



HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

Assurance Review of the Scottish Police Authority Forensic Toxicology Provision – Terms of Reference

July 2022




HM Inspectorate of Constabulary in Scotland

HM Inspectorate for Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012¹ 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).

We have a statutory duty to ensure that the Chief Constable and the SPA 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.

¹ Chapter 11, Police and Fire Reform (Scotland) Act 2012.

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- 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.

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 Assurance Review will be undertaken by HMICS under section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012 and will be laid before the Scottish Parliament under section 79(3) of the Act.

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

Our audit

Introduction

1. This assurance review to be conducted by HMICS was requested by the Chair of the Scottish Police Authority (SPA) in June 2022 following challenges experienced by the Scottish Police Authority Forensic Services (SPAFS) - Toxicology Section, meeting statutory timescales, to allow Police Scotland to report 'drug driving' cases under both Section 4 and Section 5A of the Road Traffic Act 1988.

Aim

2. The aim of this Assurance Review will be to assess the state, efficiency and effectiveness of the arrangements in relation to the processes which are in place for obtaining, analysing and reporting toxicology samples obtained for Section 4 and Section 5A Road Traffic Act 1988 cases.

Background

3. The legislative context around the offences of 'drug driving' in Scotland are based on the provisions contained within both Section 4 and Section 5A of the Road Traffic Act 1988 (the 'Act'). Section 4 of the Act created the offence of 'driving/attempting to drive or being in charge of a motor vehicle while being unfit'. Prior to the creation of Section 5A, a police officer would normally first have had to require the driver, suspected to be under the influence of drugs, to participate in a Preliminary Impairment Test (PIT) to determine any impairment on the part of the driver, prior to arrest and any subsequent blood sample being taken at a police station by a medical professional.
4. Section 5A of the Road Traffic Act 1988 was introduced in Scotland, in 2019 via the Drug Driving (Specified Limits) (Scotland) Regulations 2019. Section 5A created the offence of 'driving or attempting to drive with drug level above the specified limit' and set legal limits for drugs in the driver's blood stream and also meant it was no longer necessary to demonstrate 'impairment'.



5. In Scotland, similar to the rest of Great Britain, police officers will use a Home Office type approved preliminary drug test, if a driver has been involved in a road accident where someone dies, or is likely to die or which results in a serious injury, a critical incident or where there is a suspicion the driver has drugs in their system. The preliminary drug test currently screens for the presence of cannabis or cocaine through the provision of a saliva sample. The preliminary roadside drug test is a quick and efficient means by which police officers can gain an early and accurate indication of the presence of drugs in a driver's system.
6. Following a positive preliminary drug test, the accused is arrested, taken to a police station where if they consent, a blood sample will be taken by an authorised medical practitioner and retained for further laboratory analysis by the Scottish Police Authority Forensic Services (SPAFS), prior to the submission of a Standard Prosecution Report (SPR2) to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution.
7. Statutory offences, such as those prosecuted through summary proceedings under Section 4 and 5A of the Road Traffic Act 1988, would normally require to be commenced within 6 months of the date of the offence being committed and any cases which are not commenced within this time will become 'time barred'. In April 2020, due to the COVID-19 pandemic and the resultant impact on the wider criminal justice system, Scottish Government introduced a Statutory Instrument (SI) to extend the statutory time limit of 6 months to 12 months from the date of the incident.
8. Since October 2019, when the legislation came into place in Scotland, the demand on SPAFS toxicology services has been far higher than anticipated. Despite additional investment, including equipment, training and outsourcing, this has resulted in 386 cases being marked 'no proceedings' by COPFS as they have been reported outwith statutory timescales.



