

# Memorandum of Understanding

## Provision of Drug Driving Forensic Services in Scotland



**FORENSIC  
SERVICES**

**SEIRBHISEAN  
FOIREANSACH**



**POLICE  
SCOTLAND**  
Keeping people safe  
**POILEAS ALBA**



**CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE**

SCOTLAND'S PROSECUTION SERVICE

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# Contents

1. Purpose	4
2. Introduction	5
3. Background Information	6
4. Service Planning	7
5. Making a request for Forensic Casework	8
6. Service Users Undertakings	9
7. Forensic Services Responsibilities	10
8. Police Scotland Responsibilities	12
9. COPFS Responsibilities	13
10. Prioritisation of requests for Forensic Services	14
11. Performance	16
12. Outsourcing	17
13. Reviewing the MOU	18
14. Approvals	19
Appendix A – Service Catalogue	20
Appendix B – Key Performance Indicators	24
Appendix C – End-to-end process timeline	27

# Purpose

## 1. PURPOSE

- 1.1 This MOU between the Scottish Police Authority, 'The Authority', the Chief Constable of Police Scotland, 'Police Scotland' and the Crown Office and Procurator Fiscal Service, 'COPFS' is a supporting document which sets out details of the processes operated by the Authority to provide Toxicology Drug Driving services. It is supplementary to the general MOU between the parties relative to the provision of Forensic Services.

# Introduction

## 2. INTRODUCTION

- 2.1 Forensic services in Scotland are provided by Forensic Services (FS) which are part of “The Authority” and are funded by “the Authority” via a Grant in Aid from Scottish Government. **Section 31 of the Police and Fire Reform (Scotland) Act 2012 states that “*The Authority must provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and Procurators Fiscal.*”**
- 2.2 By setting and maintaining standards of forensic analysis the Authority seeks to achieve the following:
- Appropriate and timely investigation of crime.
  - Management of instruction, necessity for and prioritisation of forensic submissions.
  - Efficient use of forensic science resources and improved and properly managed prioritisation of workload.
  - A transparent management of the forensic science process across the justice system.
- 2.3 The parties hereto shall at all times work to assist the Authority through effective liaison and communication at the key stages of investigation/case preparation and prosecution.
- 2.4 Cognisance must be taken of the length of time taken to recruit new staff into FS, taking into account likely timescales for recruitment processes, vetting and formal notice periods associated with current employment. As such, it is unlikely that this would realise an immediate benefit in a critical situation, so it is recommended that proactive and collaborative planning is a more effective form of mitigation.

# Background Information

## 3. BACKGROUND INFORMATION

- 3.1 FS is part of the Authority and provides Toxicology services to the criminal justice process in Scotland. Criminal Toxicology services are based at Howden Hall in Edinburgh with Post Mortem Toxicology services based at Moorepark in Govan.
- 3.2 A list of all Criminal Toxicology services (which includes Drug Driving analysis) provided by FS is included within the Service Catalogue which is provided at Appendix A.
- 3.3 The Detection and Quantification of drugs in relation to Section 5A of the Road Traffic Act 1998 (and associated Scottish Statutory Instrument No 83) is accredited to ISO17025:2017, which is assessed by the external accrediting body, United Kingdom Accreditation Service (UKAS). The most up-to-date scope of accreditation is available on the UKAS website.
- 3.4 FS is committed to continuous improvement and to development of new services and utilisation of new technology.
- 3.5 Requests for drug driving analysis within Forensic Services are submitted by Police Scotland (termed 'the Service User') to FS.

# Service Planning

## 4. SERVICE PLANNING

- 4.1 As part of a collaborative planning process all parties to this MOU will discuss annual priorities and requirements to ensure that performance and the associated KPIs, meet Service User expectations. It is accepted that requirements are determined by the available budget, number of offences detected, the cases reported to the Procurator Fiscal, and by any associated developments in the law. Submission priorities are decided by the Service Users, in consultation with FS. Internal KPIs should be a matter for each partner to measure performance internally and to take any actions necessary to meet requirements.
- 4.2 As part of this process, all parties will agree a priority forensic analysis protocol that establishes high and standard risk categories for analysis.

