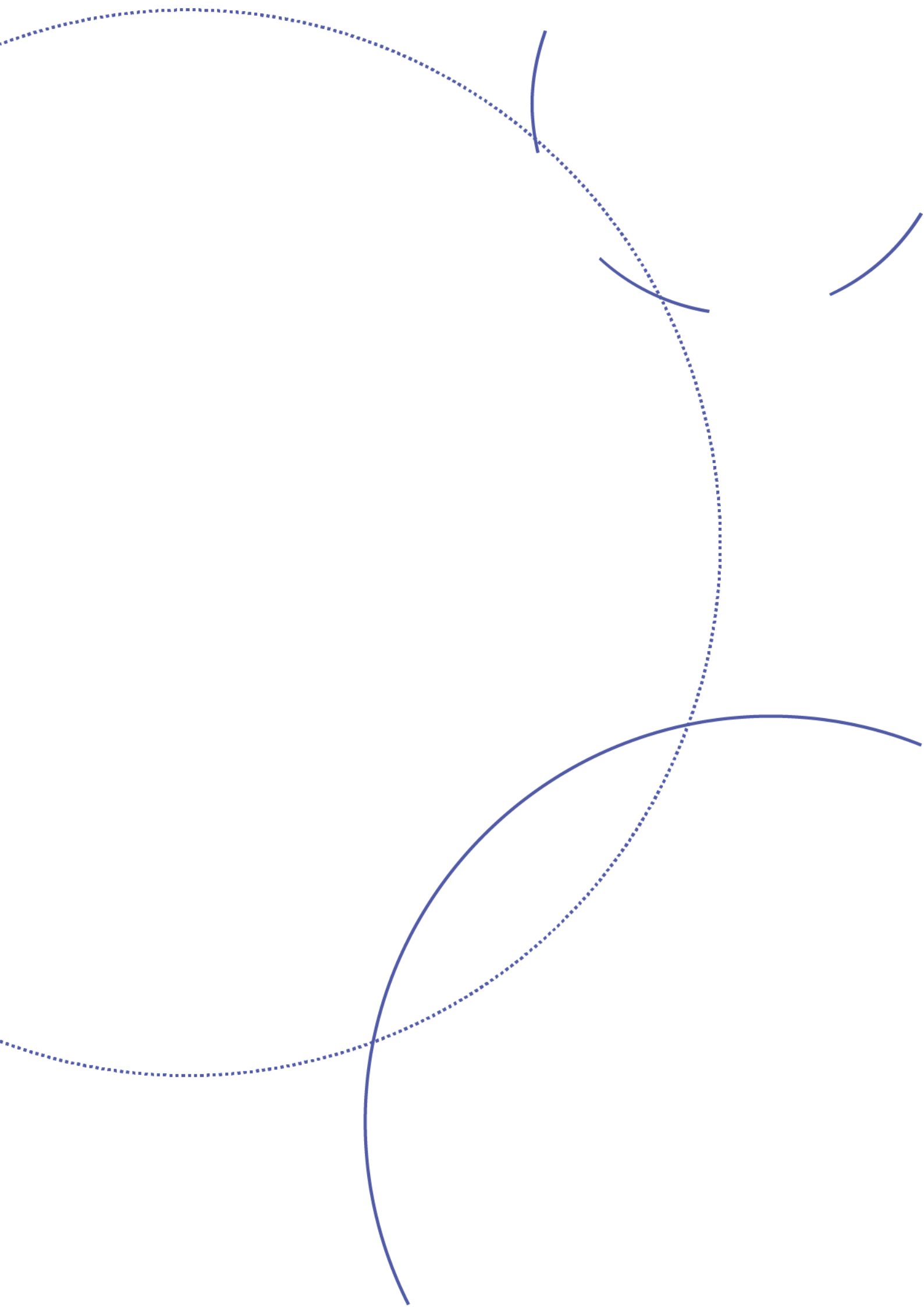




HMICS Assurance Review of Scottish Police Authority Forensic Toxicology Provision

April 2023





HM Inspectorate of Constabulary in Scotland

HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).¹

We have a statutory duty to inquire into the arrangements made by the Chief Constable and the SPA to meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given
- Where we make recommendations, we will follow them up and report publicly on progress
- We will identify good practice that can be applied across Scotland
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

¹ [Chapter 11, Police and Fire Reform \(Scotland\) Act 2012.](#)



Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.²

This review was undertaken by HMICS in terms of section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012 and is laid before the Scottish Parliament in terms of section 79(3) of the Act.

² HMICS, [Corporate Plan 2021-24](#) (February 2022).



Contents

	Page
 Our review	4
 Key findings	8
 Recommendations	11
 Areas for development	15
 Background	17
 Context	19
 Prevalence of drug driving	21
 SPA Forensic Services Toxicology	26
 Drug driving service delivery in Scotland	29
 Outcomes and process	47
 Reporting and internal governance arrangements, performance management and escalation procedures	63
 Demand, capacity and capability	83
 Achieving a sustainable drug driving operating model	94
 Prevention	103
 Appendix 1 - Glossary	111



Our review

In June 2022, the Chair of the Scottish Police Authority (SPA) requested HMICS conduct an Assurance Review of SPA Forensic Services Toxicology Section. This followed the disclosure (in May) that 384 (later rising to 447) drug driving cases had been marked as 'no proceedings' by the Crown Office and Procurator Fiscal Service (COPFS). This occurred primarily due to SPA Forensic Services Toxicology Section failing to analyse and report blood samples within appropriate timescales.

In July 2022, a review team was established, and [terms of reference](#) published. In summary, the review was to focus on the end-to-end processes, from roadside to court, for drug driving offences as described in sections 4 and 5A of the Road Traffic Act 1988.

The report provides an overview of the issues leading to the drug driving cases that were unable to be prosecuted, with an assessment of the effectiveness surrounding the processes in place for obtaining, analysing and reporting drug driving blood samples to support criminal proceedings.

The introduction of the drug driving legislation was a large programme of change for SPA Forensic Services. It involved the development of a new analytical process and methodology. Two new workstreams were accredited by [United Kingdom Accreditation Service](#) (UKAS) and the work undertaken to achieve this accredited capability is to be commended.

Since October 2019, Police Scotland has caused over 7,000 blood samples to be taken from drivers suspected of having committed a drug driving offence. It is clear since the legislation commenced in October 2019, that the actual demand and capacity was underestimated by all stakeholders, despite efforts to benchmark.

Notwithstanding this, the actual scale of the issue in Scotland is unclear; this is a significant challenge to public safety in Scotland and requires a long-term strategy to ensure that the prevalence of drug driving is understood. I do not think anyone would deny that, currently, we are merely scratching the surface of this issue.



SPA Forensics Services must keep pace in terms of modern laboratory design, innovative method development and use of automation. We discovered during our benchmarking activity that other forensic science providers have invested heavily in modernising laboratory design and functionality.

I have made specific reference in my key findings to the enduring pressurised environment staff have worked under. I expect SPA and SPA Forensic Services to engage with staff and ensure that such pressures are alleviated, and that wellbeing is meaningfully addressed for all staff.

I would also highlight that workforce capacity in SPA Forensic Services Toxicology Section is a challenge and slow progress to recruit staff has hindered improvement. I also have concerns that the existing toxicology section remains under severe pressure, with concerns regarding wellbeing and retention.

I would observe that the SPA Forensic Science Toxicology estate in Edinburgh is not conducive to an efficient working environment. The facility requires modernisation and investment on a par with the state-of-the-art facilities in Glasgow, Dundee and at the Scottish Crime Campus.

I do wish to acknowledge the work undertaken by SPA Forensic Services since 2017, when HMICS conducted a [Thematic Inspection of the Service](#). In that report HMICS made 23 recommendations and all but one have been discharged. This reflects the significant work and improvements undertaken by SPA Forensic Services.

These improvements have been underpinned by the development of the SPA Forensic Services 2026 Project. This is a long-term project which has seen delivery of Phase 1 and the development of the [Forensic Services Scottish Police Authority Forensic Strategy 2021](#) providing a road map for next steps in delivering a modern national forensic service.



However, I would highlight that Recommendation 4 remains outstanding. I am disappointed that this recommendation has not been meaningfully progressed. As we have seen in this current review, an articulation of service provision is vital for all to understand roles and expectations. I have made a specific Recommendation 22, which I would urge all to progress as a matter of urgency.

SPA Forensic Services Committee has a critical governance role in relation to the efficiency and effectiveness of the SPA Forensic Services Toxicology Section. Now, more than ever, there is a need to review the functionality and delivery of this committee to ensure that the necessary assurance is provided, and to give Police Scotland and COPFS an opportunity to challenge the provision of service in relation to drug driving.

I have made **25** recommendations for improvement and would highlight these key issues:

- There is no long-term strategy in place for the delivery of drug driving legislation in Scotland
- There is no sustained collaborative drug driving prevention activity
- The SPA Forensic Services Committee provided inconsistent oversight, scrutiny and assurance to the SPA Board on the delivery of drug driving service provision
- Within both SPA Forensic Services and Police Scotland there is no holistic, digitised approach to recording, tracking and co-ordinating drug driving cases.

Public understanding of the risks and the laws associated with drink driving is mature and, with stricter laws than elsewhere in the United Kingdom, the Scottish Government is committed to making roads safe for everyone. Few would argue with the notion that 'prevention is better than cure' yet, despite this, the current approach to drug driving in Scotland remains overwhelmingly focused on enforcement. Front-line officers report that this new legislation is a powerful tool as they work to keep our communities safe, but it must be supported by proactive prevention engagement.



We would like to thank all those who participated in our assurance review. We would also like to thank the Forensic Capability Network, Forensic Science Northern Ireland, Merseyside Police Regional Toxicology Facility, Medical Bureau of Road Safety, An Garda Síochána and leaders in private service provision for their invaluable insight into drug driving service provision.

Finally, I wish to acknowledge the significant contribution made by SPA Forensic Services in Scotland. It has many attributes which should be commended, including its independence, its advanced science, its quality approach, and its staff. However, without urgent investment, modernisation, a review of the Forensic Services Committee and a commitment to continuous improvement, the delivery of forensic toxicology will be at risk for years to come.

Craig Naylor

His Majesty's Chief Inspector of Constabulary

April 2023



Key findings

- There is currently no assessment or environmental analysis of drug driving in Scotland
- The current SPA Forensic analysis and reporting timescales contribute to delays in justice delivery in drug driving
- During the planning and implementation of drug driving legislation there was a lack of strategic oversight and scrutiny of emerging issues
- At pre-implementation planning of drug driving legislation there were missed opportunities within Scottish Government and at SPA to ensure all affected agencies and departments were consulted and involved in end-to end policy development and process design
- There was no long-term strategy in place for the delivery of drug driving legislation
- The temporary extension of statutory timescales was a missed opportunity to proactively address all matters arising and to mitigate any further service impact
- The absence of any post-legislative implementation review compounded the lack of visibility of the failing management of capacity against the existing demand
- Within both SPA Forensic Services and Police Scotland, there is no holistic, digitised approach to record, track, co-ordinate and assess drug driving cases and missed opportunities to cohesively design end-to-end process
- Within SPA Forensic Services, instrumentation use was not maximised and the work allocation process was inefficient and lacked robust managerial oversight and scrutiny
- There is a critical and enduring bottleneck within SPA Forensic Services in the preparation and presentation of evidential laboratory reports, with little consideration of methods used in other jurisdictions to improve the processes



- SPA forensic staff receive citations to attend courts throughout Scotland. Staff have no support to manage and co-ordinate citation and court attendance, causing added stress and impact on workloads
- There is a lack of co-ordination between data retention, data processing and production management guidance with no explicit reference to sensitive blood samples obtained during sections 4 and 5A Road Traffic Act 1988 investigations
- Police Scotland and the SPA reached a strategic impasse that could not move beyond the heart of this critical failure – namely, volume exceeding capacity
- At an operational level in SPA Forensics, Police Scotland and COPFS there was evidence of effective partnership with commendable efforts by all to address issues within their own organisations
- HMICS is of the view that the scrutiny applied by SPA Forensic Services Committee was inconsistent in challenging matters raised in terms of drug driving with limited resolution achieved
- There remains no practical expression of how SPA Forensic Services will provide an effective national drug driving forensic service that supports a long-term drug driving strategy, the requirements of Police Scotland and COPFS
- SPA Forensic Services staff are committed, highly professional and supportive of each other, and their role to contribute positively to public safety
- SPA Forensic Services staff have worked in an enduring pressurised environment with overtime becoming the new norm to ‘keep the lights on.’ This requires immediate change to ensure staff wellbeing is improved
- There is currently no proactive delivery of an effective development, training and competency strategy for toxicology staff and SPA forensic staff who support this service



- Negative media reporting has impacted on SPA Forensic Services staff and there is potential that it has affected public trust and confidence regarding SPA Forensic Services' ability to provide a robust and consistent service
- Failures in drug driving blood sample analysis service delivery has led to negative perception for Police Scotland front-line officers, which could result in a negative impact on the safety of road users
- In Scotland there is an absence of collaborative drug driving prevention activity with missed opportunities to raise public awareness



Recommendations

Recommendation 1

Police Scotland, SPA Forensic Services and Crown Office and Procurator Fiscal Service should work with Scottish Government to collate and produce data to facilitate an assessment of the scale and nature of drug driving in Scotland. This should include a review of combination drink and drug driving behaviour

Recommendation 2

SPA and Police Scotland should consider an auditable mechanism to assess impact of new legislation in terms of resource, budget, policy and public confidence

Recommendation 3

SPA Forensic Services, Police Scotland and Crown Office and Procurator Fiscal Service must work together and identify solutions and timelines to 'stand down' outstanding interim and exceptional measures, still in place, to support drug driving justice provision

Recommendation 4

SPA and SPA Forensic Services should review the drug driving analytical and reporting process and seek ways to reduce costs

Recommendation 5

SPA and SPA Forensic Services should review current and future procurement of drug driving analysis outsourcing to ensure best value

Recommendation 6

SPA and SPA Forensics Services should consider the available evidence in other jurisdictions to assess the opportunities to reclaim forensic service costs and then work with Crown Office and Procurator Fiscal Service and Scottish Government to establish if this is possible in Scottish criminal trials



Recommendation 7

Police Scotland and SPA Forensic Services should improve how drug driving samples are tracked and managed, including the consideration of technological methods such as barcoding, networking and automation of processes and instruments

Recommendation 8

SPA Forensic Services, Police Scotland and Crown Office and Procurator Fiscal Service should consider opportunities for the Joint National Forensic Gateway to effectively manage all forensic submissions, including drug driving

Recommendation 9

Police Scotland and SPA Forensic Services should create a priority forensic analysis protocol that would establish high and standard risk categories for analysis and associated timescales for drug driving cases

Recommendation 10

SPA Forensic Services must immediately progress the core operating solution plans and explore opportunities to interface with Police Scotland and Crown Office and Procurator Fiscal Service

Recommendation 11

SPA Forensic Services should work with Police Scotland and review the storage and movement of drug driving samples end to end, to ensure that all efficiencies, sample degradation risks, forensic integrity and health and safety matters have been considered and implemented

Recommendation 12

SPA, SPA Forensic Services, Police Scotland and the Health Boards of Scotland must collectively consider the service provision for drug driving within the scope of the Memorandum of Understanding between Police Scotland and all geographic Health Boards, regarding custody healthcare and forensic medical services in police custody



Recommendation 13

SPA Forensic Services should, as a matter of urgency, review current working practices including workload and work allocation for all staff involved in the delivery of drug driving forensic service provision

Recommendation 14

SPA Forensic Service managers must ensure they have effective management structures and performance management information in place to ensure proactive oversight and scrutiny in terms of work allocation, demand and capacity assessment, as well as performance

Recommendation 15

SPA Forensic Services should work with Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service to establish a pragmatic and realistic approach to report and evidence submission for drug driving, and consider criteria for SPA Forensic Services professional witnesses and opportunities for remote evidence provision

Recommendation 16

SPA Forensic Services and Police Scotland should assure that data retention, data processing and production management guidance is cognisant of the handling and management of blood samples and associated data obtained for the purposes of sections 4 and 5A of the Road Traffic Act 1988

Recommendation 17

SPA should review the functionality and membership of the Forensic Services Committee to provide effective and robust governance, providing an effective platform for Police Scotland, Crown Office and Procurator Fiscal Service and the Police Investigations and Review Commissioner to hold SPA Forensic Services to account in terms of the quality and delivery of service provision

Recommendation 18

SPA Forensic Services must urgently address drug driving analysis and reporting turnaround times, cognisant of six-month statutory timescales



Recommendation 19

SPA Forensic Services must prioritise the recruitment of toxicology staff – as outlined in the Forensic Services Operating Model – to ensure current drug driving demand levels can be met in the short term

Recommendation 20

SPA and Police Scotland should develop a drug driving Enforcement Model that incorporates incremental growth and investment for innovation and technology with an adjoining public communication plan

Recommendation 21

SPA Forensic Services should review its Estates Strategy in respect of toxicology provision and consider the development of a dedicated road traffic facility

Recommendation 22

SPA and SPA Forensic Services must, as a matter of urgency, articulate the delivery of forensic service provision (as laid out in section 31 of the Police and Fire Reform (Scotland) Act 2012) to manage expectations of agencies and to ensure understanding of what is required by those in SPA Forensic Services

Recommendation 23

Police Scotland should include drug driving prevention activity within its current road safety prevention activity

Recommendation 24

Scottish Government should consider refreshing its Road Safety Framework to 2030 to include drug driving, given the growing prevalence in Scotland

Recommendation 25

Police Scotland should work with Transport Scotland and other organisations to establish long- term co-ordinated engagement and education campaigns and programmes aimed at raising awareness of the drug driving law



Areas for development

Areas for development	Number
SPA should ensure an identified strategic lead for any future legislative implementation	1
HMICS would encourage SPA Forensic Services, Police Scotland and Crown Office and Procurator Fiscal Service to consider the organisational learning opportunities from implementation to critical issue management. There is still an invaluable opportunity for those involved in drug driving service delivery to come together and consider lessons learned, which would inform ongoing and future change and development activity	2
There are opportunities to refine training in respect of the use of preliminary roadside drug test kits, alongside a general understanding of the legislation	3
HMICS would be keen to see case acceptance criteria and monitoring of submissions from Police Scotland to SPA Forensic Services included in future performance data. This data should generate performance information, where agreed criteria has not been met, to support engagement and improvement	4
Our review considers there are opportunities for both SPA Forensic Services and Police Scotland to undertake end-to-end process flow mapping to assist improvement opportunities	5
Police Scotland must critically address current backlogs within Case Management Units to provide assurance section 4 and 5A cases will not be at risk of time bar	6
SPA Forensic Services should consider the introduction of a single point of citation administration	7
As a user of forensic services, Road Policing to have a standing item on the Forensic Performance Operational Group	8
Police Scotland should review the terms of reference for the Forensic Performance Improvement Group and Forensic Performance Operational Group and consider mechanisms for capturing forensic service requirements and potential challenges	9



experienced within Police Scotland, so that these can be considered, addressed, and escalated	
The performance reports produced by SPA Forensic Services Toxicology are an area for improvement. Performance reports should include drug driving case status and backlog information at each stage with a clear description of case status against statutory time limits	10
We would encourage Police Scotland to use the expertise within its Demand and Productivity Unit when considering further expansion of the drug driving service	11
We would urge Police Scotland to consider the impact of vacancies within Road Policing in relation to enforcement capability in support of road traffic legislation	12
HMICS advises the Toxicology Management Team to undertake a departmental training review to operationally plan/streamline weekly tasking, and report on progress	13
SPA Forensic Services should detail the activity, timescales, ownership and expected outcomes contained in the Development Plan	14
SPA Forensic Services must improve data collection and report on specific data points to provide assurance that staff are achieving a baseline capacity	15
SPA Forensic Services should consider how it communicates and delivers the strategic objectives and outcomes laid out in the Forensic Services Scottish Police Authority Forensic Strategy 2021 (spa.police.uk) to staff and key stakeholders	16
Police Scotland should build on the work with other partners including DVLA and the Traffic Commissioner to maximise intervention and prevention opportunities for prolific offenders from driving between, arrest and conviction	17



Background

1. The SPA was established under the Police and Fire Reform (Scotland) Act 2012 and has a statutory responsibility under section 31 of the Act to provide forensic services to Police Scotland, the Lord Advocate and Procurators Fiscal and the Police Investigations and Review Commissioner (PIRC) in Scotland. Consequently, the national Forensic Service was established as a Directorate under the Scottish Police Authority on 1 April 2013.
2. The Director of Forensic Services holds responsibility for the strategic direction and performance throughout SPA Forensic Services and reports directly to the Chair of the SPA.
3. The delivery of SPA Forensic Services is overseen by the SPA Forensic Services Committee (FSC). The Committee was established in October 2018 to provide oversight, scrutiny and assurance on the delivery of forensic services by constructive challenge and contribution to planning and future development. The committee makes recommendations to the SPA Board on forensic services matters.
4. This assurance review has been specifically undertaken to consider matters arising within SPA Forensics Toxicology provision of drug driving analysis and reporting. This is not therefore a review of the wider national provision of forensic services. There are, however, points of consideration for this review which have wider ramifications on national service provision.
5. Over the last 10 years, SPA has undertaken reviews supported by external management consultants and has been the subject of a previous HMICS inspection. This is important as there are key themes that were previously highlighted which are relevant to the subject of this report. It is important that these are considered in this review as part of the ongoing work by SPA to review and modernise the provision of forensic services within Scotland.



