



Meeting	Forensic Services Committee
Date	04 May 2023
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.

The paper is submitted for discussion.

1. BACKGROUND

- 1.1 This report is to update members on progress of the Drug Driving Toxicology service.
- 1.2 The introduction of a new offence in Scotland on 21 October 2019 set specific drug driving limits for 17 specified drugs. This change was part of Scottish Government's Programme for Government in 2019/20.
- 1.3 The response to the new drug driving offence was developed in partnership with Police Scotland and COPFS with oversight by Scottish Government. A working group enabled co-ordinated planning across all bodies to the new offence.
- 1.4 The legislation enacted in October 2019 allows police to carry out a roadside mouth swab to test for cannabis or cocaine on any motorist they suspect of drug driving or who has been involved in an accident or stopped for a traffic offence. Where there is a positive test, or a motorist fails a field impairment test, the police can request a blood sample for testing and analysis.
- 1.5 Forensic Services support the delivery of the drug blood limit testing requirement for this Act prompted by a positive roadside test. This process is accredited to the recognised laboratory standard ISO 17025 by UKAS – the United Kingdom Accreditation Service.
- 1.6 The examination process to detect and quantify drugs has a high degree of complexity when compared with the more traditional drink-driving analysis.
- 1.7 Since the new offence was introduced in Scotland, there has been a significantly higher demand for testing and analysis of blood samples than initially forecast. Initial casework was anticipated at circa 1000 cases per year (c.83 per month), however, the actual demand is currently around double that figure, and is forecast to increase.
- 1.8 The number of drug-driving cases is reported to the Scottish Police Authority Policing Performance Committee as part of the Police Scotland quarterly performance report.

2. FURTHER DETAIL ON REPORT TOPIC

- 2.1 Demand has consistently been more than twice the original estimated level - which was what the Forensic Services Toxicology laboratory was set up to support. Forensic Services have been reporting sustained high-levels of demand for drug driving testing to the Forensic Services Committee since 2020. The current level of demand for Section 5A analysis is c.205 cases per month.
- 2.2 As a result of this sustained demand for Section 5A drug driving analysis remains significantly higher than Forensic Services capacity, however the internal caseload has reduced significantly, as a result of an increased level of outsourcing funded by the Scottish Government, in particular.
- 2.3 Staff within the Toxicology team have been working at full capacity since the introduction of the legislation. Measures are in place to monitor staff wellbeing, but there were significant concerns at the continued high demands being placed upon the team. As a result of the actions taken, these high demands are now reducing.
- 2.4 Outsourcing of Section 5A cases has continued since the last update to the Forensic Services Committee.
- 2.5 Additional funding of £325,000 was approved by the Scottish Government in November 2021 to support continued outsourcing.
- 2.6 The impact of this high level of sustained demand reached the point where 447 cases (from October 2019 to date) could not be progressed to prosecution, having reached the current statutory 12-month time limit. No further cases reached the current statutory 12-month time limit due to delays in laboratory testing from September 2022 to date.
- 2.7 As stated above, the position regarding cases that could not be progressed to prosecution has improved significantly, however Forensic Services, Police Scotland and the COPFS are continuing to review the caseload to identify and prioritise further cases to mitigate against further risk of reaching the statutory time limit.
- 2.8 The Scottish Government agreed to fund a further £370,000 for outsourcing for 2022/23, which has further improved the situation.
- 2.9 A new outsourcing contract was implemented in September 2022. This new contract allows outsourcing of Section 4 cases, in addition to Section 5A cases, so offers additional flexibility. This has

assisted greatly in mitigating the pressures on the Forensic Services staff from the demand for drug-driving toxicology services in Scotland.