# Forensic Casework Requests

## 5. MAKING A REQUEST FOR DRUG DRIVING CASE SAMPLE ANALYSIS

- 5.1 Drug Driving samples will be submitted directly from the Service User (Police Scotland) within 14 days of incident, except where it is not reasonably practicable to do so (see Appendix C for associated end-to-end process timeline). Provision is made for a limited number of cases to be submitted within 21 and 28 days, however, every effort should be made to adhere to the 14 day target.
- 5.2 If a Request is rejected by FS post submission (e.g. information comes to light which would invalidate a result or there is insufficient time to complete the analysis prior to time bar), then the reasons for this rejection will be clearly specified on the Request form and communicated to Police Scotland.



# Service User Undertakings

## 6. SERVICE USER UNDERTAKING IN SUPPORT OF THIS SUMMARY MOU

6.1 In so far as it is legally possible and practicable to do so, Service Users should (as relevant to their role):

- Document the exact nature of the examination request, or the specific question to be answered.
- Ensure all productions meet the minimum standard for submission (as per FS instruction) and are submitted within 14 days of the incident date (as per Appendix C).
- Lodge all relevant productions with the request.
- Submit any further productions requested by FS / or pertinent information to assist FS to progress the work.
- Ensure timely communication to confirm (1) when Requests are no longer required, (2) when court dates are amended, (3) where an offender has pled guilty, or (4) when there is a change in status of the accused. Any significant delay in communication will have an adverse impact on other cases in progress.

# FS Responsibilities

## 7. FS RESPONSIBILITIES IN RESPECT OF THIS SUMMARY MOU

- 7.1 FS will provide all forensic services to the Service Users, including those outlined in the Catalogue of Services Provided (see Appendix A).
- 7.2 FS will store Criminal Toxicology samples for the period of examination and analysis and will return samples to Police Scotland within 2 months after the conclusion of the examination.
- 7.3 The Service User will be notified in writing of any foreseen delay in completion of an examination request case or part case as soon as practicable (and in advance of the estimated delivery date), and FS will provide an update on the progress of the case. If further information is required from the Service User, without which the case cannot be progressed by FS, FS will request this information from the Service User.

If information has been requested from the Service User, FS will include line management in the communication to mitigate against any long-term absence of OIC, for example, and will place the case on-hold until the information is received. Once the further information is provided, the case will be removed from on-hold by FS within 24 hours.

If the further information is not provided by Police Scotland within 14 days of a request therefor (without exceptional reason), the Service User will be notified that the case will be closed and the case will be returned to the Service User for re-submission.

- 7.4 FS will report Drug Driving cases in accordance with the timescales as detailed within Appendix C.

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**NOTE1:** This target is dependent on cases being submitted in a timely fashion. If submission of a sample is delayed, analysis will be expedited as far as reasonably practicable and in line with the reduced analysis protocol detailed below in order to mitigate against the risk of proceedings being timebarred.

Submission timeliness (from incident date)	Analysis Provided	Expected Timescale (from submission date)
0-14 days	Full section 5a and / or 4 analysis	3 months as per MoU
15-60 days	Full section 5a and / or 4 analysis	3 months as per MoU
2 -4 months	Full section 5a analysis. Section 4 analysis limited to reporting first significant finding or a limited number of tests only.	6 weeks – these cases will be treated as ‘priority’ cases and moved to the front of the caseload and may therefore have a detrimental impact on routine work.
4 – 5 months	Section 5a – 1 test only (i.e. either THC or MQ) Section 4 cases will be rejected due to insufficient time for analysis.	4 weeks - these cases will be treated as ‘priority’ cases and moved to the front of the caseload and may therefore have a detrimental impact on routine work.

**NOTE2:** continuation of delivery to these timescales is subject to maintaining existing testing requirements and current rates of demand and capacity, including ongoing use of outsourcing.

- 7.5 FS shall record the date when the Criminal Toxicology report is sent to a Service User.
- 7.6 FS will work with Police Scotland to prioritise Drug Driving cases under specific circumstances (e.g. where there is an accident involving injury). Where there has been a delay on the part of a service user in the submission of a sample, FS will prioritise testing and analysis of the sample to ensure the case can be reported to the Procurator Fiscal for consideration at the earliest opportunity (and sufficiently in advance of statutory timescales to allow proceedings to commence). This may involve the use of the

reduced analysis protocol as detailed in section 7.4 NOTE1 above. Where possible, this will be in line with the timescales set out at Annex C.