6. In 2014, the SPA commissioned an in-depth review from an external management consultant to consider demand, capacity, delivery of services and areas where SPA Forensic Services could potentially position itself within the competitive forensics market, generating additional revenue.
7. The review reported in July 2015 and provided a comprehensive analysis of SPA Forensic Services with several key findings and recommendations for further action.
8. In October 2016, at the request of SPA, HMICS provided a [Professional Advice Note \(PAN\)](#) on options for future governance and delivery of SPA Forensic Services. This advice was not taken up and the SPA Board approved an internally revised corporate governance framework in December 2016.
9. In 2016, HMICS began a [thematic inspection of the Scottish Police Authority Forensic Services](#). The aim of this inspection was to independently assess the effectiveness and efficiency of the leadership, governance, management and delivery of forensic services to meet the demands across specialist services and volume analysis.
10. The inspection reported in July 2017 and made 23 recommendations for action. In summary the inspection noted that there had been a lack of progress across most areas previously highlighted in the external management consultant's report. At the conclusion of the thematic inspection, we reported that – without ongoing investment, changes in governance and structure, strengthened strategic leadership and a commitment to continuous improvement – the delivery of the service would be at risk. These themes endure and will be raised within the context of this report.



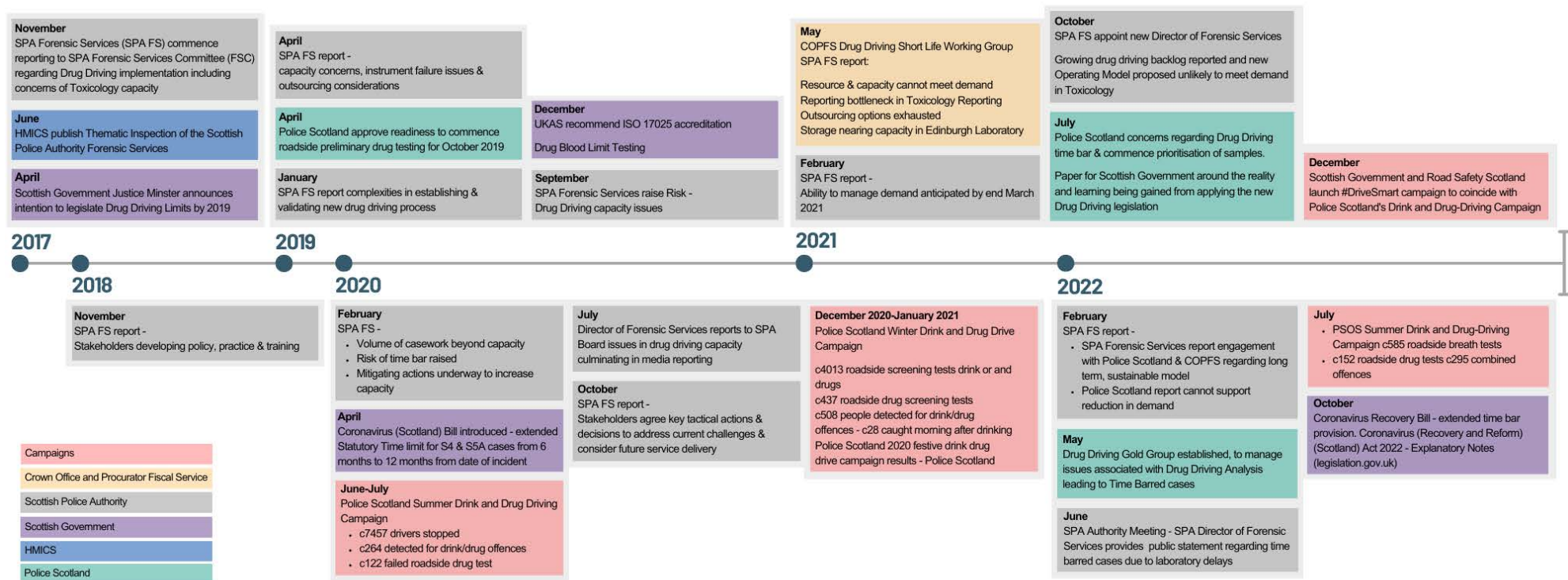
Context

11. As part of [Programme for Government 2018-2019](#), the Scottish Government announced its intention to introduce drug driving legislation. This followed a two-year period of consultation with the Scottish public and stakeholders ([Drug Driving: Proposed Regulations – Analysis of Consultation Responses](#)).
12. In October 2019, [Section 5A of the Road Traffic Act 1988](#) came into force in Scotland, providing a specific offence of driving with a specified controlled drug above a prescribed limit. Previously, drug driving offences ([Section 4 of the Road Traffic Act 1988](#)) required proof that a driver was impaired or unfit to drive. This was significantly more difficult to prove in court, due in part, to the subjectivity of the roadside field impairment test.
13. Very quickly after the introduction of the new legislation, it became clear that the evidential samples submitted for analysis by Police Scotland were outstripping SPA Forensic Services capacity, causing analysis and reporting backlogs within the dedicated toxicology laboratory.
14. In Scotland, criminal proceedings for drug driving offences must commence within six calendar months of the commission of the offence, except where any other Act expressly provides otherwise. This timescale was extended to 12 months in April 2020 and extended again in 2022, until 30 November 2023. In 2023, Scottish Ministers will consider whether to extend the justice temporary measures for a one-year period beyond 30 November 2023. When a case reaches these statutory limits, it is referred to as ‘time bar.’ This means that the legislative prescribed period for prosecution of this offence has passed, and no further action can be taken.
15. In April 2022, it was revealed that 384 drug driving cases would be unable to be prosecuted as they did not meet the statutory time limits. This figure later rose to 447. These cases reached time bar due to SPA Forensic Services failing to analyse and report the evidential blood samples within the timescale required to support case reporting and assessment for prosecution. The consequences of this were that alleged drug drivers, including potential repeat offenders and drivers responsible for collisions, evaded justice and remain able to drive on Scotland’s roads.



16. The timeline provides details of some key milestones and issues considered during this review. It does not capture every activity or consideration but is meant to provide a broad chronology of the matters arising.

Drug driving timeline





Prevalence of drug driving

17. In 2010, a review of [drink and drug driving law by Sir Peter North](#) concluded that there was “a significant drug driving problem”. In this independent report, commissioned by the UK Government, Sir Peter made several recommendations, including the introduction of drug driving limits.
18. In England and Wales, the [Department for Transport carried out an evaluation of the legislation one year after implementation](#) and found that the number of police officers using the legislation, and prosecutions under the new section 5A, was higher in 2015 than for the pre-existing section 4 impairment drug driving offences, and that the latter was at a similar level to 2014. This suggested that the section 5A offence was being used in addition to the existing section 4 offence and was not replacing it. It also suggested that police forces were still using the existing offence where appropriate, and that the new section 5A was leading to additional police activity against alleged drug drivers, rather than as an easier route to report people who would have been reported anyway. There is evidence that use of the section 5A offence rose steadily throughout 2015 and increased in 2016.
19. In March 2021, the Parliamentary Council for Transport Safety (PACTS) published [Drug driving: the tip of an iceberg? A report from PACTS - PACTS](#). The report states that drug drivers are a varied group, that different drugs have different user groups, and that this diversity is important to consider when considering interventions.
20. A great deal of research has been conducted into the influence of alcohol on driving ability and this has revealed to what extent alcohol concentrations in the blood can increase collision rates. Drug driving, involving both illegal and prescription drugs, can have a major detrimental effect on a person's ability to drive. It is a serious road safety problem and can have a negative impact on reaction time, judgement, co-ordination, attention and perception.



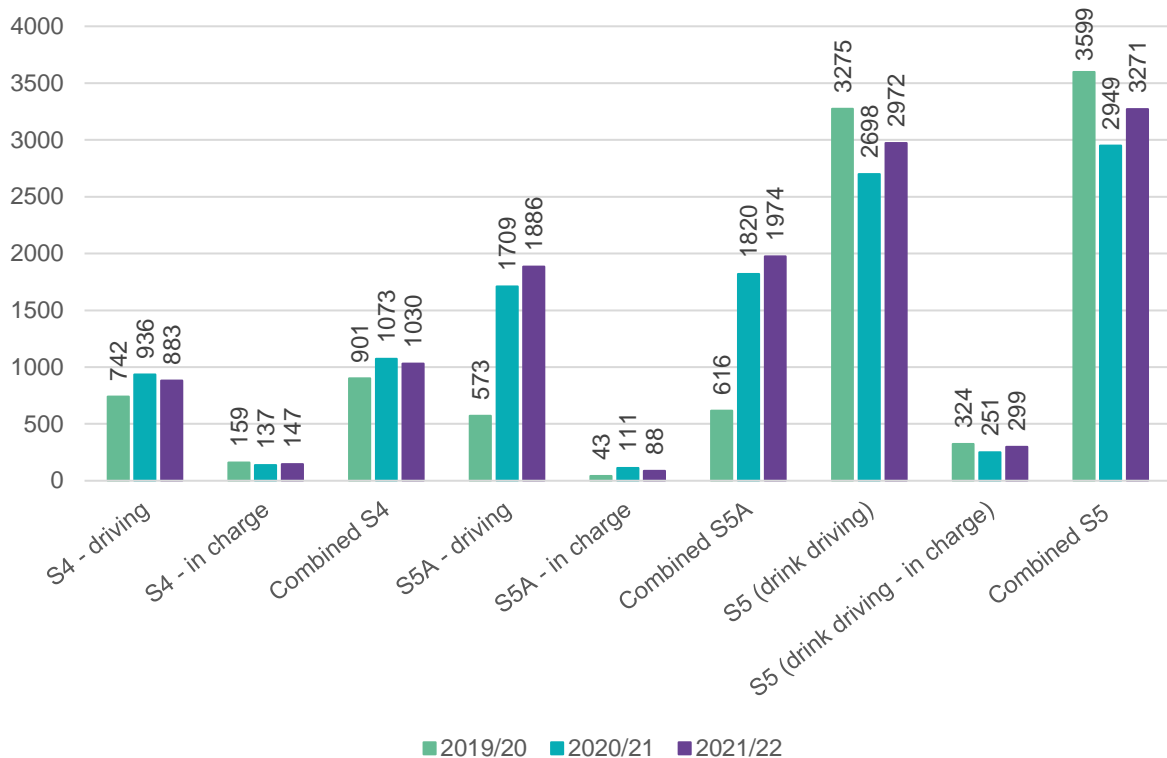
21. The combination of different substances must also be considered as combining substances with similar effects, either stimulating or dampening, is likely to lead to a stronger effect on the brain. In situations where both stimulating and depressant substances are combined, it is more difficult to predict the adverse effects this could have on driving ability: in some cases, these combinations appear to counter each other, while other combinations reinforce each other.

Drug driving in Scotland

22. In Scotland, the Road Traffic Act 1988 creates the following offences:
 - **Section 4**, for a person who is driving, attempting to drive or is in charge of a mechanically propelled vehicle on a road or other public place while unfit to drive through drink or drugs.
 - **Section 5A**, for a person who is driving, attempting to drive or is in charge of a motor vehicle on a road or other public place with a specified controlled drug above a prescribed limit.
23. There are currently 17 specified drugs with specific limits set [\(The Drug Driving \(Specified Limits\) \(Scotland\) Regulations 2019 \(legislation.gov.uk\)\)](#).
24. Under section 6 Road Traffic Act 1988, a preliminary test for drug and drink driving can be administered when dealing with a person in charge of a motor vehicle in the following circumstances:
 - moving traffic offence
 - road traffic collision (RTC)
 - suspicion that there is alcohol, and/or drugs, or the influence of a drug.
25. We wanted to understand the effectiveness of section 5A since implementation. We considered the drink and drug driving offences recorded by Police Scotland. The Scottish Government's Justice Analytical Services was able to provide information on crimes recorded. Specifically, this is in relation to where a driver has driven and/or been in charge of a vehicle whilst under the influence of drink or drugs.



3 Year Recorded Crime Drink & Drug Driving



NB – references to combined in this graph are in relation to either drink (section 5) or drugs (section 4 or 5A).

26. This data provides detail of recorded crime which in 2020/21 is likely to have been affected due to COVID travel restrictions which saw a reduction in road usage.
27. From this information we can see that drug driving continues to increase year on year (despite COVID considerations) whilst in the main drink driving remains steady.
28. We would anticipate, as issues within SPA Forensic Services Toxicology Section are addressed and Police Scotland have the opportunity to increase drug driving enforcement capability, that there will be a continuing rise in drug driving detection. Therefore, it is important that data collection and analysis is robust to inform policy, enforcement, intervention and prevention opportunities.
29. Both Transport Scotland's Reported [Road Casualties Scotland 2021](#) and Scottish Government's [Recorded Crime in Scotland, 2021-22](#) assist in understanding current road safety challenges in Scotland.



30. Transport Scotland reported:
- There were 5,023 road casualties reported in 2021. Of these, there were 139 fatalities, 1,596 people were seriously injured and 3,288 people were slightly injured
 - The total casualty figures and fatality figures for 2021 are the lowest since records began. However, they are broadly similar to the previous lows recorded in 2020
 - Like the figures for 2020, the 2021 casualty numbers will be affected by the Covid pandemic and the associated changes in travel.
31. Most notably, this included the 'second lockdown', which ran from 5 January 2021 to April 2021, and incorporated a legal requirement forbidding anyone from leaving their home except for essential purposes.
32. The correlation of road safety data and prevalence of drug and drug/drink driving combination offending and its impact on the safety of Scotland's roads needs to be better understood.
33. There is a lack of effective data collection and analysis by all agencies involved in the criminal justice process in terms of drug driving. Improved collection of diversity, equality and human rights information is needed as well as driver data such as age, gender, ethnicity, drug profile, employment and vehicle use to enhance understanding of drug driving impact and prevalence in Scotland. The Scottish Government and the Department of Transport are crucial to the co-ordination and direction of such data analysis and assimilation to inform strategy and policy development.
34. In 2013, the Department for Transport commissioned an expert panel to produce a report informing what drugs should be considered in terms of section 5A offending, therein known as the drug panel – [Driving under the influence of drugs](#). The existing section 5A drug panel in England and Wales was transposed to Scottish legislation. We are aware that, in 2020, SPA Forensic Services conducted an analysis of section 4 Road Traffic Act 1988 cases and 84 per cent showed the presence of Etizolam. While Etizolam is not on the S5A Drugs Panel, blood samples are regularly screened for Etizolam, due to its known prevalence in Scotland. This is to be commended, as it shows SPA Forensic Services utilising environmental analysis in the provision of service.



35. We believe that there are opportunities, as assessments develop, to review the current Section 5A Drugs Panel in Scotland to ensure it continues to be reflective of the nuances of Scottish drug use. SPA Forensic Services had also previously considered developing a Section 4 Panel of Drugs to improve process. We would encourage this ongoing consideration.
36. Our review considers that, in Scotland, there is still much to learn about the scale and impact of drug driving. In terms of this review a suitable starting point would be an assessment of the impact of the drug driving legislation from roadside testing through to criminal justice disposal.
37. We believe that there is a need to ascertain the problem in Scotland and to conduct research surrounding the prevalence of combined drink and drug driving offending. This is crucial, as all agencies need to consider current and future capability and the preventative efforts required. SPA Forensic Services must consider how they ensure agility to provide a service in toxicological provision, to support drug driving enforcement and within the wider context of supporting policing to tackle volume crimes such as road traffic offending which by scale and nature impacts on communities.

Recommendation 1

Police Scotland, SPA Forensic Services and Crown Office and Procurator Fiscal Service should work with Scottish Government to collate and produce data to facilitate an assessment of the scale and nature of drug driving in Scotland. This should include a review of combination drink and drug driving behaviour



SPA Forensic Services Toxicology

38. [SPA Forensic Services](#) provides a vital service to the criminal justice system in Scotland. It provides multi-faceted services, from biology to scene examination. SPA has set out its [strategy](#) describing how it seeks to provide this service to Scotland. [Toxicology](#) is a complex and specialised discipline. With significant training, there is scope for interchangeability with drugs but less so with other disciplines.
39. Toxicology is the analysis of blood, urine, and other samples for the presence of alcohol, illicit drugs, medicines and other toxins. A toxicologist will analyse samples to confirm the presence of a toxin, identify what it is and determine how much is present (i.e., the concentration). Toxicology analysis will detect a wide range of substances present in a sample. Toxicologists works closely with police, pathologists and COPFS to determine the type of analysis required.
40. Toxicology analysis is split into two principal areas – post-mortem and ante mortem:

Post-mortem toxicology (sometimes referred to as morbid toxicology)

Toxicology is used in cases of sudden death and fatal accident enquiries.

This department is newly established and is based in Glasgow.

Ante-mortem toxicology (referred to as criminal toxicology)

This department is based in Edinburgh and undertakes analysis when biological samples from a living person are analysed (e.g., those from assaults and drug assisted- sexual assaults). The department already analysed blood samples taken from drivers suspected of drink driving and driving while impaired due to drink or drugs but required expansion to undertake section 5A analysis – drug driving. (In Scotland, there is no standalone road traffic offence forensic science laboratory.)



41. Toxicology scientists determine the effects of drugs and alcohol, and this depends on a variety of factors, since everyone responds differently to drug or alcohol ingestion. People also have different tolerances, depending on whether they are heavy drinkers, drug users or regularly taking a prescription drug. The variety of drugs and medicines available is vast, but most substances have published data that reports the effects, and therapeutic and fatal ranges of concentrations. This information can help a toxicologist interpret their findings.
42. Once the analysis is completed a toxicologist will prepare a court report setting out the results of the analysis. This will be provided to the police. This report will state the drug(s) found, the concentration (if available) and the effects these drug(s) will have had – both on their own and in combination with other drugs. As well as analysis, toxicologists will also provide interpretation of these results and expert opinion (where required).
43. SPA Forensic Services had to consider the impact of this new legislation on service demand, as well as designing a new analysis capability. This was a significant piece of work to ensure that SPA Forensic Services toxicology department was able to receive and analyse all new samples submitted by Police Scotland, taken from drivers in suspected section 5A cases.

UK Forensic Services oversight

44. Within England and Wales, independent scientific oversight is provided by the [Forensic Science Regulator](#) (FSR). The FSR publishes codes of practice and conduct that provide additional guidance, context and interpretation of forensic science standards. Although the FSR has no statutory investigatory or enforcement powers in Scotland, we understand that – where practicable and recognising legislative nuances – SPA Forensic Services works to the spirit of these recognised codes of practice and conduct. UKAS works closely with the FSR and, where requested, undertakes the assessment of forensic units against the additional requirements of the FSR's codes of practice and conduct. SPA have not requested assessment from UKAS against the FSR codes of practice and conduct and therefore have not been formally assessed for compliance.



45. UKAS is the national accreditation body for the United Kingdom, appointed by government, to assess organisations that provide certification, testing, inspection and calibration services. UKAS assesses SPA to meet the requirements of ISO/IEC 17025:2017 and ILAC G19:06/2022 for SPA's toxicology accredited testing activities. The process of independent assessment provides an accountable and transparent process that strengthens public trust. SPA Forensic Services has an ongoing and proactive relationship with UKAS.
46. Since December 2019, the SPA Forensic Services drug analysis and reporting process has been accredited by UKAS to the recognised standard ISO/IEC 17025:2017. By their nature, blood samples begin to degrade immediately and therefore analysis must be conducted within timeframes that have been shown to be appropriate through the provision of validation and stability data.
47. UKAS assess SPA to meet the requirements of ISO/IEC 17025:2017 and ILAC G19:06/2022. UKAS continues to work closely with SPA in relation to their compliance with ISO/IEC 17025:2017 and ILAC G19:06/2022 and specifically, in relation to their current and on-going ability to deliver toxicology work to appropriate timescales given the nature of the samples.



Drug driving service delivery in Scotland

48. Transport (including road safety and associated road traffic legislation) is devolved to the Scottish Government. [Road Safety Scotland](#) is part of Transport Scotland and works to promote road safety issues in Scotland. In February 2021, the Scottish Government published [Scotland's Road Safety Framework to 2030](#). This framework sets out a vision for Scotland to have the best road safety performance in the world by 2030 and an ambitious long-term goal where no one is seriously injured or killed on our roads by 2050. Transport Scotland works with the UK Government's Department for Transport on such matters.

Drug driving procedure – from roadside to court



49. There are various agencies involved in the criminal justice process associated with drug driving:

Police Scotland enforces the legislation and promotes prevention activity

NHS Boards in Scotland provide forensic medical services to people in custody settings in Scotland. Appropriately qualified and trained healthcare professionals undertake forensic medical examinations, which include the taking of blood samples or other forensic medical samples



SPA Forensic Services completes analysis and prepares evidential reports, which are then sent to Police Scotland

Crown Office and Procurator Fiscal Service receives standard prosecution reports (SPR) about drug driving crimes from Police Scotland for consideration of prosecution and makes independent decisions as to whether to prosecute or not

The Scottish Courts and Tribunals Service (SCTS) is an independent body corporate established by the Judiciary and Courts (Scotland) Act 2008. Its function is to provide administrative support to Scottish courts and tribunals and to the judiciary of courts, including the High Court of Justiciary, Court of Session, sheriff courts and justice of the peace courts and to the Office of the Public Guardian and Accountant of Court.