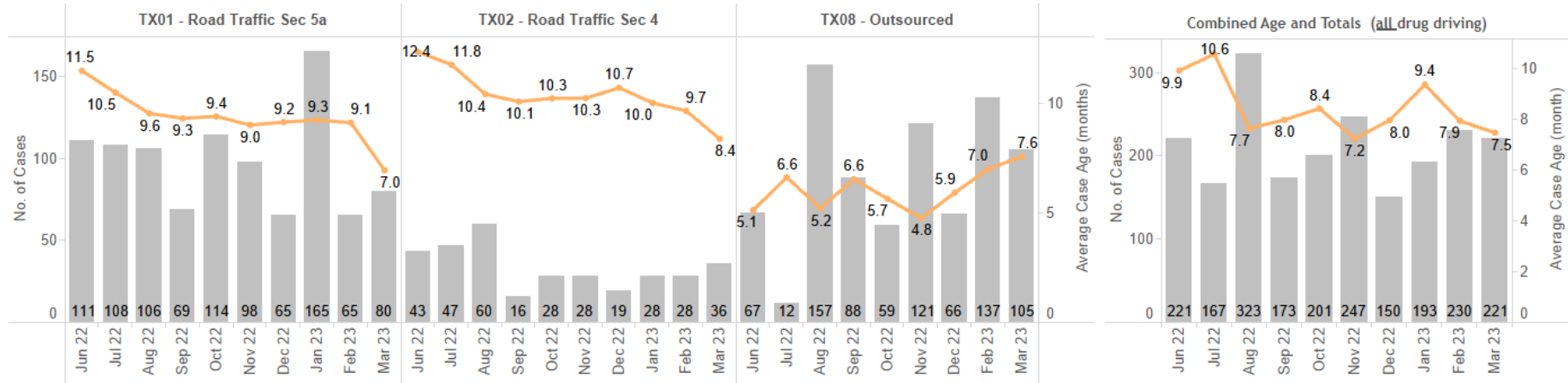
- 2.10 On 13th July 2022 HM Chief Inspector of Constabulary Scotland (HMICS) published the Terms of Reference for their Assurance Review with the aim to 'assess the state, efficiency and effectiveness of the arrangements in relation to the processes which are in place for obtaining, analysing and reporting toxicology samples obtained for Section 4 and Section 5A Road Traffic Act 1988 cases'.
- 2.11 Activities associated with this Assurance Review have been ongoing since that time.
- 2.12 It is anticipated that HMICS will publish the report on their findings around the end of April 2023.
- 2.13 The Forensic Services Operating Model Project makes provision for an increase in capacity for Toxicology services. Forensic Services received approval to commence the recruitment process for the additional Toxicology staff associated with this project, as follows:
- An interim Capability Team Manager took up post in February 2023 and is working in conjunction with the Team Manager to provide additional management support.
 - The four temporary Forensic Analyst posts have been converted to four permanent Forensic Analyst posts and this is being progressed.
 - The recruitment process for a Senior Forensic Scientist vacancy is being progressed.
- 2.17 This recruitment will increase the internal capacity and align more closely with the current level of demand.
- 2.18 The Scottish Government has agreed to fund up to a further £310,000 for outsourcing in 2023/24, which will further improve the situation by allowing equipment validation, method development and staff training to be completed.
- 2.19 Toxicology staff continue to work tirelessly and remain committed to processing cases in a timely fashion, to meet the requirements of the Criminal Justice System. We continue to work closely with Police Scotland, COPFS and the Scottish Government to manage and mitigate risks and to develop a sustainable, system-wide,

solution that can meet future demand and mitigate against cases reaching their statutory time limit.

- 2.20 UKAS visited the Toxicology team in Edinburgh, as planned, for an assessment visit on 27th March 2023. The assessment visit was concluded successfully with accreditation being maintained, subject to the necessary submission of evidence regarding clearance of findings.
- 2.11 The long term sustainable model options paper remains with Scottish Government and a number of clarifications were provided in March 23. Following publication of the HMICS report on Drug Driving the options can be considered in light of the findings of the review to consider strategic direction for the development of this service beyond the end of this financial year.
- 2.22 A more detailed performance update regarding the drug driving service is provided on the following pages.

