



<b>Meeting</b>	<b>Forensic Services Committee</b>
<b>Date</b>	<b>01 February 2023</b>
<b>Location</b>	<b>Via MS Teams</b>
<b>Title of Paper</b>	<b>Drug Driving Update</b>
<b>Presented By</b>	<b>Alastair Patience, Head of Function</b>
<b>Recommendation to Members</b>	<b>For discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**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 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 this Act prompted by a positive roadside test. 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.
- 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 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 (c.83 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.
- 2.2 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.
- 2.3 As a result of this sustained demand for Section 5A drug driving analysis remains significantly higher than Forensic Services capacity, with the internal caseload continuing to reduce steadily as a result of an increased level of outsourcing.
- 2.4 Staff within the Toxicology team have been working at full capacity since the introduction of the legislation and whilst measures are in place to monitor their wellbeing, there are significant concerns at the continued high demands being placed upon them.
- 2.5 Marginal gains, with modest capacity increases have been implemented/are being taken forward, but these initiatives will not solve the underlying issue of demand outstripping available capacity.
- 2.6 Outsourcing of Section 5A cases has continued since the last update to the Forensic Services Committee.
- 2.7 Additional funding of £325,000 was approved by the Scottish Government in November 2021 to support continued outsourcing.
- 2.8 The impact of this high level of sustained demand reached the point where 447 cases (from October 2019 to end August 2022) could not be progressed to prosecution, having reached the current statutory 12-month time limit. No cases reached the current statutory 12-month time limit due to delays in laboratory testing during September, October and November 2022. The December figures are being finalised.

- 2.9 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 backlog to identify and prioritise further cases to mitigate against the risk of reaching the statutory time limit.
- 2.10 The Scottish Government agreed to fund a further £370,000 for outsourcing this financial year, which is further improving the position.
- 2.11 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 will help relieve some of the pressures on the Forensic Services staff from the continued higher than predicted demand for drug-driving toxicology services in Scotland.
- 2.12 A Gold Command Group, involving all partners, was established in May 2022 to examine, compile and correlate the affected cases as well as review the drug-driving testing process and ongoing prioritisation. This Gold Command Group was concluded during September 2022, as a result of progress made in the recovery process. A Silver Improvement Group was also established which is considering Police Scotland and Forensic Services processes, as well as the actions in progress to minimise the risk of any further cases reaching the statutory time limit in the near future.
- 2.13 HM Chief Inspector of Constabulary Scotland (HMICS) is close to concluding a review of the end-to-end process for obtaining, analysing and reporting drug driving sample results.
- 2.14 This review will consider, amongst other aspects, the issues that have led to cases reaching their statutory time limit before they can be progressed to prosecution.
- 2.15 It is anticipated that HMICS will publish the report on their findings in February 2023.
- 2.16 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 and some of the post are being progressed, with due consideration for the likely pressure on the 23/24 budget for Forensic Services. Staff will commence employment in these posts in the near future.

- 2.17 However, despite this, there is likely to be a shortfall in capacity based on more recent forecasting work undertaken by Police Scotland and Forensic Services.
- 2.18 UKAS visited Howden Hall in Edinburgh, for their annual assessment visit during w/c 7<sup>th</sup> November, which included Toxicology. The assessment visit was concluded successfully with accreditation being maintained, subject to the necessary clearance of findings.
- 2.19 Consideration is being given to the required level of outsourcing required for 23/24, to allow essential equipment validation, method development and staff training to be completed.
- 2.20 Toxicology staff continue to work tirelessly and remain committed to processing cases in a timely fashion. We continue to work closely with Police Scotland, COPFS and the Scottish Government to manage and minimise risks, and to make a decision on a long-term, sustainable, solution to meet future demand.
- 2.21 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.