50. Under section 6 Road Traffic Act 1988, a preliminary test for drug and drink driving can be administered when dealing with a person in charge of a motor vehicle in the circumstances set out in paragraph 24.
51. Police Scotland already had policies in place for preliminary breath tests and preliminary impairment tests (PIT) for drink driving and driving while impaired.
52. With the commencement of section 5A in October 2019, Police Scotland developed new capability and policy. This included preliminary roadside drug test kits. These kits test saliva and test for cannabis and cocaine only.
53. The current policy developed by Police Scotland restricts the issue of preliminary roadside drug test kits to road policing officers and a limited number of local policing officers based in more remote locations, where access to road policing resources is limited. In total, around 767 officers have been trained, representing only 4.4 per cent of the warranted workforce.
54. Police Scotland has further restricted use of preliminary roadside drug tests to the following circumstances:
 - following a fatal or likely to prove fatal RTC
 - critical incidents which may attract media attention or public scrutiny
 - where a driver is suspected of having drugs in their system.



55. We understand that, in most cases, tests are undertaken based on officers suspecting a driver is under the influence of drugs. Therefore, although the legislation provides for it, Police Scotland does not routinely conduct preliminary roadside testing for drugs following commission of moving road traffic offences or involvement in non-fatal RTC unless there is a suspicion of drugs.
56. When an officer considers the criteria has been fulfilled, they will administer a preliminary roadside drug test (if trained) or request attendance of a trained officer to administer a roadside test.
57. If a driver fails a roadside drug test, they will be arrested and taken to a police station where a blood sample is taken by an NHS authorised medical practitioner for evidential testing. This procedure may differ if, for example, a driver has been injured in a collision or is unconscious.
58. A drug driving suspect can refuse to allow a blood sample to be taken, but in such cases may be charged with failure to provide a sample. In some cases, there are genuine reasons why blood cannot be obtained (e.g., medical reasons).
59. After providing a blood sample, a decision will be made regarding custody status. The driver will be given the option to be provided with a sample from the blood test which is commonly referred to as the 'B' sample. This is to facilitate independent analysis the driver may wish to pursue.
60. The driver then waits for a court date. In most cases, they will be free to continue to drive in the period between being charged and appearing in court.
61. Police Scotland has committed to ensuring that blood samples are submitted to SPA Forensic Services within 14 days.
62. SPA Forensic Services toxicologists will provide the analysis of blood samples taken and prepare reports detailing the drugs(s) found, their concentrations (if applicable) and if they are above or below the legal limit. These reports provide the evidential basis to support section 4 and/or section 5A offences. Critically for section 5A offences, the results of the reports are essential to prove the offence i.e. how it is established that the accused was over the prescribed limit.



63. In the case of section 4, these laboratory reports will be submitted to the prosecutor, along with any PIT and/or any opinion provided by the custody healthcare professional regarding impairment.
64. SPA Forensic Services committed at point of implementation that turnaround time (including analysis and reporting) would be four months.
65. On receipt of the laboratory evidential report, police officers will submit a criminal case to the Crown Office and Procurator Fiscal Service via Police Scotland Case Management Unit.
66. Prosecutors require two months in order to consider a case and commence proceedings in court.
67. If a driver is found guilty at court for a first-time offence, the court can impose a ban from driving for 12 months and/or a prison sentence of up to 6 months. The court also has the power to impose a fine of up to £5,000.
68. The submission and turnaround times referred to equate to approximately six months. These were the agreed timescales established by each agency during implementation planning and were in keeping with the then six-month statutory timescales.

UK landscape and benchmarking – what we learned

69. In March 2015, section 5A of the Road Traffic Act 1988 came into force in England and Wales. The objective was to improve road safety by reducing the risk that drug drivers pose to themselves, as well as other road users, by reducing its prevalence in the driving population.
70. It should be clear that, from 2015-2019, there were significant challenges for this new legislation in England and Wales. This led to backlogs and it has only been with significant work and the centralised co-ordination activity of the UK Forensic Capability Network that the situation improved. Colleagues in England and Wales reported similar experiences in terms of the sheer volume of cases detected (again, underlining the unknown prevalence of drug driving in the UK).



71. This experience, both in Scotland and the rest of the UK, is crucial and provides an opportunity for mutual experience and lessons learned to be shared.
72. During our review, we researched effective practice across the UK and Ireland to inform our understanding of how both police and forensic science laboratories provide a drug driving service. This research included a mixture of site visits and speaking with management and staff.
73. Our benchmarking exercise included engagement with the England and Wales Police Forensic Capability Network, An Garda Síochána, a private forensic provider, Merseyside Police Regional Toxicology Facility, Forensic Service of Northern Ireland, and the Medical Bureau of Road Safety (Ireland). The Medical Bureau of Road Safety is the forensic laboratory in Ireland for road traffic matters.
74. Our findings found that some forensic providers have dedicated road traffic laboratories, with service provision for both drink and drug driving cases. Laboratories have invested heavily in an automation function, as well as increasing staffing levels, and use abbreviated reports (known as streamlined reports). Laboratories have also invested in video conference equipment, allowing toxicologists to present evidence remotely.
75. Laboratory turnaround time for blood samples submitted from elsewhere in UK was between 28 and 90 days. This timescale allowed both the police and prosecution agencies sufficient time to submit police reports and serve papers for court proceedings within the 6-month statutory time limit.
76. One laboratory had an agreed maximum monthly baseline for road traffic sample submission from the police. Any additional samples over and above this figure were submitted to a sub-contractor for analysis.
77. We found that barcodes were in use on sample bottles and associated documentation. This allows the tracking of samples on an electronic laboratory information management system.



78. The Medical Bureau of Road Safety, An Garda Síochána, and the Department of Transport in Ireland have a proactive co-ordinated approach to road safety. An Garda Síochána launched a new preliminary roadside drug testing kit on 1 December 2022. The approach was so successful that 5,000 tests were administered within the first 6 weeks. An Garda Síochána is currently expanding this capability to all operational officers.
79. In England and Wales, private providers provide the majority of toxicology service provision. The Forensic Capability Network (FCN) is responsible for the management and co-ordination of drug driving toxicology. The FCN provides national co-ordination and guidance and helps English and Welsh Police enhance their forensic quality and introduce new science.
80. The FCN supported the co-ordination of policing's forensic response to the impact of COVID for more than two years. They monitored, gathered, and analysed data from police and forensic service providers to assist in managing significant backlogs in drug driving cases; and through significant effort of policing and providers these were resolved.
81. The FCN also manages and oversees the Streamlined Forensic Reporting (SFR) process on behalf of policing and the criminal justice system. Toxicologists use templates for reporting findings to the police following drug driving toxicology analysis. These provide a consistent approach to reporting forensic outcomes.
82. Our research also revealed that some laboratories are working closely with the police to improve standards. This includes video tutorials and training at custody suites, concerning methods of packaging and transportation. Couriers with carriers and crates at set temperatures are in place elsewhere to prevent sample degradation during the movement of samples from police premises to laboratories.
83. Some laboratories engage with the judiciary so that courts are kept up to date with laboratory developments.



Pre-implementation

84. In 2015, the Scottish Government conducted a period of consultation for the proposed section 5A drug driving legislation: [drug driving: Proposed Regulations - Analysis of Consultation Responses \(www.gov.scot\)](https://www.gov.scot/consult/DRUGDRIVING/ProposedRegulations-AnalysisofConsultationResponses).
85. In 2017 within Scottish Government, the Criminal Justice Division, the Justice Directorate and the Education and Justice Portfolio were identified to lead the implementation of this legislation. A multi-agency group was established, including representatives from SPA Forensic Services, Police Scotland's Road Policing Unit and COPFS, and the group met regularly, up to implementation in 2019.
86. The purpose of this group was for Scottish Government to bring together agencies to implement and support the legislation. The group considered such matters as demand, resource, instrumentation and kit. We understand that there was no formal structure to this group, with an assumption that agency representatives would lead or inform implementation within each of their separate agencies.
87. Representation was very much at an operational/tactical level. There was a lack of strategic oversight and scrutiny of matters as they developed at a multi-agency level during planning and implementation of the drug driving legislation.
88. As well as the public consultation, we found evidence of a financial impact assessment (FIA) but no evidence that, strategically, there was a collective or single agency assessment conducted on the full extent of legislative impact.
89. Impact assessments should ensure that all agencies affected by new legislation are consulted, considered and inter-dependencies identified at the earliest opportunity.
90. The ability to assess impact at both a strategic and tactical level should inform policy, process and design.



91. SPA and Police Scotland already have a [Memorandum of Understanding to consider public engagement and communication](#) in terms of new policy or change with significant public interest. We would encourage SPA and Police Scotland to consider if there is an opportunity to ensure there is consideration of this MOU when any new legislation is introduced for implementation.
92. Scottish Government has a framework of impact assessments to be considered, dependent on the matter under consideration.
93. We would also encourage the effective use of existing policy assessment frameworks (e.g., equality and human rights and data protection), as well as robust business continuity planning to continue to inform and enhance policy development and identify risks, issues, and interdependencies.
94. Scottish Government did request an FIA from SPA Forensic Services, Police Scotland, COPFS and Scottish Courts and Tribunals Service. This was to assess costs associated with implementation which Scottish Government had agreed to fund.
95. The absence of key stakeholders during the planning phase – including Transport Scotland, Road Safety Scotland, Health and third sector organisations supporting roads safety and drug use – is highly noticeable.
96. This missed opportunity is apparent from the fact there is no reference to drug driving in the Scottish Government's road safety framework – [Scotland's Road Safety Framework to 2030 | Transport Scotland](#).
97. This legislation spanned various divisions and departments within Scottish Government from Criminal Justice, Police Division, Health and Road Safety Scotland, and we observed a lack of connectivity. This compounded the lack of cohesion in legislative implementation. We believe that the lack of a fully joined-up approach has hindered the creation of long-term prevention arrangements, including support for drivers with substance use issues.



Predicted forecasting

98. Both SPA Forensic Services and Police Scotland liaised with colleagues in England and Wales previously involved in implementation, from both a scientific and police enforcement perspective. It is accepted by all involved in implementation that forecasting right up to implementation (and thereafter) has been flawed. This clearly had a negative impact on policy, process design and modelling. Predicted forecasting requirements are considered in more detail later in the report.

Implementation planning

99. The strategic planning process for implementation was not sufficiently robust or effective and under-estimated the demand for toxicological analysis. Planning and preparation had been ongoing since 2017, however SPA Forensic Services was not prepared for the volume.

100. There was no collaborative project plan or contingency arrangements if demand exceeded laboratory capacity. The level of scrutiny from existing governance and oversight groups was insufficient. (This is explored later in the report.)

101. There is evidence of implementation planning within SPA Forensic Services. There is significant detail of process design at a tactical level. It is apparent that the focus for SPA Forensic Services was the establishment of new analysis capability. What is not so clear is the consideration given to the wider SPA forensic process and implementation requirements.

102. A similar assessment is true of Police Scotland. This was very much viewed as a matter for the Road Policing department within Operational Support Division. Road Policing led on implementation for Police Scotland and, again, this was conducted by a small, finite resource on top of existing workload within the Road Policing Management Unit.

103. Both these teams undertook policy, practice, procedure, training, and delivery – as well as the specific scientific process design, instrumentation validation etc. required by SPA Forensic Services. This was a significant workload and should not be underestimated.



104. There does appear to have been an assumption in both SPA Forensic Services and Police Scotland that new drug driving cases would be assimilated into existing criminal justice frameworks within agencies at an inter-agency level. Notwithstanding this, it is reasonable to expect that an informed assessment of the impact on interdependent functions and departments should have occurred to ensure capacity of resource and functionality within all agencies.
105. For SPA Forensic Services this was a large and new programme of work. It was a legislative requirement but appears to have been viewed through the lens of instrument provision and analysis, rather than a whole system approach. SPA Forensic Services was enthusiastic about delivering a new and complex analytical capability, but there was limited experience of this significant change management programme, compounded by an expectation that staff would deliver it while also maintaining core business.
106. There was no consideration of the scale-up required due to volume increase. This was compounded by the flawed predicted forecasting at planning and point of implementation.
107. SPA Forensic Services' implementation was led and delivered by existing staff within SPA Forensic Toxicology on top of existing work requirements. Implementation activity was overseen by the Head of Function. For a period, SPA did provide additional resource to support planning and implementation.
108. It is clear from the start that SPA Forensic Services aimed to build a gold standard analysis service. This was a huge challenge; the ambition to achieve the best standard has been at the cost of the volume of work that could be delivered had a more pragmatic approach been taken. Robust strategic scrutiny and leadership may have supported more efficient business decisions regarding realistic implementation planning, with considerations of accreditation being introduced incrementally.
109. In no way does this take away from the achievement in designing and delivering a brand-new accredited service. By concentrating efforts on this objective, SPA Forensic Service did not have time consideration of the wider planning requirements and ramifications on the service.



110. For instance, the new legislation introduced new business within existing resource structures. Trades unions reported a lack of consultation on the introduction of the legislation – another missed opportunity to ensure informed implementation, cognisant of people and welfare.
111. During this review, we have regularly noted that the time bar of cases due to analysis failure has been described as an unforeseen consequence of demand exceeding capacity. We cannot accept this description and would contend that time bar was an inevitable and known legislative consequence. To be clear, from implementation, all stakeholders were fully aware of the timescales to be worked to.

Area for development 1

SPA should ensure an identified strategic lead for any future legislative implementation

Recommendation 2

SPA and Police Scotland should consider an auditable mechanism to assess the impact of new legislation in terms of resource, budget, policy and public confidence

Limited benchmarking activity

112. We believe that research and benchmarking arrangements in advance of the rollout of the legislation were limited. However, we are aware that previous experience of staff (especially within SPA Forensic Services Toxicology) was utilised to a degree during implementation.

Post-implementation chronology of issues

113. By February 2020, approximately three months from legislative commencement, SPA Forensic Services was reporting that they were not able to manage the quantity of drug driving submissions. They required additional instrumentation to support delivery and, once procured, this would take time to establish.



114. SPA Forensic Services was behind the curve from the start, not just because of their capacity, but also due to the need for SPA to complete the actions required by UKAS following the assessment of the toxicology methods (these actions had to be completed by SPA within a three-month period to assure that the accreditation could be secured by October 2019); training delivery of new instrumentation; process and embedding of same; and ongoing daily business (including other toxicology requirements).

Impact of COVID

115. By March 2020, Scotland was experiencing the first wave of the COVID pandemic. Operation Talla was established as the national UK Police response to COVID and Police Scotland implemented a command structure of which SPA Forensic Services was an integral part. This provided a framework to consider maintaining critical business functions, protecting staff, providing resilience and recovery objectives.

116. This had a significant impact on all agencies in terms of working practice, staff availability and staff absence due to illness. For SPA Forensic Services Toxicology this initially led to a period of shutdown for six weeks until safe working practices could be devised and implemented.

117. Working practices within SPA Forensic Services were further compromised as, initially, there was no ability for staff to work remotely, with no laptop provision. This was addressed in time through an agreed national rollout across Police Scotland and SPA. ICT infrastructure and design was also exposed as, within Toxicology, instrumentation was not able to be managed and monitored remotely. (However physical samples still required manual processing).

118. For Police Scotland and COPFS there were also reductions to regular service delivery. In the main, this caused a disruption and delay in the movement of drug driving blood samples from Police Scotland to SPA Forensic Services, further backing up throughput. COPFS was not able to receive evidential reports as per pre-COVID process and, effectively, the system was choked.

119. The Coronavirus (Scotland) Bill was introduced in April 2020, extending statutory time limits for section 4 and section 5A Road Traffic Act 1988 cases from 6 to 12 months from date of incident.



120. We are concerned that this extension provided a false confidence to SPA Forensic Services and that the issues experienced to date were minimised due to additional time provision. This was a missed opportunity to proactively and robustly address all matters arising, to mitigate any further service impact.
121. In England and Wales, the UK Forensic Network experienced similar challenges, particularly regarding the significant backlogs in both drugs and road traffic toxicology. This impacted on capacity within the private provider marketplace in the UK.

Other issues

122. Between August and September 2020, the toxicology department in Edinburgh underwent a significant refurbishment. This was to facilitate effective working of the new instrumentation procured. This included a period of shutdown; this was anticipated to take six weeks but took eight weeks in total.
123. In February 2022, due to planned upgrading of facilities, there was around five weeks of downtime. It is worth noting that the upgrading work took longer than anticipated. In April 2022, the toxicology laboratory suffered a flood, which led to downtime of around two weeks both having a significant impact on service delivery.
124. What is clear is the lack of overall planning and assessment when introducing new service and instrumentation into existing infrastructure and accommodation. It is appreciated that, in the case of the flood, this was unforeseen but, again, this exposed gaps in contingency planning. There does not appear to have been the ability to move business elsewhere within SPA Forensics or access an automatic outsourcing contingency contract.

Interim and exceptional measures

125. In reaction to early identified and enduring issues in SPA Forensic Services, Forensic Services, Police Scotland and COPFS have continued at an operational level to work together and identify interim and exceptional measures within their working practices to support the current issue. Each agency has made it clear that these are not long-term sustainable solutions, but exceptional process measures in reaction to an issue.



126. In summary, SPA Forensic Services sought to increase capacity opportunities and process improvements by introducing the following:

- amendment to initially agreed approach to analysis - approved by the Lord Advocate
- procurement of additional instrumentation
- provision of dedicated administrative support
- streamlining of the section 4 analysis activity
- cross-training of staff in section 5A processes
- promoting a staff member to forensic scientist to specifically support bottleneck at the reporting stage.

127. Police Scotland's Road Policing Management Unit provides the administrative functionality in support of Road Policing and has supported SPA Forensic Services from the outset. This has included:

- maintenance of the drug screening register (described in more detail later in this report)
- maintaining relevant records on the SPA Forensic Services Evidence Management System (EMS)
- acting as quasi-gateway to ensure grip and momentum of cases
- co-ordinating and reviewing drug driving cases to support swift reporting on receipt of evidential reports.

128. SPA Forensic Services did also request that Police Scotland consider limiting enforcement activity to reduce submissions. Police Scotland declined due to the obvious impact on road safety.

129. COPFS has also introduced specific exceptional measures to ensure cases are marked immediately to enable court proceedings to commence. Consequently, this can rely on operational officers to serve notification for appearance at court within tight timescales. It is recognised that the ability to regularly react within such challenging turnaround times is not sustainable.

130. It is our understanding at the time of reporting that, in the main, these interim and exceptional measures endure – despite each agency reporting that they are not sustainable.



Recommendation 3

SPA Forensic Services, Police Scotland and Crown Office and Procurator Fiscal Service must work together and identify solutions and timelines to 'stand down' outstanding interim and exceptional measures, still in place, to support drug driving justice provision

Finance

131. Over and above initial implementation funding from Scottish Government, the following additional monies have been provided by Scottish Government to SPA Forensic Services. In March 2020, £180,000 to purchase additional instrumentation. Thereafter, from March 2020 to May 2022, the Scottish Government has provided additional funds of approximately £1.1 million to support outsourcing.
132. SPA Forensic Services also identified a total of £75,000 from its existing budget for additional instrumentation.
133. To deliver a modernised and improved SPA forensic service to support drug driving investigation, financial challenges must be addressed collaboratively and integration opportunities between justice services identified.

Outsourcing

134. Within the UK forensic network, outsourcing of analysis is commonplace and provided by UKAS-accredited private and public providers. SPA Forensic Services has a strong network and professional relationship with these providers and has engaged outsourcing services at various points to support forensic service provision in Scotland.
135. In initial implementation discussions with the SPA Forensic Services Committee in 2017, SPA Forensic Services raised the possibility that outsourcing may initially be required to support delivery, but this does not seem to have been followed through. At this time, SPA Forensic Services was already raising concerns regarding capacity within Toxicology and existing backlogs.
136. Again, in January 2019, SPA Forensic Services reported to the SPA Forensic Services Committee its intention to outsource drug driving samples in the short term.



137. By April 2019, SPA Forensic Services was reporting that the complex instruments procured were proving challenging and that this was impacting on its ability to ensure an accredited analytical provision in time for legislative commencement.
138. However, it was not until February 2020 that the first outsourcing contract to support this new business came into effect. We are aware that, at this point, the UK outsourcing toxicology market was limited (for a variety of reasons), thus limiting outsourcing opportunities.
139. In May 2021, the Director of Forensic Services reported that the funding provision for outsourcing had been exhausted. However, in June 2021, additional funds were identified by SPA Forensic Services.
140. A further outsourcing contract was agreed in September 2022. This contract allowed SPA Forensic Services to send all new drug drive samples to an outsource provider, so that the backlog of work within the laboratory could be reduced.
141. SPA Forensic Services initially reported that the estimated cost for internal processing of a drug driving case by forensic services was £330-360 per case. As can be seen from the table below, the average cost of outsourcing since November 2020 is £361. These costs would include associated court costs.
142. Currently, SPA Forensic Services is reporting anticipated future outsourcing costs at c£272 per case (restricted analysis), or c£450 per case (full analysis) (these figures do not include court costings). The table below outlines the SPA Forensic Services various funding requests, based on an estimated number of cases and the costs per sample include court costs.

