

<b>Meeting</b>	<b>Authority Meeting</b>
<b>Date</b>	<b>23 June 2022</b>
<b>Location</b>	<b>MS Teams</b>
<b>Title of Paper</b>	<b>Drug Driving Update</b>
<b>Presented By</b>	<b>Fiona Douglas, Director of Forensic Services</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**PURPOSE**

To update members on the impact of sustained demand for drug-driving testing and analysis and capacity pressures.

## 1. BACKGROUND

- 1.1 This report is to update members on the impact of sustained demand for drug-driving testing and analysis and capacity pressures.
- 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 the Road Traffic Act 1988. This process is accredited to the recognised laboratory standard ISO 17025 by UKAS – the UK 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. In drink-driving cases blood is examined for alcohol only. Examination times are longer for drugs driving cases and as such the turnaround times are longer than more simple blood alcohol work.
- 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 (c83 per month), however, the actual demand is currently around 2220 per year (c185 per month) and forecast to increase. The demand averaged over the period since the legalisation was enacted (2019-present) is equivalent to more than 2,100 (c177 per month).

- 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. UPDATES**

- 2.1 Since October 2019 when the new offence was introduced, more than 5,600 drug driving blood samples have been tested.
- 2.2 Drug driving analytical services were set up by Forensic Services in 2019 and funded by the Scottish Government to test up to 1000 cases per annum (c83 per month). This anticipated demand was estimated by a working group involving Forensic Services, Police Scotland, Crown Office and Procurator Fiscal Service and the Scottish Government.
- 2.5 Demand has been constantly more than twice the original estimated level - which was what the Forensic Services laboratory was set up to support. Forensic Services have been reporting sustained high-levels of demand for drug driving testing to the Authority since 2020. It is clear that drug driving in Scotland is far more prevalent than was thought to be the case when the service was set up.
- 2.6 In early 2020, in light of this excess demand, the Scottish Government supported further additional capital investment of £180,000 to purchase additional instrumentation that would provide increased analysis capacity. Forensic Services also improved in-house processes. While there were 150 samples a month (equivalent to 1800 cases per annum) received around this time, this rose as high as 300 per month (equivalent to 3600 cases per annum) during the pandemic - far over and above the laboratory capacity. This created a backlog of samples waiting to be tested.
- 2.7 In April 2020, the Coronavirus (Scotland) Bill was introduced which extended the statutory time limit for drug-driving from 6 months to 12 months from date of incident, which reduced the immediate pressure of cases reaching the statutory time limit.
- 2.8 Following an open tender process, an outsourcing contract was awarded in January 2021 to an external forensic science provider. This followed a Scottish Government award of £356,000 of Grant in Aid funding to Forensic Services for the outsourcing of cases.

- 2.9 Average demand during 2021 was around c.190 per month (equivalent to c2280 annually), at a time when Forensic Services capacity was c.133 cases per month (equivalent to c1600 annually). With all of the improvements and additional instrumentation this had risen to c.150 cases per month (equivalent to c1800 annually) by 2022, still short of the actual demand.
- 2.10 Capacity in Forensic Services' laboratory was still not sufficient to meet demand.
- 2.11 Forensic Services staff working in the Toxicology Unit have been working at full capacity since the introduction of this legislation and whilst measures are in place to monitor their wellbeing, there are significant concerns at the continued high demands being placed upon them.
- 2.12 The same Toxicology Unit analyses spiking cases and other Criminal toxicology work including drink driving. Spiking cases are prioritised over all other work.
- 2.13 In November 2021, the Scottish Government awarded an additional £325,000 to support continued outsourcing.
- 2.14 The impact of this high level of sustained demand, has now reached the point where 386 cases cannot be progressed to prosecution having reached the current statutory 12-month time limit.
- 2.15 Further cases are anticipated to reach the statutory limit in the immediate months ahead. Forensic Services, Police Scotland and the COPFS are currently reviewing the backlog to identify and prioritise further cases at risk of reaching the statutory limit.
- 2.16 Testing to date has prioritised cases and a review of the circumstances in each of the 386 cases has confirmed that none involve any fatalities.
- 2.17 The Scottish Government has agreed to fund a further £370,000 of outsourcing this year on top of the previous £681,000 of additional investment for outsourcing cases. This will further reduce the age of the drug-driving samples in the backlog.
- 2.18 A Gold Command Group, involving all partners, was established in May to examine, compile and correlate the affected cases as well as review the drug driving testing process and ongoing prioritisation. The Gold group is considering Police Scotland and Forensic Services

processes as well as the actions in train to minimise further cases from reaching the statutory time limit in the near future.

- 2.19 HM Chief Inspector of Constabulary Scotland (HMICS) has, following a request from the Chair of the Scottish Police Authority confirmed that they will carry out a review of the end-to-end process for obtaining, analysing and reporting drug driving blood sample results in order to support criminal proceedings.
- 2.20 This review will consider the issues that have led to cases reaching their statutory time limit before they can be progressed to prosecution, whether the mitigations in place are having an impact and whether these issues have been resolved as far as practicable.
- 2.21 This is a deeply regrettable situation and I want to apologise and reassure the public and our partners that our laboratory staff are working tirelessly and remain committed to processing samples in a timely manner. We are also working closely with Police Scotland, COPFS and the Scottish Government to manage and minimise risks and develop a sustainable system-wide solution to meet future demand and mitigate against cases reaching their statutory time limit as a result of forensic testing and analysis in the future.
- 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 outsourcing costs detailed in the report.

### **4. PERSONNEL IMPLICATIONS**

- 4.1 There are personnel implications associated with this paper in relating to the continued pressures on staff in the Forensics Toxicology Service.

### **5. LEGAL IMPLICATIONS**

- 5.1 There are legal implications associated with this paper – specifically the cases, as detailed above, which cannot now be pursued to prosecution.

### **6. REPUTATIONAL IMPLICATIONS**

- 6.1 There are reputational implications associated with 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.