- 7.7 Service Users will endeavour to work in such a way as to avoid delay in the submission of samples to FS.

# PS Responsibilities

## 8. POLICE SCOTLAND RESPONSIBILITIES IN RESPECT OF THIS SUMMARY MOU

- 8.1 Police Scotland shall record the date a sample is taken as a production and the date the sample is then delivered to Forensic Services.
- 8.2 Police Scotland will provide FS with all information reasonably necessary to be able to progress the request. Should further information be required (in order to allow progression of the case), Police Scotland will provide the information as a matter of urgency in response to FS making a written request for same, during which time the case will be placed on-hold. Once the further information is provided, the case will be removed from being on-hold (FS will do this within 24 hours). In order to meet the 6-month statutory timescale, it is vitally important that delays are minimised at each stage of the end-to-end process.
- 8.3 Police Scotland shall record the date the FS Drug Driving Report is received by Police Scotland.
- 8.4 Upon receipt of the FS Drug Driving Report, Police Scotland shall be responsible for timeous reporting via Case Management Units and will submit 90% of FS Drug Driving Reports to the Procurator Fiscal within 14 days of receipt and within statutory time-limits. (see Appendix C for associated end-to-end process timeline). Provision is made for a limited number of reports to be submitted within 21 days, however, every effort should be made to adhere to the 14 day target.

# COPFS Responsibilities

## 9. COPFS RESPONSIBILITIES IN RESPECT OF THIS SUMMARY MOU

- 9.1 Upon receipt of a police report to the Procurator Fiscal, a prosecutor will consider the circumstances within 28 days and decide whether there is sufficiency of evidence and whether prosecutorial action is in the public interest. This must be completed sufficiently in advance of the statutory time limit to allow proceedings to be commenced. In most cases, proceedings are commenced when a summary complaint is served on the accused or when the case calls in court for a pleading diet. The Procurator Fiscal accordingly requires relevant police reports to be submitted at least 2 months in advance of the statutory time limit.
- 9.2 In relation to an SPR reported within two months of the statutory time limit, where this is highlighted to the Procurator Fiscal, the Procurator Fiscal will endeavour to commence proceedings within the statutory time limit. In order to initiate proceedings, a prosecutor may exceptionally require to seek a warrant to cite an accused person to a pleading diet or an initiating warrant in advance of expiry of the statutory time limit, where a prosecutor considers that such action is justified and proportionate. Whether such an application is granted, is a matter to be determined by a Sheriff. In some circumstances, such an application will be refused.

# Prioritisation of Requests

## 10. PRIORITISATION OF REQUESTS FOR FORENSIC SERVICES

10.1 Drug Driving cases will be prioritised, based on the timescale required by the Service User for the provision of results. Where there is an increase in high priority work this may affect the departmental capacity. The agreed priorities are as follows:

Urgent - Cases nearing time bar

Urgent - Fatality cases

Priority - Serious likely to result in fatality cases

Priority - Repeat offenders

Standard - All other Sect 4, 5 and 5A RTA cases unless specifically instructed by COPFS with clear rationale

10.2 Where Police Scotland requires support with specific Police Scotland Operations and initiatives this should be discussed with FS in order that FS may ensure the level of support required and the delivery timelines of this work.

10.3 It is the responsibility of the relevant FS Managers to ensure that the demand for forensic casework is managed effectively and efficiently and to strive to meet the KPI's and deliver an effective service to the justice system.

Where there is a significant increase in demand which cannot be managed by FS, an urgent initial meeting will be held with Service Users and any concerns escalated to the appropriate line management within FS. In practical terms (current structure), this will mean escalation to the Director of Forensic Services, via line management and early engagement with Police Scotland and the Procurator Fiscal.

10.4 Where the short-term demand is significantly and consistently above the capacity for services stated within this MOU, the following should be considered in conjunction with FS Operations Managers and Service Users:

- Re-allocation of resources within the service area, or from one service area to another, where practical, with revised service levels agreed with all parties.
- Capture and escalate the Risk via the FS Risk Registers (and partner risk registers, if appropriate).
- Increase level of outsourcing, where reasonably practicable.
- Engage directly with partners to seek support in the first instance.
- Update Forensic Performance Operational Group or Forensic Performance Improvement Group.