Table – outsourcing funding and costs

Date of request	Funding (£)	Number of cases	Average cost per sample	Backlog position
March 2020	75,000 (SPA)	250	300	Not established
Nov 2020	356,190 (SG)	1,020	349	1,600
Sept 2021	325,000 (SG)	900	361	1,350
May 2022	370,000 (SG)	950	389	1,500
Totals	1,126,190	3,120	361	N/A



143. The SPA budget and additional Scottish Government funding has been utilised for outsourcing contracts in support of drug driving since 2020 amounting to c£1.1 million. It is not clear to us whether these contracts have been used to their full potential regarding the number of cases submitted.

144. We have already reported that statutory timescales in Scotland have been extended to 12 months. In England and Wales, the statutory time scales are 6 months. We have noted that, due to the different statutory timescales within the UK, outsourcing providers utilised by UK law enforcement (including SPA Forensic Services) are adopting statutory timescale prioritisation in their working practices.

Recommendation 4

SPA and SPA Forensic Services should review the drug driving analytical and reporting process and seek ways to reduce costs

Recommendation 5

SPA and SPA Forensic Services should review current and future procurement of drug driving analysis outsourcing to ensure best value

Court Costs

145. In addition to analysis and reporting costs, there are clearly significant prosecution and court costs associated with drug driving whether outsourced or provided by SPA Forensic Services. During benchmarking we learned that cost recovery from convicted drivers is being considered where appropriate.

Recommendation 6

SPA and SPA Forensics Services should consider the available evidence in other jurisdictions to assess the opportunities to reclaim forensic service costs and then work with Crown Office and Procurator Fiscal Service and Scottish Government to establish if this is possible in Scottish criminal trials



Post-implementation review

146. We found no evidence that SPA Forensic Services, Police Scotland or the Scottish Government commissioned a post-legislative implementation review. We believe that this was a major oversight, since it would have allowed scrutiny surrounding implementation arrangements, infrastructure and how SPA Forensic Services could manage and grow service provision. It would also have ensured that interim and exceptional measures introduced by SPA Forensic Services, Police Scotland and COPFS were tracked and monitored as temporary provisions, rather than becoming the new norm.
147. Good practice would dictate a post-implementation review to have occurred some 12 months after implementation. This would have given an earlier opportunity for agencies to have full oversight of matters arising, ongoing issues and risks and may have reduced those cases which were subsequently time barred due to SPA Forensic Services.

Area for development 2

HMICS would encourage SPA Forensic Services, Police Scotland and Crown Office and Procurator Fiscal Service to consider the organisational learning opportunities from implementation to critical issue management. There is still an invaluable opportunity for those involved in drug driving service delivery to come together and consider lessons learned, which would inform ongoing and future change and development activity



Outcomes and process

Current approach

148. Police Scotland's current preliminary roadside drug test capability is limited, and it is constrained in its strategic intention to increase enforcement activity for drug driving, due to the current challenges in SPA Forensic Services. Indeed, had it increased capability, this could have led to even more cases becoming time barred. It is accepted that, to progress, Police Scotland requires SPA Forensic Service to give assurance that it can provide the forensic capability to support such expansion.
149. We would acknowledge that, for implementation, it was appropriate for there to be incremental rollout of enforcement capability within Police Scotland. This would appear to be sensible based on our previous observation regarding the unknown scale of drug driving in Scotland. However, by 2023, we would have expected to have seen a wider enforcement capability.
150. Throughout the review, officers told us that the ability to conduct preliminary roadside drug tests was a powerful tool. However, they also expressed frustration that the kits, and the subsequent forensic analysis of blood samples, was effectively rationed to manage service provision issues at SPA Forensic Services.
151. Local policing officers who submit most of the drug driving cases, reported that, on occasions, where a suspected drug driver has been stopped, they have had to wait for lengthy periods until a specialist trained officer was available. Officers are concerned that the availability of trained support is impacting on operational delivery, and risks evidential degradation. We do not believe that this is an acceptable situation, and it is a risk to road users across Scotland.
152. After reviewing Police Scotland's Drink, Drug Driving (Including Railway, Marine and Aviation) Standard Operating Procedure (SOP) and training presentation for section 5A implementation, we would observe that officers on the ground may at times be challenged as to how to proceed when presented with a driver who is suspected of being under the influence of a combination of drink and drugs. There are opportunities to refine training on the use of the preliminary roadside drug test kits, alongside general understanding of the legislation. The ability to seek advice from the specialist trained officers cannot be underestimated in that regard.



Area for development 3

There are opportunities to refine training in respect of the use of preliminary roadside drug test kits, alongside a general understanding of the legislation

153. The SOP did not provide an overall description of the end-to-end process, so officers are reliant on accessing various SOPs and guidance to confirm stages in the process, including productions and case management.
154. We consider that these challenges can, at times, present in the submissions to SPA Forensic Services. Samples are submitted with an attached Examination Request Form (ERF). This should describe the crime under investigation, officers' observations, and suspicions and what is being requested in terms of analysis and evidence. From our interviews and site visits, we found that, on occasion, these forms are incomplete and suspect that this is due to officers being unclear about what they should be requesting.

Policy, practice, and procedure

155. The work done by SPA Forensic Services to design, develop and implement a brand-new process of drug analysis for 17 drugs should not be underestimated. The team started from nothing and – from initial discussions in 2017 up to legislative commencement – worked tirelessly to ensure that what they designed would meet the requirements for accreditation. To include the specification that the method designed was sufficiently robust to meet the requirements of ISO/IEC 17025:2017 and ILAC G19:06 2022 is commendable.
156. HMICS acknowledges the role of UKAS and is keen to support its ongoing work to review the compliance of SPA with the requirements for accreditation and to therefore ensure the on-going suitability of the delivery of the toxicology service. Therefore, in terms of efficiency, best practice and value for money, we are keen for SPA Forensic Services to review end-to-end process, considering effective use of instrumentation, case management and reporting, as well as staff skills and competencies.



157. SPA Forensic Services' process design has concentrated on the scientific process; reception and backroom functionality (e.g., production management and reporting) was not considered in detail during implementation planning.
158. Police Scotland's process design took a road policing perspective but, again, failed to consider the wider impacts of legislative implementation in other departments such as productions, custody forensic service provision, crime and case management.
159. We observed that, at various points in the implementation of this legislation and in reaction to the most recent time bar issue in April 2022, SPA Forensic Services, Police Scotland and COPFS collectively considered parts of the process, providing evidence of delivered guidance, standard operating procedures and self-evaluation. There are clear opportunities to build on this work to deliver improvements.
160. We welcome the approach by SPA Forensic Services in 2022, to commission a review of productivity and efficiency within Toxicology at the Edinburgh laboratory. We explore later in the report how this can positively impact on capacity and performance.

Case systems, tracking and prioritisation capability

161. The inability of all agencies to accurately articulate case status at any point in the process is concerning. Due to internal siloed systems and the lack of integrated inter-agency core operating systems, it is impossible to track and monitor the status of drug driving cases without Police Scotland, SPA Forensic Services and COPFS all actively co-ordinating and managing significant spreadsheets.
162. The design and implementation by Police Scotland's Road Policing Unit of its drug screening register is worthy of note and to be commended. It provides an audit of all preliminary roadside test kits issued and used, effectively providing stock status, and ensuring that, as best as possible, all preliminary roadside drug test kits are utilised and do not reach expiry date. It is an effective mechanism to track and monitor usage.
163. Building on initial design, this register became a 'go to' information point for various aspects of tracking the status of drug driving cases. This became onerous on the Road Policing Management Unit and has impacted on its daily workload. However, it should be clear that – had it not been for this data gathering – Police Scotland, SPA Forensic Services and COPFS would have found it extremely difficult to articulate any meaningful case status information.



164. We understand that the An Garda Síochána has expressed interest in the capability developed in Police Scotland. Police Scotland has also presented the register to the FCN, to favourable comment. This is commendable; however, we would be keen for Police Scotland to take this opportunity to consider system design, availability, and functionality. Since initial implementation, the Road Policing Management Unit has regularly stated that the current system and demands to extract increasing data on drug driving from it, is unsustainable and requires critical review.
165. As with all investigations, within Police Scotland there are various systems used during the investigation and reporting of drug driving cases. In the main, systems are standalone and managed by different departments. The lack of integrated system design has compounded an already overwhelmed department's ability to effectively manage and monitor cases.

Recommendation 7

Police Scotland and SPA Forensic Services should improve how drug driving samples are tracked and managed, including the consideration of technological methods such as barcoding, networking and automation of processes and instruments

Joint National Forensic Gateway (JNFG)

166. Currently, drug driving cases are submitted from Police Scotland to SPA Forensic Services via direct submission, thus circumventing the process already established within JNFG. Gateway triage was initially assessed not to be required, due to the clear legislative requirement for the blood samples to be analysed.
167. Consequently, Police Scotland Road Policing Management Unit has become a quasi-gateway – undertaking a significant and exceptional role to provide an accurate assessment of case status. This includes daily liaison with SPA Forensic Services and COPFS and (within Police Scotland) reporting and supervisory officers, case management units, and production managers. Building on the drug screening register, the unit has devised and relies solely on spreadsheets in an attempt to inform drug driving case status and ensure grip and momentum.



168. The [Forensic Services Scottish Police Authority Forensic Strategy 2021 \(spa.police.uk\)](https://spa.police.uk) states that “the Joint National Forensic Gateway will ensure work is prioritised correctly and that capacity is managed efficiently and effectively”. HMICS considers that the remit of JNFG and the current work undertaken by Police Scotland’s Road Policing Management Unit should be reviewed.

Recommendation 8

SPA Forensic Services, Police Scotland and Crown Office and Procurator Fiscal Service should consider opportunities for the Joint National Forensic Gateway to effectively manage all forensic submissions, including drug driving

Case prioritisation and submission

169. We found some evidence that samples were prioritised according to risk by Police Scotland and SPA Forensic Services – i.e., repeat drink or drug driver offenders. This prioritisation is reliant on the investigating officer or the Road Policing Management Unit identifying a requirement for a sample to be prioritised for analysis. In addition, COPFS will also identify cases which require immediate analysis. This lack of a formal protocol and joint auditable system should be addressed.
170. During benchmarking engagement, we learned other toxicology laboratories in the UK had agreed prioritisation protocols in place. This facilitated urgent case analysis and reporting. Laboratories reported urgent case turnaround time could occur within 5-28 working days.
171. There is no quality control performance mechanism for submissions to SPA Forensic Services. We directly observed sample submissions that were incorrectly packaged and, at times, illegible – along with missing or incorrect information. Currently, rectification of such issues is reliant on a significant amount of bureaucracy and checking by Forensic Services staff. Poor submission rates are not recorded or reported on and are dealt with piecemeal.



Recommendation 9

Police Scotland and SPA Forensic Services should create a priority forensic analysis protocol that would establish high and standard risk categories for analysis and associated timescales for drug driving cases

Area for development 4

HMICS would be keen to see case acceptance criteria and monitoring of submissions from Police Scotland to SPA Forensic Services included in future performance data. This data should generate performance information, where agreed criteria has not been met, to support engagement and improvement

Inter-agency ICT core operating systems

172. Currently, SPA Forensic Services, Police Scotland and COPFS are all independently designing core operating solutions; effectively reviewing and designing fundamental ICT provision within each agency. As part of this review, we only considered the Initial Business Case developed by SPA Forensic Services regarding its proposed core operating solution. In terms of best value, there is an opportunity for interdependencies and interface to be considered.
173. Where possible, we would encourage process and solution design providing digitised case tracking, performance and work allocation ability to be included. For instance, it may be that there is an opportunity for Police Scotland to review its Core Operating Solution Production Module to ensure it includes statutory and critical timelines and milestones.
174. From our site visits and interviews, we found that the packaging and management of blood sample evidence and related case papers is antiquated in comparison with private laboratory providers and other UK law enforcement agencies. There is a lack of digital or automated workflow, networked instruments or systems, remote management and monitoring options within Police Scotland and SPA Forensic Services. This includes no barcoding or automation of production management.



175. Overall, between Police Scotland, SPA Forensic Services and COPFS there is no digitised or automated process of evidence, forms or reports to provide efficient and effective case submission and reporting, to reduce double-keying and to enhance service provision. The ability to auto-populate information, alongside enhanced process integration facilitated by integrated system design, or improvements in agency system connectivity from pavement to court, would vastly improve efficiency and service provision.

Recommendation 10

SPA Forensic Services must immediately progress the core operating solution plans and explore opportunities to interface with Police Scotland and Crown Office and Procurator Fiscal Service

Process flow

176. The scope of this review did not allow us to inspect the various departments in detail, but we did consider and identify the main process points via self-evaluation submissions, interviews, focus groups and document review. We have taken the opportunity to consider the process broadly, end to end, from roadside to case reporting.

177. We should be clear this was an assurance review and we did not perform any form of audit of end-to-end or departmental process.



Area for development 5

Our review considers there are opportunities for both SPA Forensic Services and Police Scotland to undertake end-to-end process flow mapping to assist improvement opportunities

SPA Forensic Services process flow improvement opportunities

Submission management

Currently, no consistent or managed rota, resulting in a constant flow of unmanaged volume at the Edinburgh laboratory

Assessment of storage facilities

During benchmarking, we noted developments in storage design to support process. SPA Forensic Services should work with partners to consider efficiencies and modernisation of storage. Again, Police Scotland should be included in this review

Effective exploitation and maximisation of laboratory instrumentation

We found from site visits that there are opportunities to further maximise current instrumentation use. We also observed that existing instruments are not exploited to full capacity; currently working at about 50-60 per cent

Automated and remotely managed instrumentation regimes

The lack of instrumentation networking means no opportunity for remote management and monitoring

Digitising of case data sample analysis and reporting

This is not currently available but would provide potential efficiency opportunities

Review of case file production, management, and storage process

The current process is antiquated, cumbersome and heavily reliant on hard-copy production and storage of files

Police Scotland process flow improvement opportunities

Blood sample production management

There is a lack of consistency in packaging and management of drug driving blood samples. Despite National Production Guidance and additional memos to challenge inconsistencies and errors this endures

Blood sample storage and transportation

A national, consistent process is needed for the storage and transportation of drug drive samples, cognisant of the requirements of the analytical processes (including relevant requirements for UKAS accreditation), forensic integrity requirements (including mitigation of sample degradation) and health and safety considerations within nationally agreed and defined timescales

Forensic blood sample kit procurement

Police Scotland, SPA Forensic Services and Scottish health boards have liaised regarding kit issues. Regular, proactive liaison would assist informed kit procurement and monitoring in terms of best value, health and safety, and forensic requirements

Notification of laboratory analysis

Currently, once a sample has been analysed, the laboratory report is sent by SPA Forensic Services to the reporting officer (and, potentially, their supervisor) via email. A robust and auditable solution is required

Submission of cases

Case management units and crime managers rely on individual officers updating reports and submitting cases on receipt of laboratory reports. Crime and case managers have introduced review dates, based on current knowledge of backlog. Police Scotland does not proactively 'chase up' outstanding drug driving cases until they identify that the case is reaching risk of time bar. We would encourage a review of this process



178. We have also made Recommendation 8, regarding sample management, such is the importance of this in terms of fundamental service provision and the critical risk that failures can pose in terms of case preparation, justice provision and reputational risk to both SPA Forensic Services and Police Scotland.
179. We noted that, currently, Police Scotland is managing a large backlog in case management units throughout the Force, causing pressures and challenges to submit cases timeously to COPFS to meet statutory timescales.

Area for development 6

Police Scotland must critically address current backlogs within Case Management Units to provide assurance section 4 and 5A cases will not be at risk of time bar

180. Case management units cannot easily identify drug driving cases reaching risk of time bar. Staff continue to establish spreadsheet workarounds to monitor outstanding cases and manually attempt to assess section 4 and 5A cases at risk of time bar.
181. We have not had the benefit of performing an audit of this specific issue. We would, however, consider it an imperative that Police Scotland address the current backlog within case management to mitigate any further risk of drug driving cases exceeding statutory time limits.

Recommendation 11

SPA Forensic Services should work with Police Scotland and review the storage and movement of drug driving samples end to end, to ensure that all efficiencies, sample degradation risks, forensic integrity and health and safety matters have been considered and implemented



Forensic service provision in police custody

182. We found evidence of some health boards reporting challenges in providing trained staff to administer drug drive samples. On occasion, Police Scotland custody centres may not have a nurse on duty, or a nurse competent/authorised to take blood samples. In addition, there was evidence of challenges in kit used to obtain forensic drug driving samples with issues of health and safety and breakages being reported. We have already noted that more active health involvement during implementation could have informed process design and kit procurement and considered all service delivery (including prevention and intervention opportunities).
183. We are aware that there is a Memorandum of Understanding (MOU) between Police Scotland and all geographic health boards, which was signed on 1 April 2014. The MOU is an expression of partnership provision for custody healthcare and forensic medical services in terms of those requirements relating to police custody. There is also guidance that underpins the MOU. For forensic services, it states that the provision will be provided by the health boards but, under section 31 of the Police and Fire Reform (Scotland) Act 2012, will remain the responsibility of SPA. We noted there was no signatory from SPA or SPA Forensic Services and it is unknown what consultation was had at the time. As SPA and SPA Forensic Services are component partners in the delivery of forensic services in Scotland we consider they should be included in any revised MOU as per our recent joint review of [healthcare provision within police custody centres across Scotland](#).
184. The National Services Division works on behalf of NHS boards and the Scottish Government to achieve equitable, high-value health services for patients in Scotland. One of its aims is to be an active partner for planning, commissioning, and co-ordinating high-quality, person-centred specialist services.
185. There is an opportunity to include the National Services Division Senior Programme Manager at relevant forensic service provision meetings. In addition, the MOU should include all parties involved in the provision of forensic services in custody, to provide an assurance that the end-to-end process has been looked at, with consideration of such matters as health and safety and UKAS accreditation.



Recommendation 12

SPA, SPA Forensic Services, Police Scotland and the Health Boards of Scotland must collectively consider the service provision for drug driving within the scope of the Memorandum of Understanding between Police Scotland and all geographic Health Boards, regarding custody healthcare and forensic medical services in police custody

SPA Forensic Services instrument use and work allocation

186. SPA Forensic Services managers did not provide convincing evidence of robust management oversight. Staff and management struggled to accurately articulate outstanding workloads. Work allocation and mitigations appeared piecemeal and reactive, with no informed appreciation of the end-to-end process, with most days impacted by the 'new' urgent priority of the day. Management articulated a broad weekly assessment and allocation of work but, again, stated that this was regularly usurped by urgent requirements.
187. Staff reported that there was broadly an attempt by management to manage and allocate work, but that this was usually overridden by urgent requirements. They said that communication from management was mostly via email, as was work allocation. They told us that there had once been regular meetings with management, but these appear to have fallen in recent times.
188. SPA Forensic Services had provided additional administrative support for drug driving toxicology, but there remains a lack of management cohesion in the end-to-end process.



189. In 2013, SPA Forensic Services rolled out the Evidence Management System (EMS). During our 2017 Thematic Inspection of the SPA Forensic Services, we noted:

“...conflicting views on the effectiveness of EMS as a business tool. Front line staff felt that it had been implemented too quickly, without sufficient specification of requirements or involvement of staff. Staff also reported issues with poor ICT infrastructure performance which affected EMS response times and consequently efficiency of their working processes. Staff perceived that key areas of the business had struggled with using EMS, feeling they had to adapt their processes to use the system, rather than the system adapting to their business. The system is viewed as being heavily reliant on manual input of data...This has resulted in the development of local databases and spreadsheets to assist in producing management information.”

190. Staff within SPA Forensic Toxicology reported that EMS is a slow, time-consuming system that does not lend itself to efficient and effective management of drug driving analysis from end to end. There is no opportunity to effectively allocate, and track work based on staff availability and competency. Staff reported using spreadsheets to circumvent EMS, and attempting not to use EMS during office hours either staying on at night or updating at the weekend. Overall, the previous negative perception of EMS has been compounded by time and endures.

191. SPA Forensic Services has already developed an Initial Business Case for a core operating solution to replace EMS. We would encourage, as a matter of urgency, that this is progressed, as per Recommendation 7.

192. From benchmarking, we found evidence of efficient and agile drug driving process within laboratory settings; utilising barcoding, automation and maximising instrumentation capacity. This also provided efficient and agile work allocation and monitoring systems.