Drug Driving Case Ageing

Completed Sec 4, 5A and Outsourced Casework by Month of Completion



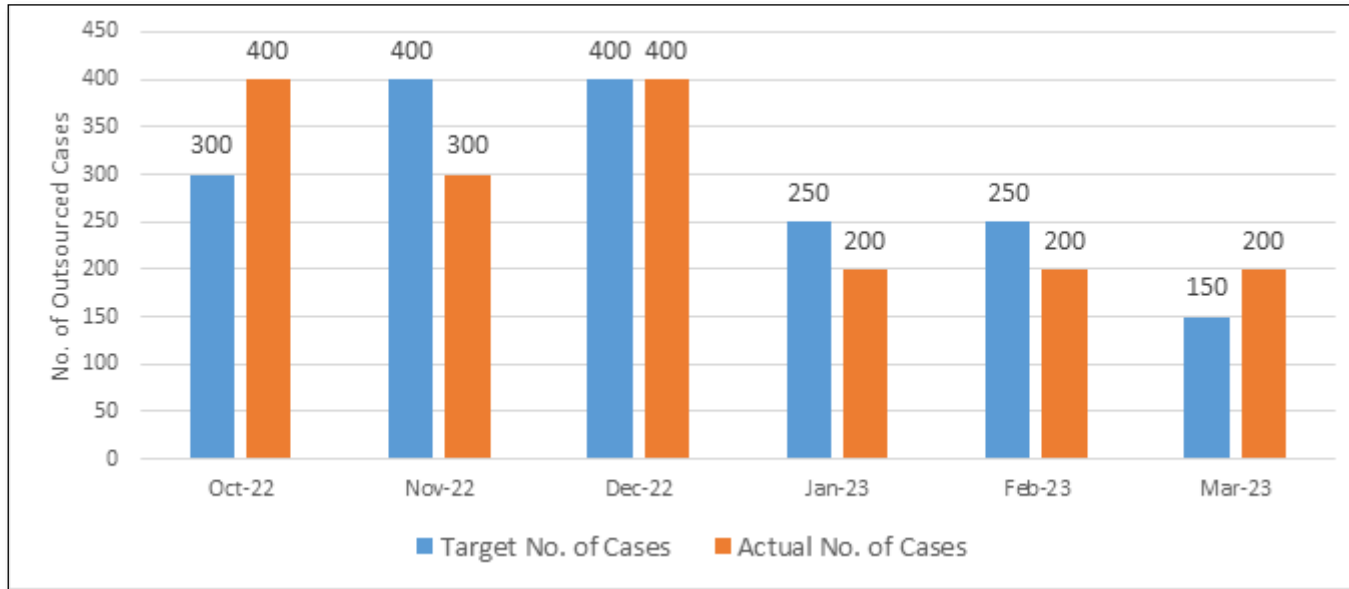
As stated in the FS Q4 Performance Report, the reporting age of Section 5A cases continues to reduce from Summer 2022, in line with the Toxicology Development Plan and Outsourcing Plan (7.0 months in March 2023). All in-house drug driving cases with a pre-2023 incident date are expected to be completed by end April 2023. Thereafter, a continued decline in case ageing is expected to track with the 3 month target. A downward trend in case ageing is also seen with Section 4 cases, although the rate of decline (i.e. improvement) is slower due to the additional complexity of Section 4 cases (8.4 months in March 2023).

In-house output through Q1 and Q2 of 2023/24 is expected to be relatively low, as staff are abstracted for equipment validation, method development and training. This is in line with the Toxicology Development Plan with the Outsourcing Plan being used to mitigate the capacity gap.

The number, and subsequently reported age, of completed outsourced cases is tracking slightly behind plan following relatively unforeseen capacity issues with the contracted supplier (average age of 7.6 months in March 2023). A recovery plan is in place, which is forecast to see a significantly improved position by Q2 2023/24 and

the supplier has confirmed their commitment to ensure that no cases will fail to meet statutory time limit, as a result of delays in testing.

