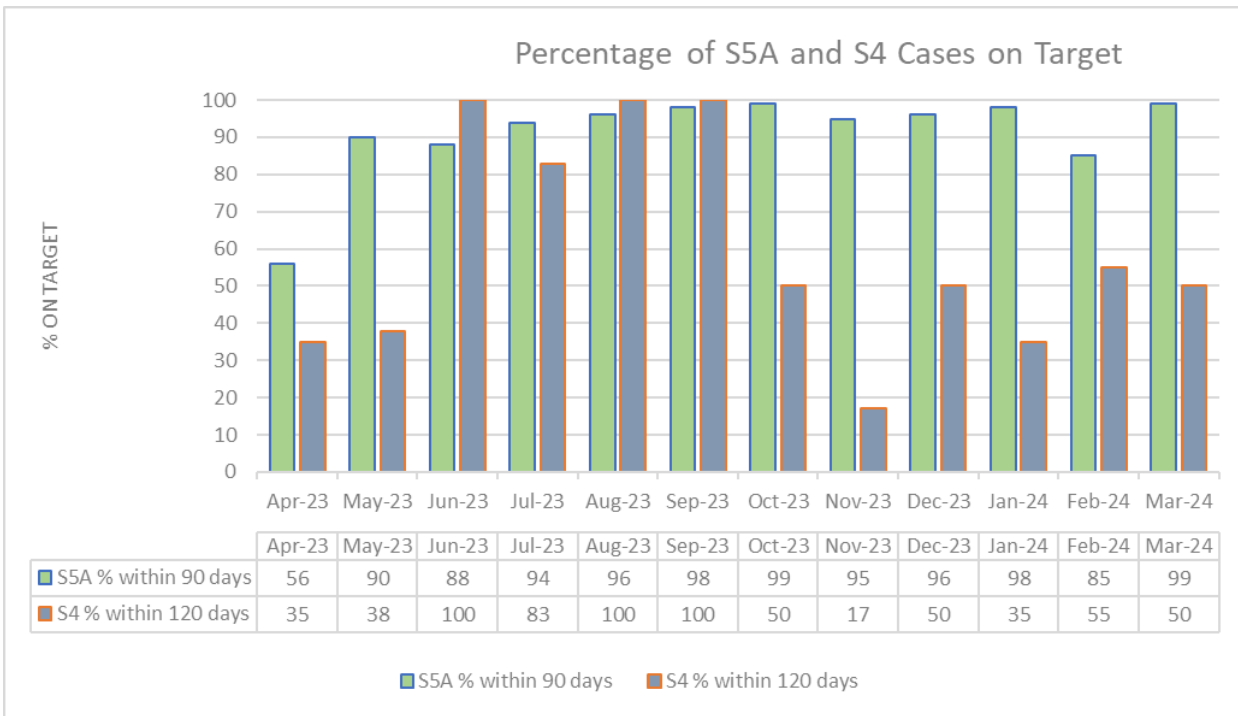
2.13 Within Forensic Services the internal targets have been set as follows:

- 95% of Section 5A cases to be completed in 90 days.
- 95% of Section 4 cases to be completed in 120 days.

2.14 These targets recognise that with the current process and methodology it is not possible to routinely deliver the analysis and reporting of the Section 4 cases within the three-month overall target. As a result, this requires other parts of the system to be more efficient in these case types.

2.15 It also highlights a focus on improving the internal process for Section 4 cases within Forensic Services to allow it to be more efficient which is captured in the updated improvement plan. Prior to this being in place there is an increased risk that these cases cannot be completed in the anticipated return of the six-month statutory time limit. It is important to note that Section 4 cases only form 15% of the total demand for drug driving toxicology analysis.

2.16 The figure below shows the timeliness performance against target month on month for Section 5A and Section 4 cases. Overall, the performance for Section 5A has been robust across the year and this is a significant improvement in comparison with previous years. Performance in relation to Section 4 cases is highly variable and routinely not meeting the target for the reasons explained above.