Recommendation 13

SPA Forensic Services should, as a matter of urgency, review current working practices including workload and work allocation for all staff involved in the delivery of drug driving forensic service provision

Recommendation 14

SPA Forensic Service managers must ensure they have effective management structures and performance management information in place to ensure proactive oversight and scrutiny in terms of work allocation, demand and capacity assessment, as well as performance

Evidential reports and court preparation and attendance

193. We understand that the current laboratory reporting process has had a significant bottleneck since 2020. Despite interviews, meeting attendance and site visits, we have not been able to accurately establish the actual backlog in terms of laboratory reports but understand that it has been significant. SPA Forensic Services has not evidenced any ability to manage and effectively reduce this backlog. Despite various process mitigations, none has had any impact on achieving an effective reduction and delivery of an efficient reporting methodology.
194. We found the current reporting practice to be a fragmented and very reactive way of working. Not all forensic staff are trained to report and corroborate a report end to end. Different staff have different skills, so reports are partially completed before being passed on, until completed. Such practice is reliant on staff being flexible and agile and is a contributory factor on where they find themselves. Additionally, laboratory reports create a significant hard-copy evidence file, requiring physical pagination. This is predominantly done by one person in SPA Forensic Services.
195. During benchmarking, we found evidence of the use of abbreviated reporting, automation of reporting process and the production of laboratory reports based on single witness observation. Indeed, during our review no issues with reporting were brought to our attention in terms of cases SPA Forensic Services have outsourced.



196. In England, a two-tier reporting process is used. Streamlined Forensic Report 1 (SFR1 – Abbreviated) and Standard Forensic Report 2 (SFR2 – Enhanced). Effectively, an initial laboratory result is provided at SFR1 and only if a full evidential report is required for court purposes, is SFR2 completed. Some staff in SPA Forensics have experience of this system. We were informed that only a limited number of requests are received for SFR2 reports. The benefit of this is swifter resolution of cases, allowing forensic scientists to focus on toxicology analysis.
197. There are also opportunities to reduce corroboration requirements of laboratory reports. Under section 16 of the Road Traffic Offenders Act 1988, authorisation of a laboratory report for court evidence may be conducted by one scientist instead of two. This authorisation had previously fallen, but the Scottish Government liaised with the Home Office, and this has been reinstated for SPA Forensic Services, since June 2022. We queried the use of this process to assist in alleviating backlog and there appears to be a concern by some SPA forensic staff that this will negatively impact on citations and court attendance requirements.
198. We have noted the significant impact that court citations and provision of evidence have on SPA Forensic Services staff. Currently, there is no central corporate function to manage the administration of citations which is additional work for an already challenged workforce, adding an additional element of stress.

Area for development 7

SPA Forensic Services should consider the introduction of a single point of citation administration

199. Currently, there is no regular provision to allow staff to provide evidence remotely. Due to the nature of the work, staff can be cited to appear throughout Scotland regularly receiving several citations at various locations for the same day. This is neither achievable, practical, nor best use of time and provides an additional layer of stress to an already over-stretched team.



200. We found good evidence of remote evidence provision between private and UK law enforcement laboratory settings and courts in England.
201. It should be noted that failure to provide remote evidence provision may impact on Scotland's ability to outsource forensic service provision.
202. It is vital that SPA Forensic Services works with colleagues from COPFS and the Scottish Courts and Tribunal Service to explore modernisation of this criminal justice pathway that could directly improve efficiencies regarding preparation time and court attendance.

Recommendation 15

SPA Forensic Services should work with Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service to establish a pragmatic and realistic approach to report and evidence submission for drug driving, and consider criteria for SPA Forensic Services professional witnesses and opportunities for remote evidence provision

Data management

203. There is a lack of co-ordination between data retention, data processing and production management guidance, with no explicit reference to sensitive blood samples obtained during section 4 and 5A Road Traffic Act 1988 investigations.
204. HMICS understands the blood samples obtained as part of a section 4 or 5A Road Traffic Act 1988 are not considered as biometric data as per the section 34 (1) of the Scottish Biometrics Commissioner Act 2020. This defines biometric data as information about an individual's physical, biological, physiological, or behavioural characteristics, which is capable of being used, on its own or in combination with other information (whether or not biometric data), to establish the identity of an individual.
205. Police Scotland has a national Data Retention Standard Operating Procedure. Users of the SOP must consider if the items being retained are of a forensic nature. It does not specify forensic sample type (e.g., blood).



206. Drug driving blood samples are taken by Police Scotland for a specific law enforcement purpose. All agencies handling such samples should consider them as sensitive data, and evidence in policy, practice, procedure and training that they are identified, handled and stored appropriately.

Recommendation 16

SPA Forensic Services and Police Scotland should assure that data retention, data processing and production management guidance is cognisant of the handling and management of blood samples and associated data obtained for the purposes of sections 4 and 5A Road Traffic Act 1988



Reporting and internal governance arrangements, performance management and escalation procedures

Role of the Scottish Police Authority

207. The SPA was established under Police and Fire Reform (Scotland) Act 2012 (legislation.gov.uk) and, under section 31 of that Act, has a statutory responsibility to provide forensic services to the police service, the Lord Advocate and Procurators Fiscal and the PIRC. The Director of Forensic Service is an executive officer with responsibility for the management and delivery of forensic services in Scotland, reporting to the Chair of the SPA.

208. The application of section 31 has emerged as a key theme throughout our review and was often raised in discussion by senior leaders on expectations and responsibility of service delivery. We found different interpretations of how the SPA exercises oversight and scrutiny of policing while balancing its responsibility to provide policing with effective forensic services.

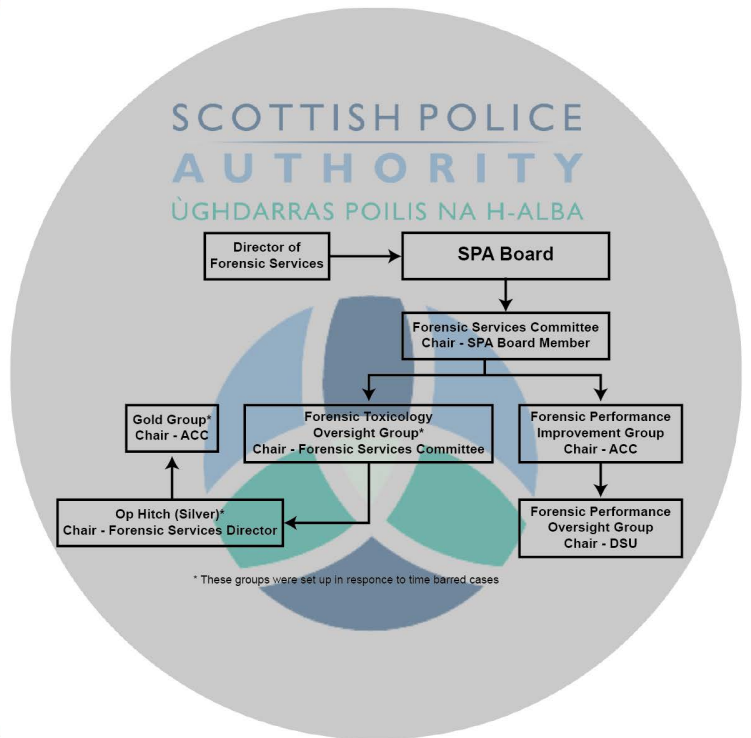
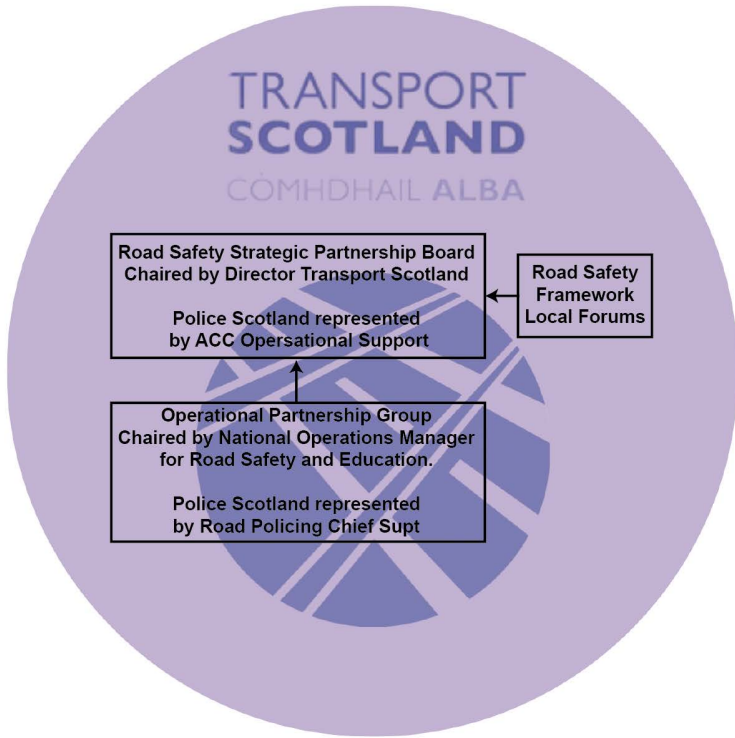
Leadership and governance

209. The following table provides an overview of governance structures within Scottish Government in relation to roads safety and within SPA and Police Scotland in relation to road safety and forensic services. Membership of these groups can involve representation from some or all stakeholders.

210. We would note a disconnect between these various structures which has been apparent in relation to the implementation of section 5A legislation and the subsequent issues which developed in drug driving.



Governance Overview





211. The SPA has a detailed [Corporate Governance Framework](#). This document was refreshed in August 2022 and provides detailed SPA governance and accountability, standing orders and all the committees' terms of reference.

SPA committee structure



212. The Director provides updates to the Board and the Forensic Services Committee (FSC), who have oversight of delivery of the Forensic Strategy. The Chair of the FSC provides regular summary updates of FSC meetings to the Board.

Role of the Forensic Services Committee

213. The governance of forensic services has evolved since 2007 and, as documented earlier in the review, the FSC was created by the SPA in 2018 in response to a recommendation contained in the HMICS 2017 Thematic Inspection of Forensic Services.

214. The terms of reference (ToR) in Annex C of the Corporate Governance Framework states that its purpose is to provide 'oversight, scrutiny, and assurance to the Board on the delivery of forensic services.' The ToR goes on to advise that committee 'will provide advice and seek assurance on the delivery of forensic services by providing constructive challenge and contributing to planning and future development of Forensic Services.'

215. The FSC consists of a minimum of three members including the Chair (the Committee Chair), with Police Scotland, COPFS and PIRC having a standing invitation to attend meetings and participate in discussions.



216. We reviewed FSC documents and meetings from pre-legislation to present day and entered key events on our timeline to understand how this critical issue unfolded from an oversight and scrutiny perspective. HMICS regularly attends SPA Board and FSC meetings in the fulfilment of our independent scrutiny role and has found an increased level of governance and oversight of policing since our [thematic inspection](#) of the SPA in 2019.
217. The dynamics of the FSC are complex, with a member of the SPA chairing the committee. However, the SPA should, with the Director, be able to assure Police Scotland, COPFS and PIRC that their forensic provision needs are being met. The SPA, equally, has a duty to provide oversight and scrutiny of policing. This, naturally, does not extend to the oversight or scrutiny of COPFS and PIRC.
218. The question of whether COPFS is a customer, partner or stakeholder was raised in a recent FSC and remained subjective and open to interpretation. This same query exists with Police Scotland and PIRC, leading us to the view that all three parties should have a platform, with opportunity to challenge the SPA at a strategic level on issues of forensic service delivery.
219. Our review found Police Scotland and the SPA had reached a strategic impasse that could not move beyond the heart of this critical failure – namely, volume exceeding capacity. We consider this an enduring issue for the criminal justice system in Scotland.
220. We retain the view found in our previous inspection, that SPA Forensic Services should remain independent from policing, preserving the operational ‘sterile corridor.’ However, this review within Toxicology has brought into focus the effectiveness of governance during an evolving service delivery crisis. We understand the FSC is unique (due to its dual role): in our Professional Advice Note of October 2016, the option of a non-departmental public body (NDPB) was considered. We recognise the fiscal impact this would present, nevertheless, we would strongly advise an immediate review of the functionality and delivery of this committee.



Recommendation 17

SPA should review the functionality and membership of the Forensic Services Committee to provide effective and robust governance, providing an effective platform for Police Scotland, Crown Office and Procurator Fiscal Service and the Police Investigation and Review Commissioner to hold SPA Forensic Services to account in terms of the quality and delivery of service provision

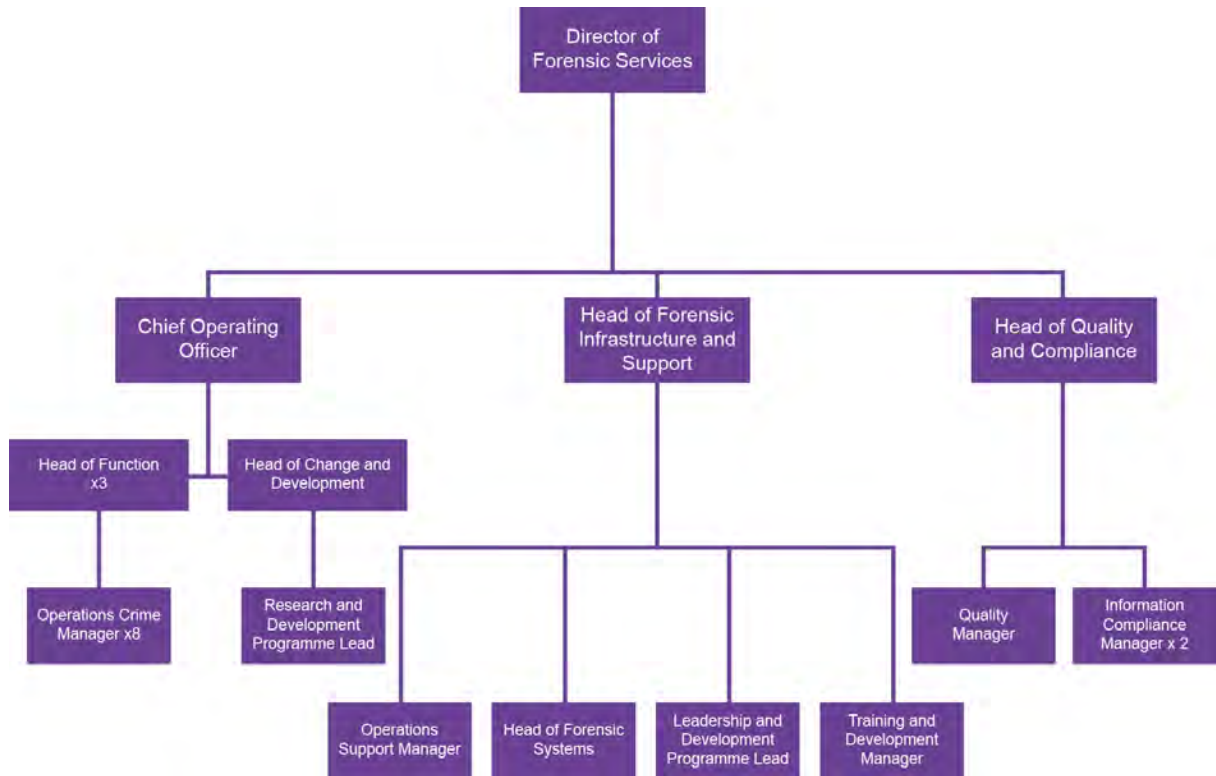
SPA Forensic Services reporting arrangements

221. Our review has endeavoured to understand the strength of the reporting mechanisms from management level to strategic leadership, and from single to inter-agency forums.
222. The landscape that has emerged contains multiple groups and a lack of clarity regarding reporting lines and does not provide confidence in connectivity (especially where there are multi-agency fora).
223. In the last six months, SPA Forensic Services has restructured the senior management team (SMT) following recommendations in our 2017 thematic inspection. Relevant to this review is the new post of chief operating officer, who reports into the Director. This post was created in July 2022 (at this height of this issue), and it provides a link between the Head of Function for Physical Science and the Director.
224. The Head of Function receives reports from the Operations Manager, who has responsibility for drug analysis and toxicology. The toxicology team (around 17 members) is led by a team manager.



225. Roles and responsibilities are described in greater detail later in the report. The reporting at senior management level within SPA Forensic Services is as follows:

SPA Forensic Services senior management and reporting structure



226. The Director chairs the Forensic Services Performance and Planning Board, which draws together all the operational functions performance alongside relevant updates from the People, Corporate and ICT Boards. The performance information forms the basis of the report that is submitted to the FSC and SPA Board.

227. Prior to the new chief operating officer post, the Director chaired the higher-level internal governance meetings, enabling a comprehensive knowledge of emerging operational issues and planned activity.

228. Our review was less confident on the effectiveness of SPA Forensic Services operational and tactical meetings. In the report, we have covered ad hoc 'tasking by email' and we were not presented with any evidence that would signal effective performance management, with little evidence of robust achievement of targets.



Police Scotland governance

229. The Deputy Chief Constable (DCC) for Crime and Operational Support is supported by the Assistant Chief Constable (ACC) for Operational Support Division (including road policing), and the ACC Major Crime and Public Protection. The DCC chairs the Crime and Operations Management Board, providing a forum for all matters under this business area to be considered and discussed.
230. The ACC Major Crime and Public Protection delegates the forensics portfolio to the Detective Chief Superintendent (DCS) Specialist Crime Division – Local Crime.
231. The Roads Safety Governance Board is chaired by ACC Operational Support Division. This is the forum where local policing commanders and representatives from the Road Policing Unit come together to discuss road policing matters.
232. There was communication directly between the forensic portfolio lead and the Road Policing SMT. However, we would observe the fora described do not appear to have facilitated this; rather it was direct contact.
233. There was a lack of connectivity with leaders in the Criminal Justice Service Division who have the lead for custody, productions, case management, and Corporate Services Division who have the lead for data governance, information management and IT.
234. In summary, we would observe that this structure and delegated portfolios do not facilitate a natural connectivity across the wider policing organisation, and we would encourage appropriate representation within established structures when considering matters such as legislative implementation.



Partner oversight arrangements

235. We found evidence that a variety of both partnership and single agency oversight arrangements have been in place both pre- and post-introduction of the drug driving legislation.

236. We recognise that several groups had discussed the risks associated with introducing the new drug driving legislation and note the absence of streamlined activity for implementation of drug driving, or management of matters arising post-legislation. We observed meetings and/or reviewed documents from several standing forensic partnership groups and temporary structures created to manage the criticality of the time-barred cases including:

- Forensic Performance Improvement Group (FPIG)
- Forensic Performance Operational Group (FPOG)
- Forensic Toxicology Oversight Group (temporary – now stood down)
- Gold Group for drug driving (temporary – now stood down)
- Silver Group/Operation Hitch/Drug Driving Improvement Group.

237. The FPIG is chaired by Police Scotland's ACC Major Crime and Public Protection. It provides oversight, monitors performance and, when possible, makes decisions on forensic services issues. The remit includes providing tactical guidance and support to operational groups and ensuring that the Forensic Gateway processes are operating effectively and continuously improving. The group sits quarterly and members collectively consider those matters to be raised at the FSC.

238. FPIG is the management body representing Police Scotland, COPFS and SPA Forensic Services. It has representation from all three bodies and, although a constructive forum to bring together agencies, it is limited in terms of decision making as the Chair only has authority to effect change within Police Scotland.



239. The FPOG is the tactical support meeting and is chaired by a Detective Superintendent from Specialist Crime Division. The nomenclature for this meeting appears to be changeable (from partnership to performance group) but it is a forum where other areas of policing can attend and discuss ongoing service provision issues with the specialisms from SPA Forensic Services. Areas represented in the April 2022 meeting included organised crime and counter terrorism, major crime, local policing, public protection and criminal justice productions, as well as COPFS.
240. Within Police Scotland, the forensics portfolio is held by the Detective Chief Superintendent for Local Crime. While it is acknowledged that serious and complex crime investigation rely heavily on forensic capability, there is clearly a wider service requirement within Police Scotland for SPA Forensic Services. This is especially true in volume crime areas such as road traffic investigation and Police Scotland must ensure that those requiring forensic service provision understand the appropriate governance platforms that exist, to raise matters accordingly.
241. We note that, in January 2021, an internal audit of forensic case management reported to the SPA Audit Risk & Assurance Committee (ARAC) that governance improvements were needed within FPIG and FPOG. This is currently underway and we would specifically ask for the following area of improvement to be considered during this activity.

Area for development 8

As a user of forensic services, Road Policing to have a standing item on the Forensic Performance Operational Group

242. These structures allow more than sufficient opportunities for Police Scotland to consider forensic service provision. However, we are not confident that the structures are known and understood within the wider organisation and thus there is a risk that departments and units with challenges in forensic service provision do not have a clear understanding of how to address such matters. This can lead to matters being raised elsewhere, or the creation of short-life working groups (SLWG), causing duplication and additional pressure on resource attendance, especially for SPA Forensic Services.



243. It is also unclear what reporting there is directly from the FPIG to FSC. There is an opportunity for FPIG and FPOG ToR to be reviewed, in conjunction with the work to be undertaken by SPA on Recommendation 14.

Area for development 9

Police Scotland should review the terms of reference for the Forensic Performance Improvement Group and Forensic Performance Operational Group and consider mechanisms for capturing forensic service requirements and potential challenges experienced within Police Scotland, so that these can be considered, addressed and escalated

Risk management and escalation

244. Since 2017, concerns about capacity in toxicology have been reported within SPA Forensic Services and to partners (illustrated by the early contingency outsourcing considerations). We note SPA Forensic Services did spend around £75,000 in 2019/20 to outsource 250 cases. SPA Forensic Services is still reacting to crises of volume as they occur, however we are pleased that there is now a longer-term framework agreement for outsourcing in place providing section 4 and section 5A testing. What is not clear is the long-term funding allocation.