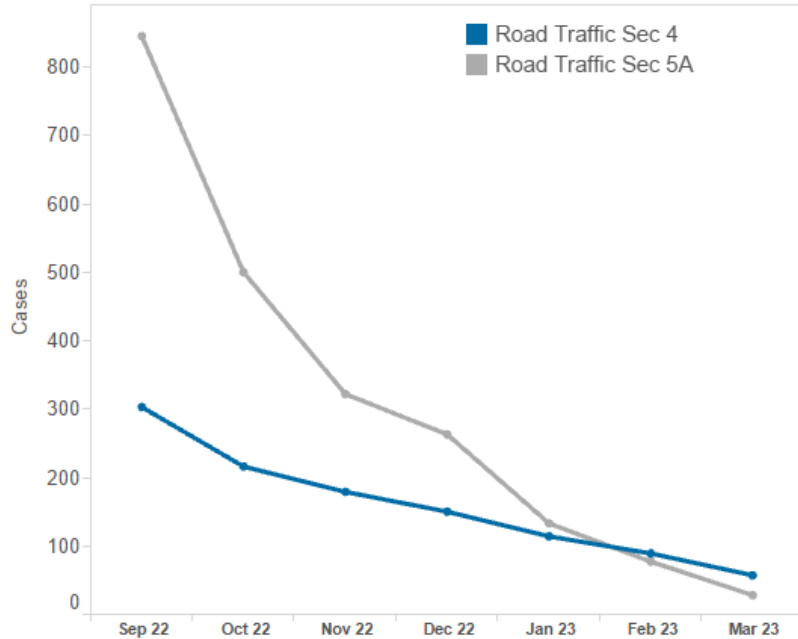
Drug Driving Outsourcing



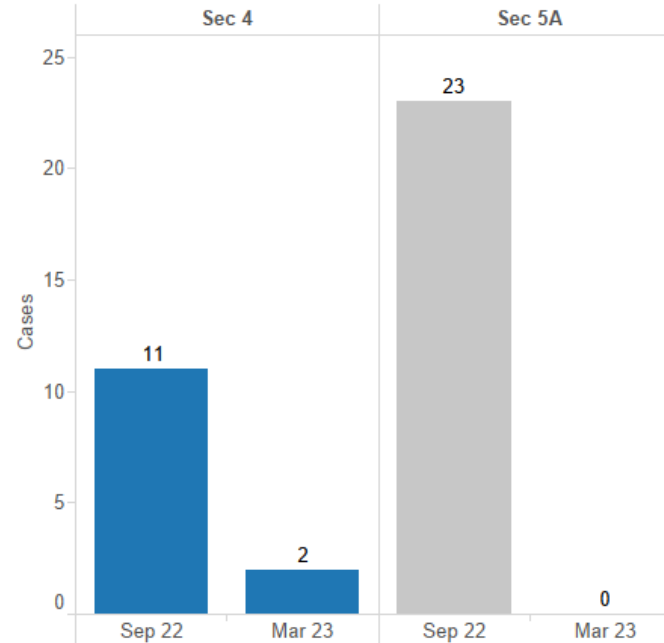
Since October 2022, c.1700 drug driving cases have been outsourced to commercial providers, which is broadly in line with the Outsourcing Plan developed last year using funding provided by the Scottish Government.

Drug Driving In-House Analysis

Open Drug Driving Casework (in-house analysis)
no. of cases remaining open by end of calendar month



Open cases dated 42 weeks or more from incident
(approaching statutory time limit)



Volumes of internal outstanding drug driving casework (Section 4 and Section 5A) have decreased significantly since Summer 2022 (data above measured from September 2022 when the Toxicology Development Plan was implemented). At the end of March 2023, there were 72 internal outstanding drug driving cases (Section 4 and Section 5A). Output has been lower than anticipated for some months in Q3/4, for a variety of reasons. As a consequence, more Section 4 cases are open than initially forecast, however good progress is being made in addressing this and this will be improved further during April 2023.

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At the end of Q4 (i.e. end of March 2023), only 2 active drug driving cases were within the 10 week window of statutory time limit (i.e. currently one year from the date of incident). This represents a substantial reduction from September 2022, when there were 34 cases within 10 weeks of statutory time limit, and from June 2022 when more than 130 cases fell into this age band.

As stated previously, no drug driving cases have been confirmed as failing to progress to prosecution due to laboratory testing delays since September 2022.

2.22 Updates on the progress of the drug driving service will be reported to the Forensic Services Committee and Authority meetings.

3. FINANCIAL IMPLICATIONS

3.1 There are financial implications in this report, specifically the costs associated with outsourcing and the additional staff associated with the Forensic Services Operating Model.

4. PERSONNEL IMPLICATIONS

4.1 There are personnel implications associated with this paper, specifically in relating to the continued pressures on staff in the Forensic Services Toxicology team, and the recruitment of staff associated with the Forensic Services Operating Model.

5. LEGAL IMPLICATIONS

5.1 There are legal implications associated with this paper, specifically the cases, as detailed above, which could not be pursued to prosecution.

6. REPUTATIONAL IMPLICATIONS

6.1 There are reputational implications associated with this paper, specifically the drug-driving cases for Forensic Services and the wider justice sector.

7. SOCIAL IMPLICATIONS

7.1 There are social implications associated with this paper, specifically the impact on communities from drug-driving cases not being pursued.

8. COMMUNITY IMPACT

8.1 There are community implications associated with this paper, specifically the impact on communities from drug-driving cases not being pursued.

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.