Scope

9. This inspection will be undertaken by HMICS in terms of the Section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012 and will consider the following areas;
 - A review of the end to end process for obtaining, analysing and reporting drug driving blood sample results in order to support criminal proceedings
 - The co-ordination, time scales and handover arrangements between justice partners and the potential interface issues associated with this
 - Identify the issues that led to cases not reaching COPFS within statutory timescales
 - Reporting and internal governance arrangements, performance management and escalation procedures
 - The process to monitor the caseload across the system, including timing, individual case management and prioritisation
 - SPAFS current capacity and capability to deal with the demand and the investment required to meet the estimated current and future demand
 - Consideration of a future target operating model and the steps required to achieve an efficient and effective model that can meet demand in the most financially efficient manner
 - Current and future public education, prevention and enforcement models, including the future expansion of the policing response beyond roads policing.

10. HMICS will look to benchmark with other jurisdictions, seeking evidence of good practice in terms of governance, assurance, capacity and capability.



Exclusions from scope

11. The following areas are outwith the scope of this inspection;
- individual auditing of cases which have become time barred by COPFS for prosecution, instead HMICS will examine themes which have led to delays in submission to COPFS
 - arrangements which are in place for post mortem toxicology services delivered through Project Weaver (transfer of Post Mortem Toxicology Services to Glasgow Forensic Services) unless this can be shown during the inspection to have had an impact on Section 4 and 5A analysis
 - accreditation by the United Kingdom Accreditation Service (UKAS) laboratory standard ISO 17025
 - procurement processes for the outsourcing of toxicology services to any external forensic science provider
 - capacity and capability of SPAFS to undertake wider forensic provision eg firearms, biology, fingerprint, DNA and document and handwriting analysis.

Objectives and outcomes

12. The HMICS objective for this inspection is to assess the state, efficiency and effectiveness of the arrangements in relation to the processes which are in place for obtaining, analysing and reporting toxicology samples obtained for Section 4 and Section 5A Road Traffic Act 1988 cases. The intended outcomes from this inspection and its publication of the report are to:
- Provide assurances robust processes are in place for obtaining, analysing and reporting drug driving blood sample results in order to support criminal proceedings. This will extend to governance and performance management.
 - Provide an overview of the issues which have led to cases not reaching COPFS within statutory timescales.
 - Make an assessment of the current and future capacity of SPAFS to meet the demand of Section 4 and Section 5A Road Traffic Act 1988 cases.



Methodology

13. We will use the HMICS Inspection Framework which is based on the European Foundation for Quality Management (EFQM) Excellence Model and Best Value Characteristics.

14. The Inspection Framework will provide a structure to our inspection which will be risk based, proportionate and focused on improving the delivery of policing in Scotland. We will structure our inspection around three themes;
 - Outcomes
 - Leadership and Vision
 - Delivery

15. Between July 2022 and December 2022 we will:
 - Identify a single point of contact for HMICS in the SPA and Police Scotland (PS) to support the review process and to facilitate appropriate access to people and information.
 - Liaise regularly with SPAFS, PS and maintain ongoing engagement with other key stakeholders
 - Issue a self-evaluation template (based on Key Lines of Enquiry - 'KLOEs') with guidance as early as possible
 - Analyse the completed self-evaluation and evidence provided and consider relevant documentation in the public domain. Where possible we will minimise the amount of further documents requested but this will depend on the quality of evidence provided in the self-evaluation. Additional requests may emerge during the course of the review
 - Assess existing jurisdictions in the field of forensic toxicology, and benchmark models in England and Wales, Northern Ireland and Republic of Ireland.
 - Engage directly with relevant officers and staff, conducting interviews and observations where appropriate
 - Provide updates will be provided as appropriate and directed by the HMIC / AIC to closed sessions of the SPA Forensic Services Committee.



Publication and reporting timescales

16. We anticipate publishing a report of our findings in January 2023. Our report will be published in terms of Section 79 of the Police and Fire Reform (Scotland) Act 2012. A copy of the report will also be provided to the Chief Constable, the Scottish Police Authority and the Cabinet Secretary for Justice and laid before the Scottish Parliament. A copy will also be made publicly available on the HMICS website.

17. For further information about the Assurance Review, please contact Steven Meikle, Lead Inspector (steven.meikle@gov.scot).

Craig Naylor

HM Chief Inspector of Constabulary in Scotland

July 2022