Risk management

245. SPA Corporate Audit Risk and Assurance has a comprehensive framework for risk management that reports to ARAC. SPA Forensic Services benefits from SPA corporate resource to provide advice and guidance in the management of strategic, operational, and business area risk. We found this to be good practice, which provided an audit of risks raised and their mitigation through various controls.

246. In September 2019, SPA Forensic Services raised an Operational Risk (FS086), citing a risk that drug driving cases would not progress to prosecution due to time bar, and/or ageing caseload, resulting in a reduced success rate (due to degradation).

247. A further Risk (FS103) – drug driving capacity, was raised in July 2021. This risk was that Forensic Services would not be able to meet partner demands to fulfil drug driving testing, due to absence of an overarching agreed strategic direction.



248. These risks scored high and remain open, citing the interim and exceptional measures and the Position Paper to Scottish Government (referred to in the Operating Model Section) as mitigating controls. We would have expected this to trigger scrutiny from the FSC and the SPA Audit and Risk Committee.
249. There is an ongoing review of the risk registers held by FPOG and FPIG. This is an opportunity to consider joint risks and collective mitigations for drug driving.

Escalation

250. In July 2020, the concerns regarding drug driving analysis capacity were raised by the Director of Forensic Services at the SPA Board. This attracted media attention: [Expert warns drug-driving 'could soon exceed' drink-driving - BBC News](#).
251. Our review confirms that, by June 2021, the escalation of capacity pressure within SPA Forensic Services was communicated at the highest level within criminal justice in Scotland. From a prosecutorial perspective, this was raised by the Lord Advocate to the Cabinet Secretary for Justice and Veterans. The Scottish Government has committed resource and funding to this issue, prior to the legislation and to the present day.
252. We have reviewed several papers that report periodically on the challenges presented by drug driving to SPA Forensic Service.
253. The Road Policing Management Unit (RPMU) escalated the following matters through internal Police Scotland governance (primarily the Road Safety Governance Board (RSGB) and the Crime and Operational Management Board (COMB)). This resulted in the chief superintendents from road policing and crime working together to communicate the ongoing issue to divisional commanders, to explain the delays in receiving reports.



Summary of key issues raised within Police Scotland



254. In September 2021, SPA Forensic Services hosted two workshops with representation from SPA Forensic Services, Police Scotland, COPFS and Scottish Government to consider matters related to drug driving service provision. This was to discharge the action raised in July 2021 FSC, whereby the Chair requested a joint paper from SPA Forensic Services, Police Scotland and COPFS to Scottish Government, articulating status of the provision of drug driving forensic services. (Subsequently referred to as 'The Position Paper').

255. At the October 2021 FPIG, the Chair acknowledged concerns about the possibility of drug driving cases becoming time barred. The Director of Forensic Services subsequently ensured this matter was raised at the subsequent FSC, in November 2021.



256. SPA Forensic Services has regularly supplied status updates to Scottish Government, which has led to secured short-term funding to outsource and to procure additional instrumentation.
257. The interim and exceptional measures described in this report provide evidence of SPA Forensic Services, Police Scotland and COPFS working together operationally to alleviate the risk of time bar. These matters were discussed and implemented because of various SLWG established at different time points from implementation. We have no doubts that these discussions, and the temporary measures implemented by the partners, prevented many more cases reaching time bar.
258. What is not evident, is the ability of any of these SLWGs to raise and direct matters to a strategic forum and, therefore, no obvious audit trail in terms of decision making. There was no identification of the overall strategic owner for implementation of this legislation.
259. For instance, we learned of Police Scotland Criminal Justice Custody Division leading a SLWG to oversee matters arising from the taking of blood samples within custody settings. This group stood in isolation from all drug driving-related oversight groups, yet was identifying critical health and safety and evidential sample quality control issues. Some of these issues remain unresolved: for example, we understand that there is an ongoing problem with the standard of vials and packaging supplied by Police Scotland, which is a potential risk to sample integrity.

Critical incident

260. In May 2022, Police Scotland, at the request of the SPA, created a Gold Command Group to manage the criticality of the emerging volume of time-barred cases. We attended this group during our review and found it to be well-chaired and managed. There was appropriate leadership and scrutiny to steer stakeholders to a more stable position.
261. The new Chair of the FSC established the Forensic Toxicology Oversight Group (FTOG) with a focus on three areas relating to toxicology: drug spiking; post-mortem toxicology service; and drug driving. This culminated in SPA Forensic Services presenting initial drug driving development plan proposals. We are keen to understand the progress and impact of this plan and would expect this to be a feature in the FSC and other existing structures.



262. These specific temporary governance structures facilitated candid discussion between agencies on critical issues in service provision. We appreciate that the issue is now better understood by all agencies, but there are clearly still outstanding matters to be addressed, with no agreed and defined route map to ensuring a long-term solution.
263. The Position Paper appears to have been presented as an opportunity to solve the problems of resourcing within Toxicology. Temporary drug driving groups have been “stood down” because of this paper submission. However, we are unclear as to the status of this paper and as noted are aware that stakeholders continue to work within interim and exceptional measure parameters.
264. In our benchmarking, we heard from experienced police and scientific leaders who have experienced drug driving capacity pressures and cited strategic national ownership as key to improvement.

Forensic Services Committee oversight

265. The FSC meets quarterly, although members can elect for additional meetings. Our review found drug driving has been reported to FSC in private session (in accordance with SPA Standing Orders) and/or in the public session.
266. The FSC is the strategic forum for Police Scotland, COPFS and PIRC to attend on forensic matters. Police Scotland is represented by either DCC Crime and Operational Support/ACC Major Crime and Public Protection or Detective Chief Superintendent with forensics portfolio.
267. Our assessment of drug driving is that there is a history of emerging issues highlighted and then not followed up, either by the Committee or SPA Forensic Services itself.
268. The table below, taken from our timeline, is a summarised extract of some of the emerging issues, at FSC pre- and post-legislation.



Summary of key issues raised at SPA Forensic Services Committee





269. The FSC is managed using familiar business management tools such as action log, risk register, performance and situational updates provided by the Director or business areas leads. Drug driving is now a standing agenda item at the FSC, consisting of a situational update presented by a member of the SPA Forensic Services team. These reports lay out the pressures from drug driving analysis and reporting.
270. The SPA Forensic Services quarterly performance reports lay out performance statistics across forensic services, including Toxicology. From the outset, these documents provided an overview that volume of casework had grown beyond capacity.
271. In June 2020, at the FSC, the Chair asked for a meeting to be convened to enable FSC Chair, the Interim SPA Chair, Director of SPA Forensic Services, Scottish Government and Police Scotland to agree what steps were required to address drug driving issues in terms of demand exceeding capacity.
272. The action was marked complete in February 2021, stating that a SLWG had been established between SPA Forensic Services, COPFS and Police Scotland. There appears to be no regular reporting output from this forum.
273. We understand the FSC was in receipt of updates on interim and exceptional measure activity, and periodic assurances as to service status. In February 2021, SPA Forensic Services reported to the FSC that it anticipated normal workload by the end of March 2021. We consider this to be a critical point in the management of this issue, as it was the drug driving cases in March/April 2021 that subsequently failed to meet statutory timescales and thus became the catalyst for the critical incident.
274. Over the following months, despite reports to the contrary, this issue was never resolved with a lack of improvement in performance, failure to increase capacity and a growing backlog. This should have provoked more curiosity and intrusive scrutiny from FSC members.



275. In July 2021, the backlog within Toxicology had grown to c.1,500 cases, with c.12 cases identified at COMB as having exceeded time bar (due to delays in police delivering samples to the laboratory). We have previously referred to the action raised for a joint paper to be prepared, for the attention of the Scottish Government. While this action provides an opportunity to consider medium to long-term solutions, it does not address the immediacy of the situation in terms of backlog and the inevitable risk of time bar.
276. We note that predictions by Forensic Services of an in-house potential capacity reaching c.200 cases failed to materialise. We were surprised to hear the FSC advises that, should demand exceed the c.200 capacity level, Police Scotland would require a business case. We found this surprising, considering the delineation of forensic service provision detailed within section 31 of the Act which states that SPA must provide forensic services for Police Scotland, the Lord Advocate and procurators fiscal and the Police Investigations and Review Commissioner.
277. We are concerned SPA Forensic Services provided assurance during 2021, when capacity reported in performance documents was at 120-133 cases per month. We are of the view that FSC members should have used the meetings to challenge why previous assurance had not produced the desired outcomes and enquire what support could be directly offered by the SPA to resolve this. We noted (from reviewing all FSC meetings and submissions) that there was a pattern of behaviour, whereby SPA Forensic Services would raise critical issues, only to advise that those challenges were mitigated, in the same or subsequent meeting.
278. Notwithstanding this, there can be no doubt that risk of an out-of-control backlog was evident to members of the FSC and, as we have illustrated, the consequence of cases being time barred was highlighted.
279. HMICS would observe that FSC has been reactionary in its oversight of this issue, which has been compounded by a lack of cohesion in what was reported in terms of the drug driving service provision issues. Given the information that was presented to FSC, we would have expected a more robust challenge – both to the information presented and to the significant issues that required direct action (i.e., the growing backlog).



280. Service provision and capacity issues have been raised at FSC since 2019. Although some actions were taken, there was no cohesive, directed and sustained proactivity to understand and address these challenges until May 2022, when the Police Scotland Gold Group was established to critically review the issue of drug driving cases reaching statutory time limit.
281. Statutory timescales should have been a critical consideration as soon as issues were described. However, it is our view, there has been no effective ownership by FSC to lead on the issue and to ensure that service provision was addressed and risks mitigated.
282. HMICS therefore concludes that there is an urgent need for governance change so that an assurance can be provided to SPA, Scottish Government, forensic service customers (namely Police Scotland, COPFS and PIRC) and, most importantly, the communities of Scotland that the SPA FSC is an effective forum of oversight, scrutiny, and assurance for the delivery of forensic services in Scotland. We anticipate that Recommendation 14 will facilitate this improvement.

Performance

283. We examined the SPA Policing Performance Committee meetings from February 2020 to December 2022. The Performance Framework and presentation of the information surrounding road policing has developed but we found an absence of analytical information between the statistics on people killed on the roads and drug or drink driving. Information on drug driving mainly centres on reporting activity during Police Scotland drink and drug driving campaigns.
284. SPA Forensic Services provides several performance reports from various metrics, including Weekly Management Information Performance Reports. These reports contain a significant amount of data providing week to week, and year to year, average comparisons of performance across all SPA Forensic Services departments.
285. The SPA Forensic Services Performance and Planning Board considers monthly performance including information on case aging, caseload, capacity and average age of cases. This data is assessed against SPA Forensic Services Key Performance Indicators, five-year trends and information such as staff absences.



286. SPA Forensic Services presents a quarterly performance report to the FSC. These documents also provide a significant amount of data, in the form of graphs and charts, supported by narrative for all services across SPA Forensic Services.
287. Compilation of these reports is significant and due to constraints in current case management systems, resource intensive. During the period of review, these reports have been refined.
288. SPA Forensic Services is currently devising a new Performance Reporting Framework and we look forward to seeing this product and the impact assessment thereafter. We would expect any performance framework improvements to consider the current service delivery challenges within drug driving. Overall, it should provide a product that supports management requirements, as well assuring effective service provision to other agencies as service users (and, indeed, the public at large). We would hope to see the use of abbreviated performance reports (to be given to oversight and scrutiny groups), alongside more detailed reporting.
289. We are keen that reporting (from both SPA Forensic Services and outsourced providers) shows critical data for each stage in the drug drive service provision – from receipt to evidential report completion. We would expect case status and backlog information to be given at each stage with a clear description of case status against statutory time limits. We do not see the merit in combined data for SPA Forensic Services and outsource provider performance.

Area for development 10

The performance reports produced by SPA Forensic Services Toxicology are an area for improvement. Performance reports should include drug driving case status and backlog information at each stage with a clear description of case status against statutory time limits

290. Overall, we would expect the new SPA Forensic Services Performance Framework to support effective scrutiny internally, as well as by key stakeholders (i.e., Police Scotland, COPFS and PIRC). It should provide a robust mechanism so that the SPA FSC and SPA Board have oversight and challenge and can be assured that SPA Forensic Services is providing a robust service for Scotland.



Turnaround times

291. As we have previously reported, Police Scotland, SPA Forensic Services and COPFS committed to the following turnaround times to support the initial statutory time limit of six months:

- **Police Scotland** – 14 days from date of incident to submission of blood sample to SPA Forensic Services
- **SPA Forensic Services** – 4 months for analysis and evidential report completion (inclusive of 14-day submission period)
- **COPFS** – 1-2 months for case marking and decision on judicial proceedings.

292. These are the maximum timelines to ensure compliance with the six-month statutory timescales.

293. Since the introduction of the legislation, we found no monitoring or regular performance reporting regarding turnaround time compliance.

294. While the current statutory limit has increased to 12 months, we know the Scottish Government will review and consider a return to 6 months this year. We would urge all stakeholders to urgently implement process improvements to ensure ability to achieve a turnaround times. Such process improvements must consider current and future demand and have the agility to react to demand surge and incremental demand growth.

Recommendation 18

SPA Forensic Services must urgently address drug driving analysis and reporting turnaround times, cognisant of six-month statutory timescales



Demand, capacity and capability

Demand analysis

295. Everyone agrees that that initial demand analysis was underestimated; we have described the lack of information that was available to understand the scale and nature of drug driving in Scotland. Stakeholders did have the opportunity to liaise directly with partners in England and Wales who had already implemented this legislation and undergone challenge in terms of demand and capacity. SPA Forensic Services and Police Scotland were also able to consider existing samples submissions in terms of section 4 and related drink driving activity.
296. The Scottish Government, having proposed funding implementation costs for the first two years, worked collaboratively with SPA Forensic Services Police Scotland and COPFS to ascertain the funding needed as per anticipated drug driving case volume.
297. The predicted number of blood samples requiring analysis has varied since planning commenced in 2017 and we have documented this in our timeline. Stakeholders have acknowledged these assessments to be crude estimates. In 2017, stakeholders' initial calculations were based on section 5A convictions in England and Wales data from 2015-2017 which, at that time, amounted to 8,500 driving endorsements. Using population ratios (Scotland representing 10 per cent of the UK) stakeholders concluded that an initial assessment of c.425 section 5A offences per annum could be expected. A 60 per cent increase in section 4 convictions was also factored in, equating to an extra 342 section 4 cases. In total, both Police Scotland and SPA Forensic Services based planning assumptions on an anticipated volume of 800 blood samples.
298. In 2018, the Scottish Government sought stakeholder information for the FIA, as part of the introduction of the legislation. Police Scotland had been directed to Cheshire Constabulary, to gain learning, including how many samples were submitted following positive preliminary roadside screening tests. This volume was tripled to give an indication of expected demand in Scotland, even though Scotland has a population that is seven times that of Cheshire. (We are aware that Police Scotland and the SPA's use of benchmarking is now wider and more sophisticated than it was in 2018, as is the understanding of demand within policing.)



Area for development 11

We would encourage Police Scotland to use the expertise within its Demand and Productivity Unit when considering further expansion of the drug driving service

299. HMICS undertook an [assurance review of Police Scotland's approach to demand](#) in 2021 and we appreciate the finite resource of the Demand and Productivity Unit. However, it is critical that, where possible, evidence-based forecasting is carried out, to help scale up the use of preliminary roadside drug testing.
300. The FIA also contained an assessment by COPFS which predicted there would be between 700 to 1,100 samples, based on previous convictions in Scotland.
301. As indicated on our timeline, by April 2019, Police Scotland gained Senior Leadership Board approval for the purchase of preliminary roadside drug test kits but cautioned that the volume of samples had the potential to reach 1,250 per annum. SPA Forensic Services was, at this point, still planning for around 700 to 800 samples per annum.
302. At point of implementation, all stakeholders were designing policy and process based on differing demand calculations.

Police Scotland capacity and capability

303. Road policing is under the remit of the Operational Support Division, providing access nationally to specialist road policing capability. Road policing officers are highly skilled and undergo ongoing competency and specialist training. The role is broader than ever, and includes specialist RTC investigations, providing family liaison support and targeting criminals who use the road network for criminal purposes.
304. Our review has explored the rationale and impact of the policy decisions regarding preliminary roadside drug testing and the corresponding training of road policing officers. The capacity levels to administer the preliminary roadside tests have remained static over the last three years. We are concerned the constraints on capacity are limiting the impact of the legislation and understand that future expansion will be a phased approach. The Road Policing Management Unit has built a wealth of knowledge regarding geographical areas that would benefit from additional capacity, and we would expect to see this feature in future threat assessments.



305. In some parts of Scotland, the vacancy rate within road policing units is as high as 25 per cent.

Area for development 12

We would urge Police Scotland to consider the impact of vacancies within Road Policing in relation to enforcement capability in support of road traffic legislation

Deployment of preliminary roadside testing kits

306. The Scottish Government provided Police Scotland with first-year funding for the purchase of 4,500 preliminary roadside test kits, which became the primary mechanism for administering roadside drug tests. This provided adequate distribution across the c.767 officers trained and the 28 road policing bases. In line with England and Wales, an average 40 per cent positive rate would have equated to c.1,800 tests per annum, if all the tests had been used in that first year. Police Scotland also had access to several station-based screening devices.

307. In February 2020, Police Scotland reported to COMB that, in the first 18 weeks of the legislation being implemented, c.1,500 tests had been administered, resulting in c.600 positive results and subsequent blood samples for analysis. This equates to 2 tests per officer over that 18-week period and a 37 per cent positive rate. Therefore, Police Scotland forecast that – should the level of preliminary roadside drug testing continue – this would yield c.1,700 positive results and subsequent blood samples for analysis over the course of the year.

308. During our interviews, we noted that all stakeholders at an operational level were aware of the volume being experienced and, in early 2020, discussions began on the first interim and exceptional measures, including additional instrumentation and negotiating £75,000 of outsourcing to ensure there was sufficient toxicology capacity to analyse the blood samples and report the results.

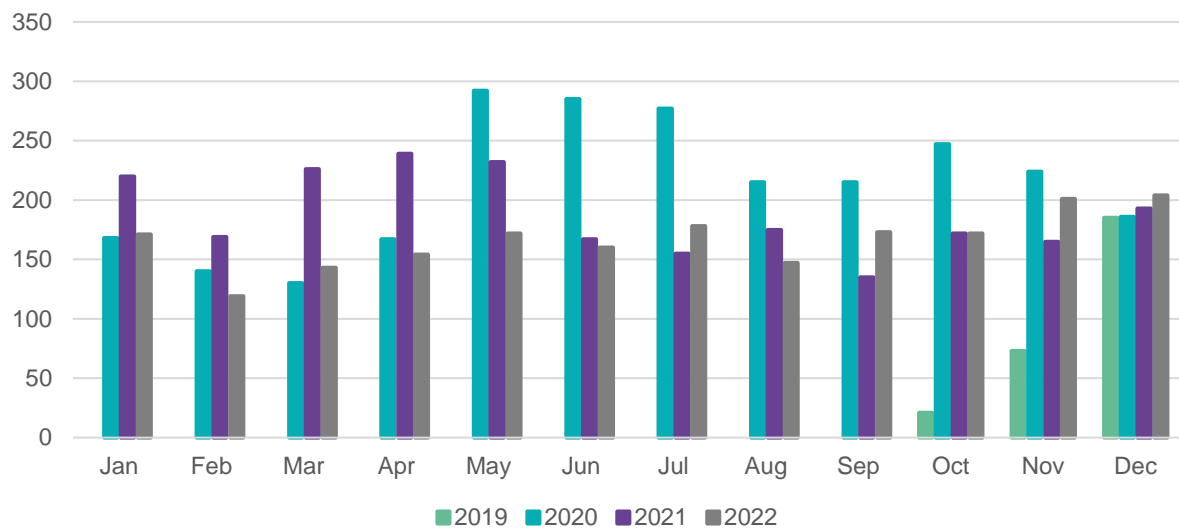
309. Figures referred to in our review have been extracted from documents, meetings, and interviews. We found compiling this information challenging due to the inherent issue previously described in the performance section of this report. These enduring challenges impact on agencies' abilities to predict and manage demand. Again, at an operational level, staff must identify worksheet workarounds.



310. The recording of the deployment of preliminary roadside drug testing kits via the drug screen register has been an invaluable source of information for this review. SPA and Police Scotland have relied on this as their primary source to monitor sample submissions and we commend the staff at Road Policing for diligently undertaking this for the last three years.

311. The volume of samples grows to an average of 200 per month from 2020 onwards, with some surge activity (for example, when Police Scotland had to hold samples while storage equipment was purchased).

Police Scotland submission figures



312. As previously reported, Police Scotland has refrained from expanding the testing capability beyond the approximately 4.4 per cent officers trained at implementation, due to the prevailing issues with service provision. Our interviews and focus groups revealed a level of frustration, primarily due to the limitations that creates in the real time availability of trained officers and use of the legislation.