2.17 Anticipating the revision to the six-month statutory time limit later this year the refreshed Toxicology Improvement Plan (version 3) has refocused a range of activity to deliver the following outcomes.

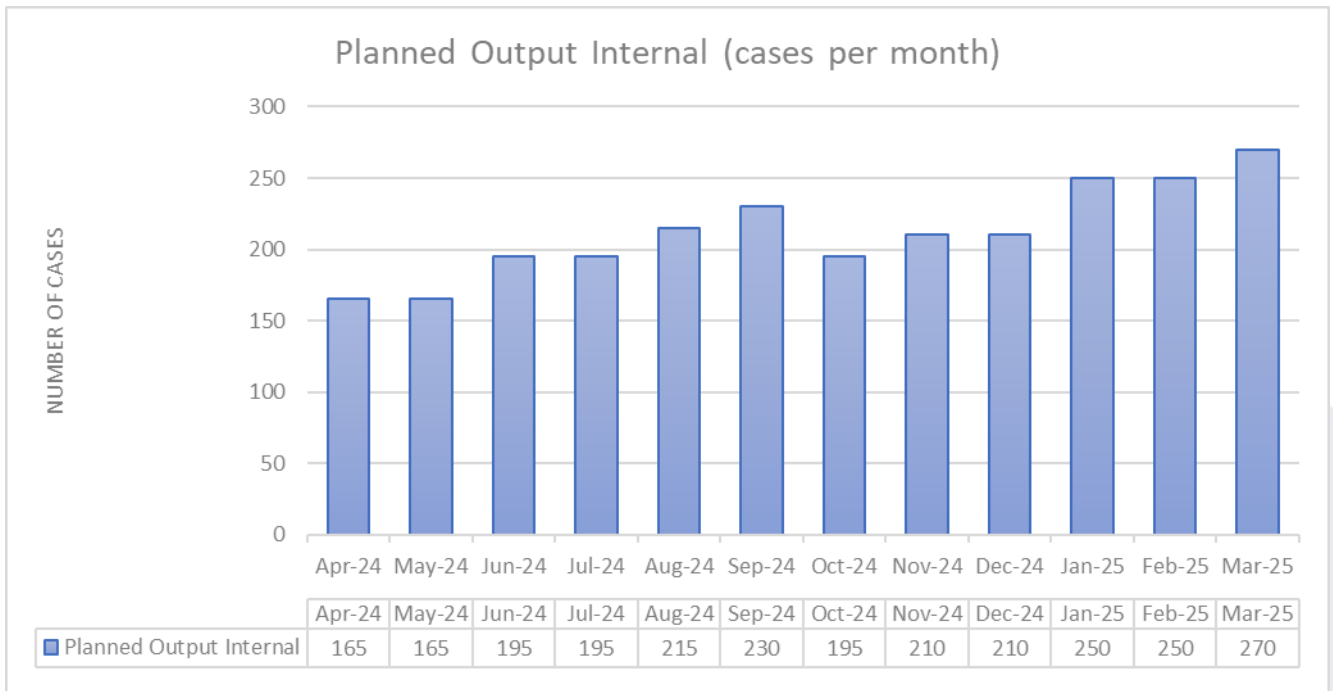
- Optimisation of the Section 4 analysis process to enable delivery within 90 days in line with Section 5A timescale
- Increased internal capacity of 270 cases by year end.

2.18 In order to achieve this some internal capacity will need to continue to focus on development activity. The agreed planned monthly demand for analysis is 250 cases per month for 2024/2, as set out in the MOU. The gap between the anticipated internal capacity and planned demand is complemented by an extended outsourcing plan for the year ahead.

2.19 The outsourcing plan also takes account of the drug spiking cases that were previously outsourced by Police Scotland through a separate contract. Having reached the end of that contract Police Scotland transferred these cases back to Forensic Services for analysis earlier this year. Utilising capacity in the toxicology team to undertake this work requires some further outsourcing of drug driving toxicology cases. Funding to support the outsourcing plan is captured within the agreed 2024/25 revenue budget for Forensic Services.