313. Toxicology scientists had access to the drug screening register and, as such, had access to live time demand. Given this access, we fail to understand how SPA Forensics capacity was permanently at odds with the demand presented by Police Scotland (even taking into account the absence of an MOU or submission protocol).



SPA Forensic Services capacity and capability

314. Toxicology as a specialism within SPA Forensic Services is a standalone function, with the main laboratory in Edinburgh.

315. As of December 2022, this structure comprised a total of c.17 full time equivalent (FTE) staff, demonstrating an uplift of net zero since the legislation was implemented and the intended restructure to create forensic analyst posts

SPA Forensic Services toxicology posts

Post	FTE
Team manager	1.0
Lead forensic scientist	0.79
Forensic scientist	7.28
Forensic examiner	6.0
Forensic laboratory assistant	1.0
TOTAL	16.07

316. Toxicology represents around 3 per cent of the SPA Forensic Services workforce and, from our discussions with SPA staff and during our benchmarking, it is a traditionally difficult area to recruit. Staff often take a convoluted route in their journey to become a forensic toxicologist and we understand that there is a dearth of available scientists to backfill vacancies – caused by retirement and extended leave – which has been a contributory factor to the laboratory capacity issues.

317. There is an ongoing restructuring within SPA Forensic Services including the toxicology department, which is covered later in the report.

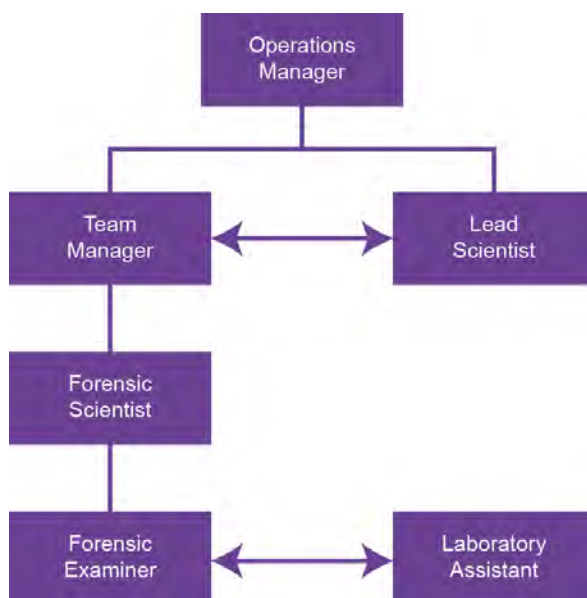
318. Capacity in Toxicology has not historically been an issue and all previous performance reporting indicates that Toxicology was in a steady state. However, we understand that capacity issues have previously been experienced in other areas such as Drugs and Biology. In 2018, as a reaction to the capacity pressures in Drugs, SPA Forensic Services returned c750 drug possession cases to Police Scotland as SPA Forensic Services were unable to undertake analysis and reporting prior to statutory timescales. It is unclear from this inspection if this matter was escalated to SPA FSC. We have a concern that the current issues in drug driving are symptomatic of SPA Forensic Services challenges in delivering on volume crime analysis and reporting.



319. Because of the drug driving capacity issues, SPA Forensic Services requested that Police Scotland consider limiting enforcement activity to reduce submissions. Police Scotland declined, due to the obvious impact on road safety. SPA Forensic Services also sought to return a small number of drug driving cases submitted by Police Scotland, as they assessed that analysis and reporting could not be completed within turnaround times compatible with statutory timescales. Again, this was declined by Police Scotland, and it is our understanding that all efforts were made by the three agencies to complete these cases.

320. The structure of Toxicology is currently hierarchical on paper but interchangeable in practice – depending on skills and competence. Currently, this leads to a close-knit workforce which understands shared responsibility. This current structure is not conducive to a command control swift response.

SPA Forensic Services Toxicology staff structure



321. We welcome the recent steps to recruit a capability manager and four forensic analysts, albeit the recruitment process has taken at least 6 months with the forensic analyst initially on 12 month temporary contracts. Since the conclusion of our fieldwork these posts have been made permanent. The role of the capability manager is to support the team in the day to day running of the toxicology team and undertake administrative tasks that remove the team manager from the operational side of the business. This recruitment process has concluded and there is a temporary appointment in this post.



Roles, responsibilities, and activities

322. We were advised of pending changes to job title and descriptions within Toxicology from 'forensic examiner' to 'forensic analyst' to broaden individual development and wider capability within the department. We view this as a positive development.
323. As part of our fieldwork, we sought to understand the activity, alongside the roles, within the department. This proved to be a difficult exercise because the process and allocation of work is not linear. We expected to see clarity over stages of the process, and alignment to certain roles, but instead we saw a combined but disjointed collective of staff supporting each other to get the job done.
324. Allocation of work in accordance with skills and competencies was best described as "similar to a Venn diagram" due to the variance of current competency levels to perform certain tasks required for the completion of section 4 or 5A cases. We found this absence of a clear tasking and allocation plan exposed the staff to daily disruption from planned activity, affecting output.

Area for development 13

HMICS advises the Toxicology Management Team to undertake a departmental training review to operationally plan/streamline weekly tasking, and report on progress

325. Our inspection revealed an indicative breakdown of the various stages of drug driving analysis and reporting, alongside the length of time for each task to be undertaken. This is a guide only and does not take account of the different anomalies that occur in scientific processes, which require repeat of steps or the entire process.



SPA Forensic Services process time analysis

Activity	Time Analysis
Case received at laboratory	
Case transfer from Admin to Toxicology	15 mins per case
Aliquot samples 0.5 days (per batch)	10 mins per case
Section 5A extraction (THC/MQ)	0.5 days (per batch)
Section 5A THC/MQ analysis (Ultivos)	1 day (per batch)
Section 5A data processing (THC/MQ17)	1-1.5 days (per batch)
Section 5A data corroboration	0.5 days (per batch)
Prepare section 5A report 30 mins	0.6 days (per batch)
Authorise section 5A report	30 mins per case
Report administration (pagination etc)	30 mins per case
Send report to customer	30 mins per case
Sample returned to storage /productions	10 mins per case

326. We found this breakdown suggests that the sample preparation, extraction, and data processing accounts for around four days' work. However, it is still not clear from this breakdown why the bottleneck at the reporting stage prevails, other than due to an absence of defined operational planning and effective management tasking. We are aware that, with outsourcing, the backlog that was c.1,400 is now c.250 and is expected to be cleared by March 2023.

327. We have considered reports presented to FSC and FTOG and it is still unclear why the average completed report time, from April 2023, is expected to take 8-9 months from date of Incident. We are concerned that SPA Forensic Services is working to the outer limits of the temporary 12-month statutory timescale, rather than the inevitable return to 6 months. We remain to be assured that a robust plan is in place to achieve statutory timescales when this 6-month maximum period returns.

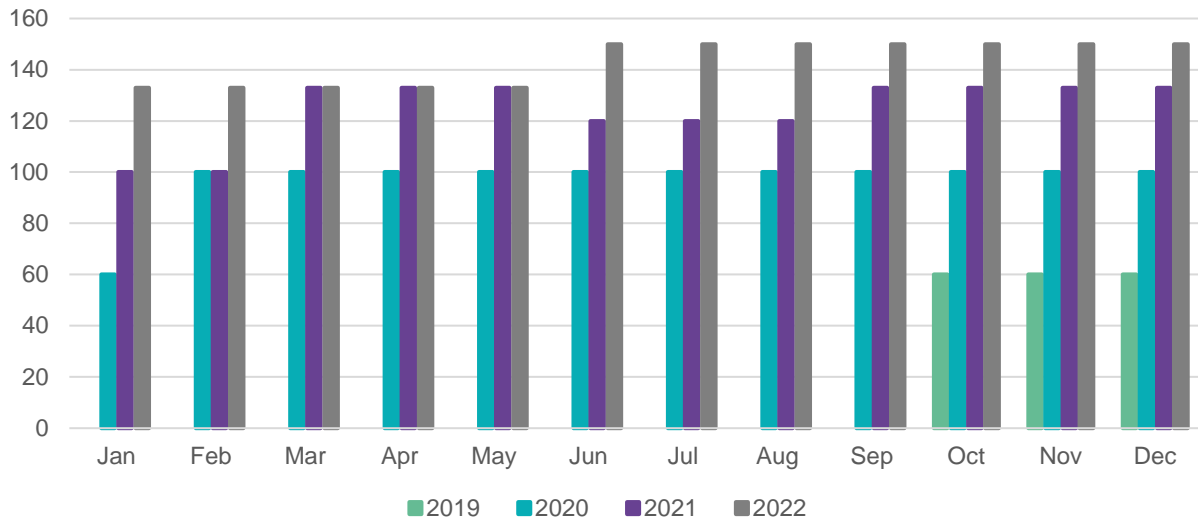
328. Our review considered the wider training and development needs of staff and this is contained later in our report.



Capacity levels and output

329. In the following graph, we have endeavoured to illustrate capacity levels since the commencement of the legislation and have based this on information provided to the SPA, FSC and the SPA Board.

SPA Forensic Services Toxicology drug driving capacity



330. As can be seen in the graph, we acknowledge the progress made by SPA Forensic Services to increase capacity by 150 per cent over the 3 years. We note this progress has been due to staff working with stakeholders and toxicologists across the forensic community to achieve these operational gains.

331. The level of detail in the Development Plan presented does not provide the assurance of ownership and timescales that we would expect.

Area for development 14

SPA Forensic Services should detail the activity, timescales, ownership and expected outcomes contained in the Development Plan

332. HMICS is concerned that the prolonged discussions on capacity have not delivered a sustainable baseline monthly output that factors in any impact of staff abstraction levels, overtime worked, or reduced demand to account for variations in that baseline.



333. The reports during the critical period of 2020/2021 attempted to detail capacity levels that were simply not achieved. We are concerned that, several times during the review period, SPA Forensic Services has failed to articulate and deliver on realistic capacity levels.

Area for development 15

SPA Forensic Services must improve data collection and report on specific data points to provide assurance that staff are achieving a baseline capacity

334. The importance of understanding the realistic capacity in Toxicology will directly inform the expansion of Police Scotland's enforcement activity. We do not agree with the view that Police Scotland must find means to further control demand. The number of samples is currently restricted by necessity. The submission of blood samples is not an optional activity to secure additional evidence; the analysis and forensic report are the essential elements that provide a sufficiency of evidence. We are of the opinion that, in line with the intention of the legislation – to make the roads of Scotland's safer – the capacity must be developed to meet demand in this area.

335. We see no role for COPFS in terms of demand, until the police report is submitted. However, there is merit in ensuring COPFS is informed of potential changes in output levels to ensure sufficient prosecutorial capacity exists.

336. We heard that, case marking for consideration of prosecution is not resource intensive. However, we understand that interim and exceptional measures endure in COPFS, due to challenges in reports continuing to be received so near to the statutory time limit.



Maximising opportunities to increase capacity

337. The Director of Forensic Services has stressed that the ability to increase capacity relies on trained competent resource within the laboratory, but that sufficient accommodation, space and equipment remains a factor. The Scottish Government's £180,000 funding for additional instrumentation marginally bolstered capacity and replacement equipment is still to be integrated.
338. We commend SPA Forensic Services for engaging specialist consultation advice to assist in a drug driving development plan. This focuses on maximising methodology within the laboratory to increase output and reduce timescales. We would view this as short-to-medium-term activity which still needs to be developed into a longer-term sustainable model.
339. We observed that laboratory accommodation in Edinburgh was dated and at capacity. There are poor car parking facilities for staff, with office and laboratory space at a premium. New instrumentation has not been fully deployed due to space challenges. We also learned of staff concerns regarding further risks (such as flooding, due to lack of effective estate maintenance).
340. We are of the view that the current accommodation is not sufficient for any aspirational large-scale toxicology road traffic testing, given that the facility accommodates other criminal work. We recognise the benefits of the geographical location in the east of the country and note that Glasgow, Dundee and the Scottish Crime Campus have benefitted from building state-of-the-art facilities.



Achieving a sustainable drug driving Operating Model

SPA Forensic Services strategy

341. The [SPA Forensic Services strategy 2021](#) was launched in September 2021 and builds on progress from achievements delivered as part of the Forensic Services 2026 Strategy. We have reviewed this strategy from the viewpoint of Toxicology Section and, specifically, the issues that have arisen with drug driving. We are pleased to see that demand and capacity building are at the forefront of the strategy, alongside a focus on the people working in forensic services. The strategy, outlined in three phases over five years, begins with the implementation of the new Operating Model project.
342. We commend the SPA in achieving a cohesive strategy, which is set out in the [SPA Annual Report 2020-2021](#). Senior leaders within SPA Forensic Services were conversant with the strategic intention, however, the wider Toxicology workforce was problem-solving, rather than following the strategic pathway presented.

Workforce planning

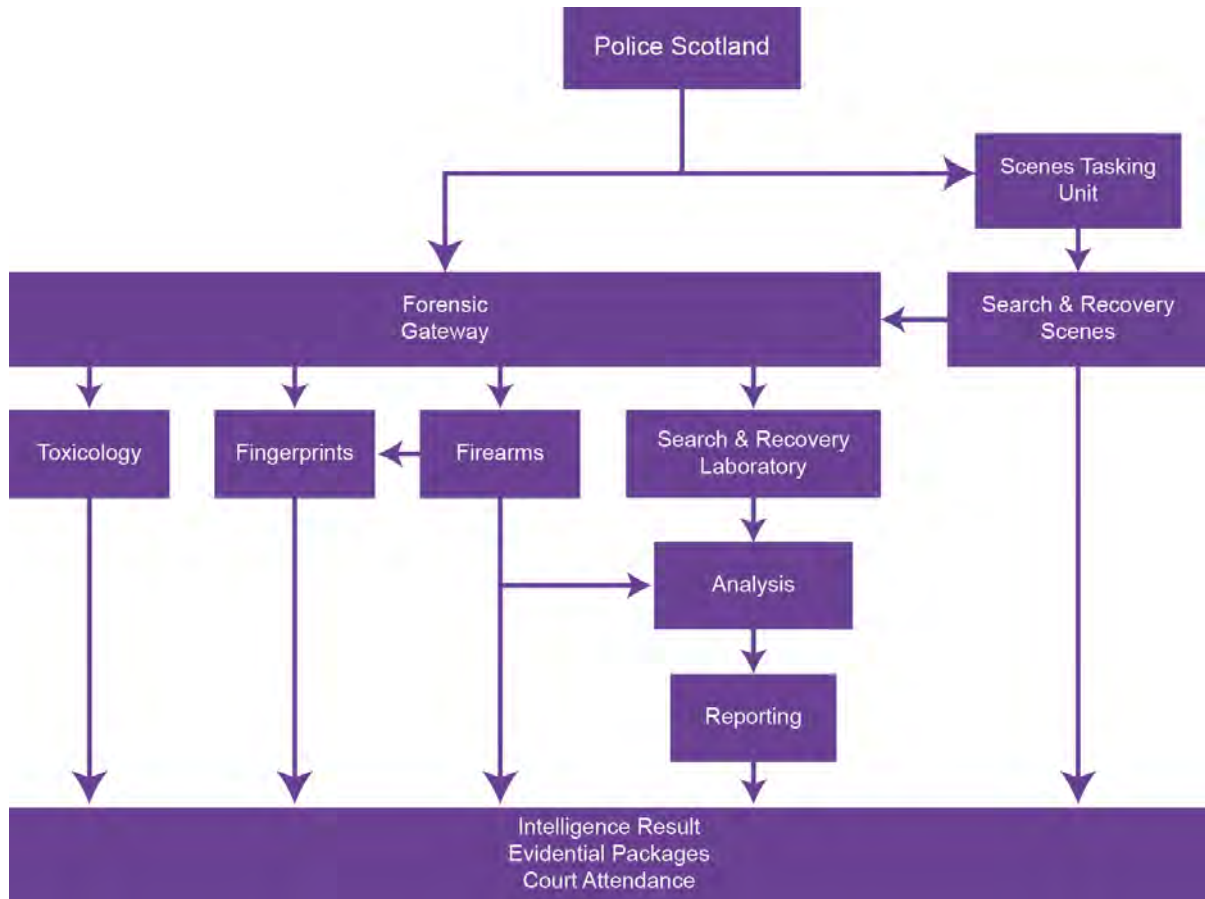
343. We understand that SPA Forensic Services has progressed to a draft Strategic Workforce Plan (SWP), focusing on Outcome 1 of the strategy and keeping people at the forefront. The draft SWP reinforces the vision of the new Forensic Services Operating Model, based on search/recovery, analysis and reporting. Toxicology will remain a standalone function, due to the specialism toxicologists possess. We see the advantage of separating Toxicology from the model, given the ongoing volume demand in this area.
344. We assess that it is vitally important that any new model for drug driving has the investment to grow incrementally, given there is limited resilience from other areas of the forensic services workforce.



Forensic Services Operating Model Project

345. The Operating Model Project Full Business Case (FBC) was approved by the SPA Board in September 2021 and is illustrated below.

SPA Forensic Services – Operating Model



346. The purpose of the model is to have a more efficient capability-based service that can flex to meet the needs of Police Scotland, COPFS and PIRC, especially where volume crime is concerned. At the time of submission in September 2021, the project FBC offered incremental options that included the wider new Operating Model, plus options to increase capacity in Toxicology to deal with rising demand due to drug driving. The original uplift was assessed to require the new capability manager, four forensic scientists and four forensic analysts. Due to the ongoing austerity, there are concerns regarding the financial provision to achieve the intentions scoped in the model, however, HMICS is of the view that Toxicology is in critical need of immediate resource uplift.



Recommendation 19

SPA Forensic Services must prioritise the recruitment of toxicology staff – as outlined in the Forensic Services Operating Model – to ensure current drug driving demand levels can be met in the short term

347. The preferred option in the FBC includes additional staff for Toxicology and increasing to a 7-day working week to maximise capacity. We agree with this rationale but are concerned whether this will be sufficient for expected future demand. The preferred option includes research and development, training and facilities, and toxicology operating modelling, documented at a net cost of £10.2 million over a 5-year period.

Future drug driving model

348. We are not clear how the Position Paper requested by FSC to articulate drug driving status appears to have become an expression of a long-term, sustainable drug driving model. Despite the originating action from FSC, we are unclear what governance routes the current Position Paper underwent, prior to submission to Scottish Government.

349. The paper was submitted in April 2022 and from our observations it has served as a backstop to all the fundamental issues and, as we have already observed, we are unclear as to status of this paper or the subsequent refreshed submission of January 2023.

350. In content, the paper is styled as being tripartite in composition, but gives the SPA Forensic Services' perspective and five options for increasing capacity within the toxicology laboratory. Police Scotland provides an assessment of the volume of samples resulting from enforcement, and how that capability may be rolled out in the future. The paper was distributed and returned by COPFS with no information.

351. The resource options contain various calculations that include the uplift of toxicology staff, additional equipment and associated recurring costs. This suggestion for a sustainable drug driving service is based on the current demand of c.200 samples per month, rising to a potential future demand of c.540 per month.



352. The Position Paper concludes that it seeks an agreement in principle that there requires to be a long-term sustainable model in Scotland to support future drug driving capability within SPA Forensic Services.
353. We would urge that any further development of papers or modelling for drug driving be cognisant of drug driving implementation and ensure that there is robust governance and resource to develop an informed business case.
354. Our benchmarking revealed several models for dedicated road traffic laboratory facilities. All of those engaged with described that they had to review their model on a regular basis, adjusting capacity to changes in demand.

Recommendation 20

SPA and Police Scotland should develop a drug driving Enforcement Model that incorporates incremental growth and investment for innovation and technology with an adjoining public communication plan

Recommendation 21

SPA Forensic Services should review its Estates Strategy in respect of toxicology provision and consider the development of a dedicated road traffic facility

Financial impact of a sustainable drug drive service

355. The budget for policing and, specifically, SPA Forensic Services, was examined in depth in the HMICS Thematic Review. SPA Forensic Services' operating budget for 2021/2022 was 2.6 per cent of the overall policing budget. Senior leaders in policing and SPA Forensics acknowledge the immediate challenges ahead for the public sector and referenced this during meetings we observed. This uncertainty has been cited as a potential obstacle for investment in staff resource and modernisation of systems.



Working collaboratively

356. Despite immediate and dramatic systemic challenges, there appears to be an absence of strategic ownership and direction to resolve ongoing and enduring issues in the service provision of drug driving in Scotland – negatively impacting on safety and service delivery for Scottish communities.
357. Within SPA Forensic Services and the FSC, there was a missed opportunity to halt service and re-evaluate service provision in 2020. Since the legislation was implemented, there has been dialogue at an operational level from SPA Forensic Services, Police Scotland and COPFS focusing improvement activity on individual elements of process, but this would have benefitted from joint strategic direction.
358. Despite Police Scotland and COPFS being aware of concerns regarding demand and capacity, we noted a frustration from many of those we spoke to regarding how service provision issues could be addressed and challenged effectively. The interchangeable description of Police Scotland and COPFS as ‘customers’, ‘partners’ or ‘stakeholders’ compounds the imbalance in this relationship.
359. We found that although there was joint stakeholder response to the recent critical incident regarding drug driving in general terms, there still requires to be pro-active strategic engagement from all stakeholders to ensure that the drug driving process end to end is improved. In addition, to this it is imperative that the joint working continues to build a better understanding of the capacity of the SPA Forensic Services and how they can better manage changes in demand to meet the needs of their primary customers - COPFS, Police Scotland and the PIRC.
360. During our 2017 thematic review, we found there was:
- “...limited evidence of Police Scotland and COPFS formally engaging Forensic Services on their strategy or policy making decisions which may have a direct impact on demand for services. However, both Police Scotland and COPFS express frustration at the limited opportunity to influence budget and policy decisions taken by the SPA regarding Forensic Services, which impact on them. SPA senior leadership believe these are internal governance matters for the SPA, and do not see a role for Police Scotland or COPFS in decision making on budget or policy. This is symptomatic of weakness in the ‘partnership’ relationship.”*



This resulted in the following recommendation that remains outstanding:

Recommendation 4

The Scottish Police Authority should review its partnership governance structures for Forensic Services and undertake a fundamental review of the Memorandum of Understanding ensuring that this process is thereafter undertaken on a regular basis with appropriate consultation with Police Scotland, COPFS and the PIRC

361. We are aware that the previously developed MOU of 2014 has been considered on various occasions, with several drafted attempts to develop an agreement that would suit all concerned. However, in the context of the drug driving provision, this remains evidence of a fundamental challenge to the relationship, roles, and responsibilities of those involved (i.e., SPA Forensic Services, Police Scotland, and COPFS, as well as PIRC). This poses a significant risk to the overarching provision of forensic services in Scotland. We are aware that SPA Forensic Services have proposed a bespoke MOU regarding drug driving service provision. It is our understanding that this is still under consultation with stakeholders and we would observe that there is risk of setting precedent for bespoke MOU requirements for various forensic service provision.

Recommendation 22

SPA and SPA Forensic Services must, as a matter of urgency, articulate the delivery of forensic service provision (as laid out in section 31 of the Police and Fire Reform (Scotland) Act 2012) to manage expectations of agencies and to ensure understanding of what is required by those in SPA Forensic Services



People, organisational culture, and vision

362. As with previous inspections, during our engagement with staff in SPA Forensics we were impressed by their commitment and work ethic. We found that staff are strongly committed to the professional service they provide to their partners, and they talked about supporting the national challenge of improving road safety. However, the ongoing challenges with service provision for drug driving has affected team members and staff reported the negative impact of media reporting and the sustained long hours worked.
363. At an executive level, the strategic intentions and outcomes of SPA Forensic Services Strategy are clearly understood and articulated, with the Director of SPA Forensic Services articulating a clear direction and vision. At an operational level, however, we found little evidence of corporate identity or understanding of corporate culture. The challenge for the SPA Forensic Services SMT is to bridge the gap between its strategic intention and daily delivery by staff.

Area for development 16

SPA Forensic Services should consider how it communicates and delivers the strategic objectives and outcomes laid out in the [Forensic Services Scottish Police Authority Forensic Strategy 2021](#) to staff and key stakeholders

364. We have already commended the Forensic Strategy; we would also observe that it provides a framework and delivery pathway for staff in SPA Forensic Services when considering the current drug driving service provision challenges and future design. For this to succeed, the objectives and ethos of the strategy need to be understood and embedded into daily working.
365. We met staff who were working in a pressurised environment – reception and administrative staff and forensic examiners and scientists, who, since implementation, have worked inordinately long hours with significant overtime. This now appears to have become part of the new norm, with staff reporting that the only way to maintain current service provision is by working permanent overtime. We believe that the current working environment and arrangements are not sustainable.



366. Staff work core hours (Monday-Friday, 0900-1700hrs), but we found that toxicology administration staff and forensic examiners and scientists, have been working an increasing amount of overtime since 2020. In May 2022, SPA Forensic Services advised the SPA Board that this amounted to approximately £113,000 over three years.

SPA Forensic Services Toxicology overtime spend

Financial year	Number of hours	Financial spend (£)
2020-21	172.5	7,559
2021-22	946.8	39,736
2022-23 (2 months till end of May 22)	253.0	10,950
2022-23 (full year projected)	1,518	65,702

367. We view this level of overtime as unsustainable (albeit when contained within the [SPA Forensic Services' budget](#) of around £36 million there is less of a fiscal impact).

368. We were concerned to find that, within the small workforce in toxicology (c.17 FTE), pressures of work affected those in certain roles. This creates a culture of guilt when taking leave or rest days amid the backlog situation. Such long working hours run the risk of burnout and a wider impact on staff wellbeing.

369. Supervisors reported that opportunities to support and manage people were infrequent, due to enduring work demand. Staff reported inconsistent training and development opportunities and, where training had been provided, staff had neither the time nor head space to practically introduce it into daily business. We consider there are limited opportunities for staff to develop wider skills and benefit from non-scientific training.

370. SPA Forensic Services has a People Board to which wellbeing and attendance management sub-groups report directly. The aim of the Board is to provide oversight and governance to all people-related matters, ensuring that SPA Forensic Services has the right number of people in place, with the right skills, experience, and training. We were encouraged to learn that the level of absence has been moderately low within the SPA Forensic Services toxicology team in Edinburgh.



371. Staff were encouraged to provide views on potential areas of improvement. It was encouraging to learn that SPA Forensic Services recognised that improvement activities are distinct from activities merely arising from required change. An improvement form is available for staff to complete.
372. We were, however, concerned to learn that there were long-term abstractions from the Edinburgh toxicology team to support projects elsewhere in the service. This is difficult to reconcile at a time when there is an ongoing challenge to deliver basic service provision in drug driving. We do welcome the recent reporting of the recruitment of the capability manager and the addition of four forensic analysts.

Public trust and confidence

373. SPA Forensic Services staff reported that the negative reporting regarding drug driving cases lost has impacted on them. They are a dedicated team who work hard, and it has been difficult for them – collectively and as individuals – to have these challenges laid out publicly.
374. Front-line officers and supervisors viewed the legislation as critical and accessible, providing instant opportunity to impact on road safety. They were, however, frustrated at the significant delay in receiving the laboratory reports delaying their ability to report offending to COPFS thus delaying the justice process.
375. Concerns were raised about the impact this may have on potential repeat offenders, on driver perception and behaviour and the potential for officers to consider alternative investigative options. There was also a question of credibility. Officers may engage with the same individuals regularly and – if incidents are not being addressed or dealt with – it challenges their ability to police and protect the public. Similar concerns have been noted at a UK level by the National Police Chiefs' Council.



Prevention

What is the current drug driving Prevention Strategy in Scotland?

376. The [Police Scotland Annual Police Plan 2022/23](#) sets prevention as one of its objectives to tackle threats to public safety and wellbeing. We consider that drug driving sits within this category and were disappointed to see no mention of it within the Annual Plan.

377. Police Scotland has set the following objective for road safety:

“Through intelligence-led policing and proactive engagement with all road users, reduce death and serious injury on Scotland’s Road network.”

378. The key milestones for this activity have been identified as:

- calendar of campaign activity with partners
- working with Transport Scotland to develop an in-depth Scottish roads fatality study
- develop an online reporting tool for the public.

379. We would expect to see drug driving prevention feature in these activities. We would encourage Police Scotland to influence a shift to prevention and early intervention, ensuring drug driving is a component in local joint planning and delivery of prevention activity, as well as a key consideration at national cross-sectoral partnerships.

380. We were also disappointed at the lack of information on drug driving in the road safety section of Police Scotland’s website. We view this as a significant missed opportunity to influence driver behaviour. Currently, there is a lack of strategic direction and there are insufficient co-ordinated resources allocated to prevention work and campaigns.

381. We would anticipate Police Scotland devise a prevention strategy in conjunction with key partners and stakeholders. We would expect this to be informed by the wider analytical work that needs to be undertaken to understand the prevalence of drug driving in Scotland.



382. An ambitious strategy is likely to improve outcomes and make an impact on prevalence. Such a strategy will need to encompass traditional road safety interventions and introduce innovative approaches to address the causes of drug driving, ensuring that those who are identified receive the support they need to avoid re-offending.
383. The lack of focus on drug driving prevention is not solely a Police Scotland issue. The Scottish Government and Transport Scotland's Road Safety Framework to 2030 contains only minimal mention of drug driving in Scotland. The most significant messaging on drug driving within this framework highlights the importance of increased enforcement in protecting road users in Scotland.
384. It is concerning that, as it stands, there will be no focus on drug driving prevention for the next seven years (at least). There is a lack of focus regarding drug driving, with the issue being less visible than campaigns related to speeding or the wearing of seatbelts. The Transport Scotland website lists a number of different road safety initiatives but there is no mention of drug driving.
385. We have already highlighted the lack of clarity in Police Scotland policy and direction regarding drink and drug driving and combination offences. At an appropriate juncture, we would encourage Police Scotland and COPFS to analyse drug driving enforcement activity (including conviction data) and consider the efficacy of the introduction of section 5A.
386. As highlighted in the PACTS report, Operation Revoke can be used to revoke the driving licence of prolific offenders while they are awaiting their latest court date. We suggest Police Scotland considers how this tactical option is currently used for alleged drug drivers. They have an opportunity at the point of a positive preliminary roadside drug test to notify DVLA, so that consideration is given to revoking or suspending an alleged drug driver's licence.



Area for development 17

Police Scotland should build on the work with other partners including DVLA and the Traffic Commissioner to maximise intervention and prevention opportunities for prolific offenders from driving, between arrest and conviction

387. Police Scotland does not currently have a strategic drug driving prevention plan. However, it has collaborated with external organisations in the past to create prevention materials relating to wider drug use.
388. In 2014, Police Scotland created a series of interactive videos entitled Choices, in collaboration with Young Scot and Choices for Life. These videos were designed to help and empower young people to make choices about drink and drug behaviours. The video storyline has multiple arcs determined by the choices made by the viewer (e.g., the choice to accept an underage drink, take drugs and ask for help in a dangerous situation). Although powerful, these videos are now outdated and could benefit from being updated, considering the new drug driving legislation, to empower young people to make positive choices about the use of drugs and driving.

Recommendation 23

Police Scotland should include drug driving prevention activity within its current road safety prevention activity

Public awareness of drug driving

389. We found evidence of collaborative work between Police Scotland and organisations such as Road Safety Scotland, regarding issues such as the wearing of seatbelts. Both Police Scotland and Road Safety Scotland have shared consistent messaging across their social media channels on this topic. Evidence of this type of partnership in action highlights the possibility of achieving similar work relating to drug driving.
390. As part of our research, we found that engagement and education activities relating to drug driving in Scotland are limited. We believe that the quality and effectiveness of these engagements are no longer of a standard to fully inform and engage the Scottish public. Updating campaign materials such as the Young Scot Choices videos with new and more relevant information would increase the ability of the campaign to inform the public.



391. Similarly, the lack of a current strategic plan for prevention within Police Scotland highlights the lack of engagement and commitment to inform the public regarding drug driving risks.
392. Police Scotland has released a number of messages on road policing activities on Twitter to keep the public abreast of the ongoing enforcement campaigns relating to drug driving. The Road Policing Unit Twitter account released a message in January 2023, detailing how a vehicle had been stopped for an expired MOT (test certificate), with the driver tested for drugs at the roadside then returning a positive test for cannabis. This message provided an excellent example of Police Scotland utilising the preliminary roadside drug test.
393. The message was viewed over 4,000 times on Twitter and offered a good opportunity to provide readers with information on drug driving, legislation, roadside process, potential consequences, and the dangers of taking drugs or combinations of substances while driving. Unfortunately, no follow-up message was put out by Police Scotland and therefore a chance to further educate over 4,000 people was missed.
394. [Road Safety Scotland](#) has specific, but limited, information and products on drug driving:
- young driver drug driving campaign
 - drug driving: a cheeky quarter poster
 - drink and drug driving: forfeiture poster.
395. There have been potentially influential prevention materials and campaigns in Scotland, with previous campaigns such as '[Gran's in the car](#)' and the Choices videos. However, there is a need for these campaigns to be updated, modernised and repeated.
396. In previous years, Road Safety Scotland has released drug driving information in the form of adverts and informative graphics (alongside targeted social media messages from Police Scotland). It was therefore disappointing to learn that Road Safety Scotland received no funding for road safety campaigns for the period 2022/23, resulting in the absence of any high-profile media prevention campaigns relating to drug driving.



397. One potentially positive development is the work that Police Scotland and I Am Me Scotland have done to provide resources for nursery-age children through to secondary education S5 pupils. These learning resources focus on the general dangers of drug and alcohol abuse, before touching on drug driving in S5. Pupils in S5 may be considering learning to drive (and therefore drug driving is an important discussion point), but this work may be even better placed earlier in their school career. Irrespective of when they learn to drive, children are likely to be entering and riding in vehicles from a young age and it is important to empower them to make decisions on their own health and safety, by allowing them to identify the potential harms of those driving under the influence of drugs.
398. The need for greater public awareness has been further highlighted in a recent [systematic review of the factors associated with illegal drug driving by Razi Hasan and colleagues \(2022\)](#).
399. This research considered a number of studies that have emerged over the last two decades regarding drug driving. Importantly, the research found numerous studies reporting that – the lower the perceived certainty of apprehension – the more likely individuals are to admit to drug driving. In addition, Hasan and colleagues report that individuals are not concerned with being apprehended for drug driving as they believe they are unlikely to be caught. This finding highlights the importance of education for the public. If enforcement activity is the primary method of drug driving prevention, then it is vitally important that public awareness of these enforcement methods is increased. It is evident from recent research that enforcement activity without public awareness is unlikely to reduce drug driving behaviours.

Recommendation 24

Scottish Government should consider refreshing its Road Safety Framework to 2030 to include drug driving, given the growing prevalence in Scotland



Recommendation 25

Police Scotland should work with Transport Scotland and other organisations to establish long-term co-ordinated engagement and education campaigns and programmes aimed at raising awareness of the drug driving law

Police Scotland prevention and tactical options guidance

400. There is no specific guidance in the drink, drug driving (including railway, marine and aviation) training, nor the most recent section 5A training, regarding considerations and tactical options in terms of prevention activity.

401. We were pleased to see evidence of proactive agency data sharing to positively impact on road safety. Police Scotland has established an Information Sharing Agreement (ISA) with the [Traffic Commissioner](#) so that when a positive drug wipe is taken from a professional driver (heavy goods vehicles, buses, and coaches) that information is shared, to promote expeditious licence removal. We would be interested to understand the impact of the ISA between Police Scotland and the Traffic Commissioner. It may provide compelling evidence of the impact of drug driving and promote strong partnership interaction. We would encourage such mechanisms as part of a future drug drive strategy, with reporting within a performance framework, as public messaging on this could be powerful.

Prevention and education in other jurisdictions

402. HMICS has found evidence of positive practices regarding drug driving prevention in neighbouring countries such as Ireland and the Netherlands. In Ireland, the use of drug driving checkpoints in high-risk areas has resulted in positive enforcement practices. Today, the increased use of social media has resulted in a greater public awareness of the checkpoints and their locations. While it could be argued that this could result in drug drivers avoiding the area (and therefore avoiding detection), there is also an argument that awareness results in increased caution, as the apprehension certainty of potential drug drivers is increased.



403. The [Road Safety Authority \(RSA\)](#) in Ireland is a notable example of the positive drug-driving partnerships that can be created with the police. Its website contains many drug driving campaign materials under the banner - *You can lie but your mouth can't*. The website hosts a number of campaign and educational videos designed to explain the powers held by the police in Ireland, what drugs can be tested for and how the testing devices operate. The An Garda Síochána has co-created a range of adverts with the RSA about the drug driving processes, including how a drug wipe operates, showing the impact of drugs on the body and highlighting the major risks of driving under the influence of drugs.
404. In the Netherlands, a designated driver campaign – *Ben je Bob?* – has existed since 2001. This campaign is directed at potential drink drivers and asks those who plan on drinking or taking drugs to consider how they will get home safely, and to designate someone as the ‘Bob’ who will remain sober. Roadside billboards asking, *Ben je Bob?* or *Are you Bob?* serve as constant reminders to drivers to consider their actions. As the campaign has progressed over the last 21 years, the yellow campaign keychain has become a coveted item for those who are the ‘Bob’, serving as constant reminders to those about to enter their vehicle of their responsibilities as drivers. ‘Bob’ has become a part of Dutch culture.
405. Another positive initiative in the Netherlands is the Free Drivers Licence campaign (primarily based on alcohol awareness in drivers). Under this initiative, new drivers are allowed to pick up their licence for free from the local council upon completion of an online alcohol and driving course. To ensure participation, individuals must use a laptop with a camera and microphone and receive a certificate of completion that can be used to receive their licence for free. The initiative saves drivers around 40 euros and may also improve awareness of alcohol laws and driving responsibilities. There is no reason this type of initiative could not be expanded to highlight drug driving laws and raise awareness of changes in legislation.



406. The Dutch Centraal Bureau Rijvaardigheid (CBR) is responsible for conducting driving examinations in the Netherlands and is often asked to assess whether an individual who has been stopped for drug driving can safely drive in the future. If the CBR determines an investigation is required into someone's driving ability due to drug use, that individual is asked to pay around 1,200 euros for psychiatric and physical examinations, as well as urine or blood tests and is unable to drive while tests are ongoing. If drivers do not co-operate, or the investigation determines that they are unsafe to drive, the CBR can invalidate their driving licence. They may also receive a penalty or fine on top of this from the Public Prosecution Service.
407. The Netherlands has also provided input regarding the necessity of keeping abreast of new developments and trends in drug use. The CBR website has an important section on the trend of nitrous oxide. Knowledge about the effects of nitrous oxide is still limited, but the CBR states that there are long-term effects of the drug, including nerve damage, delusions, anxiety and anaemia.
408. It is imperative that stakeholders in Scotland keep on top of such trends and assess the need to amend legislation to protect road users from the negative effects emerging from use of drugs such as nitrous oxide. This shift towards prevention should also include providing information to the public on the potential dangers of using such drugs prior to driving, irrespective of the legal limit.
409. Overall, we would observe that drug driving prevention has not been fully considered or exploited. The importance of prevention work cannot be understated. The collaboration of effective enforcement activity, prevention and education has the potential to safeguard the roads and road users of Scotland. Positive practices in prevention and public education are being deployed in our neighbouring countries and it is important that stakeholders engage with these external partners to widen our own awareness of positive practice and increase the ability to educate and protect the public. While the current focus on enforcement is an important aspect of dealing with drug driving, there must be a focused shift towards drug driving prevention. Without this shift, there is a risk to road safety in Scotland.



Appendix 1 - Glossary

ACC	Assistant Chief Constable
AN GARDA SIOCHÁNA (GARDA)	Ireland's national police and security service
ARAC	Audit Risk and Assurance Committee
CBR	Centraal Bureau Rijvaardigheid (Netherlands)
CC	Chief Constable
COMB	Crime and Operational Management Board
COPFS	Crown Office and Procurator Fiscal Service
COVID PANDEMIC	Coronavirus
CS	Chief Superintendent
DCC	Deputy Chief Constable
EFQM	European Foundation for Quality Management
EMS	Evidence Management System
ERF	Examination Request Form
FBC	Full Business Case
FCN	Forensic Capability Network
FIA	Financial Impact Assessment
FPIG	Forensic Performance Improvement Group
FPOG	Forensic Performance Operational Group
FSR	Forensic Science Regulator
FTE	Full Time Equivalent
FTOG	Forensic Toxicology Oversight Group
ICT	Information and Communications Technology
ISA	Information Sharing Agreement
ISO	International Organisation for Standardisation
IT	Information Technology
JNFG	Joint National Forensics Gateway
MOT	Ministry for Transport
MOU	Memorandum of Understanding
NDPB	Non-Departmental Public Body
NHS	National Health Service
PACTS	Parliamentary Advisory Council for Transport Safety
PAN	Professional Advice Note
PIRC	Police Investigations and Review Commissioner for Scotland



PIT	Preliminary Impairment Tests
PSIF	Public Service Improvement Framework
PSOS	Police Service of Scotland (Police Scotland)
RPMU	Road Policing Management Unit
RSA	Road Safety Authority
RTC	Road Traffic Collision
SFR	Streamlined Forensic Report
SG	Scottish Government
SLB	Strategic Leadership Board
SLWG	Short-Life Working Groups
SMT	Senior Management Team
SOP	Standard Operating Procedure
SPA	Scottish Police Authority
Time bar	The end of the statutory time limit to prosecute is commonly referred to as the “time bar”
ToR	Terms of Reference
UKAS	United Kingdom Accreditation Service



HMICS HM INSPECTORATE OF
CONSTABULARY IN SCOTLAND

HM Inspectorate of Constabulary in Scotland
1st Floor, St Andrew's House
Regent Road
Edinburgh EH1 3DG

Tel: 0131 244 5614

Email: hmic@hmic.gov.scot

Web: www.hmics.scot

About His Majesty's Inspectorate of Constabulary in Scotland

HMICS operates independently of Police Scotland, the Scottish Police Authority and the Scottish Government. Under the Police and Fire Reform (Scotland) Act 2012, our role is to review the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority. We support improvement in policing by carrying out inspections, making recommendations and highlighting effective practice.

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