2.20 The figure below shows the internal capacity targets for the considering the development activity. Future reports to the Forensic Services Committee will show the progress of the delivery of the

outcomes of the Toxicology Improvement Plan and capture the actual output against the plan set out in the chart.



2.21 To summarise for the year ahead, a clear development plan is in place to ensure that the process is enhanced to allow the Section 4 cases to be completed within 90 days in line with the current performance of the Section 5A casework. Expected levels of demand for the year ahead have been agreed with partners and are documented within the MOU. There is an underpinning outsourcing plan that closes the gap between internal capacity and expected demand and this is funded within the Forensic Services revenue budget.

2.22 There is a risk that demand for drug driving toxicology analysis exceeds the planned level. Indeed in 2024 to date, demand is higher than expected running at 309 in January, 281 in February and 274 in March. This is 15% higher than expected, however, it is trending down towards the expected level of 250. This is being closely monitored and discussed in the tri partite FPOG/FPIG governance meetings. The increase in demand is likely to, at least in part, relate to the festive drink and drug driving campaigns. However, further analysis is required.

2.23 In order to mitigate the risk of cases exceeding the statutory time limit, it is important that a backlog of cases is not allowed to grow within the laboratory. Any cases more than the planned internal capacity will be outsourced on receipt (with an element of stretch in

the target). As the outsourcing plan has been funded based on the agreed demand set out in the MOU (and no more) there is a risk that the budget for outsourcing could be exceeded. This will be closely monitored as the year progresses and discussion with partners in relation to this risk will continue.

Building Future Toxicology Services – Delivering a Long-Term Sustainable model

- 2.24 Given the apparent prevalence of drug driving across the country Police Scotland have articulated their ambition to roll out the roadside testing to all local policing officers in Scotland. Currently this is mostly restricted to Roads Policing officers and rolling this out further will significantly increase the demand for subsequent analysis. Over the past few years an options paper has been developed and discussed by all partners and presented to Scottish Government setting out how this additional demand could be delivered with an indication of associated costs.
- 2.25 A business case is now required that sets out in more detail some of the options for a long-term sustainable model for drug driving. To develop this there are several enabling workstreams that are in progress including:
- Progressing the HMICS recommendations in relation to understanding the scale of drug driving in Scotland and also to consider the impact of greater education, awareness and prevention activity.
 - A revised long-term forecast of demand considering changes in the model of policing in Scotland and policing priorities.
 - Development of the toxicology strategy and associated technology roadmap within Forensic Services to maximise the benefit of joint working across criminal and postmortem toxicology services and to ensure the most efficient technology platform and methodology.
- 2.26 A further update on the progress to develop the business case will be provided to the October meeting of the Forensic Services Committee, work on all the above workstreams is under way currently.

3. FINANCIAL IMPLICATIONS

- 3.1 There are financial implications in this report, specifically the costs associated with outsourcing. The Forensic Services revenue budget

for 2024/25 covers the planned outsourcing, however, members should note the risk relating to unplanned outsourcing due to higher-than-expected levels of demand. There are also potentially significant costs associated with the long-term sustainable model for future toxicology provision.

4. PERSONNEL IMPLICATIONS

4.1 There are personnel implications associated with this paper, specifically the recruitment of staff which is nearly complete at the time of writing this report.

5. LEGAL IMPLICATIONS

5.1 There are legal implications associated with this paper, specifically the risk of cases being unable to proceed to prosecution.

6. REPUTATIONAL IMPLICATIONS

6.1 There are reputational implications associated with this paper, specifically any cases which could not be pursued to prosecution.

7. SOCIAL IMPLICATIONS

7.1 There are social implications associated with this paper, specifically the impact from drug-driving on the roads in Scotland.

8. COMMUNITY IMPACT

8.1 There are community implications associated with this paper, specifically the impact on Scotland's communities from drug-driving.

9. EQUALITIES IMPLICATIONS

9.1 There are no equality implications associated with this paper.

10. ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications associated with this paper.

RECOMMENDATION

Members are requested to discuss the information contained in this report.