10.5 Where there is a sustained increase in demand for specific services that has lasted at least three months the FS Senior Management Team will formally engage with the Forensic Services Committee regarding the impact on and risk to the criminal justice system and, where reasonably practicable:

- Extend FS reallocation of resources from once service area to another.
- Increase level of outsourcing of drug driving cases to a commercial Forensic Service Provider.
- Increase capacity that supports the new level of demand through reallocation of budget within Forensic Services or provision of additional funding via the Scottish Police Authority or other funding route.



# Performance

## **11. PERFORMANCE REPORTING**

- 11.1 Performance against this Memorandum of Understanding KPIs will be reported through the Operation HITCH Improvement Group or agreed alternative tri-partite forum.
- 11.2 Any issues encountered that cannot be resolved through normal operational routes will be escalated as appropriate.

# Outsourcing

## 12. OUTSOURCING

- 12.1 Where FS require to outsource drug driving cases to address an imbalance between capacity and demand, it is the responsibility of FS to seek additional funding for outsourcing such cases.
- 12.2 FS will be responsible for setting up, and maintaining, any outsourcing contract associated with Drug Driving and will be responsible for identifying suitable cases for outsourcing, and notifying partners in advance of any increase in downstream demand.
- 12.3 It is the responsibility of FS to ensure that the necessary data protection / information security requirements are met and that the necessary security and vetting requirements have been met, prior to sharing any casework data.
- 12.4 Results from outsourced cases will be communicated to FS and Service User, via e-mail and via hard copy report, by the commercial Forensic Science provider.
- 12.5 The performance of the Forensic Science provider to meet contracted KPI will be monitored on an ongoing basis by FS.

# Reviewing of the MOU

## **13. REVIEWING THE MOU**

- 13.1 This Memorandum of Understanding is valid from the date it is signed until further notice. It should be reviewed at a minimum once per fiscal year; however, in lieu of a review during any period specified, the current Memorandum of Understanding will remain in effect.
- 13.2 FS is responsible for facilitating regular reviews of this document. Contents of this document may be amended as required, provided mutual written agreement is obtained from all parties. FS will incorporate all subsequent revisions and obtain mutual agreements / approvals as required.

# Approvals

[Steve Johnson]

Date: 03/12/2024

[Assistant Chief Constable]

On behalf of Police Scotland



[Ruth McQuaid]

Date: 09/12/2024

Ruth McQuaid

[Deputy Crown Agent – High Court]

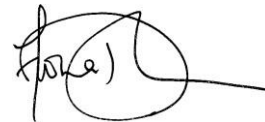
On behalf of [Crown Office and Procurator Fiscal Service]

[Fiona Douglas]

Date: 08/01/2025

[Director of Forensic Services]

On behalf of [Scottish Police Authority]



## APPENDIX A

MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH POLICE AUTHORITY, POLICE SCOTLAND AND COPFS – CATALOGUE OF SERVICES PROVIDED

<b>ALL FORENSIC SERVICES</b>		
<b>Service Code</b>	<b>Service Title</b>	<b>Description of Task</b>
A01	Reports	Full CJ report (inc. summary to report)
A02	Scene Report	Scene report completed by Lab based staff
A03	Court Attendance	Evidence given
A04	Court Attendance	No evidence given
A05	Fast-track Preliminary Examination	Internal use to expedite some examinations for efficient progress
A06	Proficiency Trials	Collaborative tests in accordance with ISO 17025
A07	Defence Examinations	Supervising Defence Scientists
A08	Forensic Strategy Meetings	As instructed

<b>CRIMINAL TOXICOLOGY</b>		
<b>Service Code</b>	<b>Service Title</b>	<b>Description of Task</b>
TX01	Road Traffic Act Offences – Section 5a	Analysis of blood samples for specified controlled drugs
TX02	Road Traffic Act Offences – Section 4	Analysis of blood and urine samples for alcohol & drugs
TX03	Road Traffic Offences – Section 5	Analysis of blood and urine samples for alcohol
TX04	Road Traffic (Alcohol calculations)	Analysis of biological and non-biological samples for alcohol
TX05	Sexual Offences	Analysis relating to Sexual offences cases
TX06	Other criminal offences	Analysis as required
TX07	Other criminal offences (Alcohol calcs)	Analysis as required
TX08	Outsourcing	Case tracking
TX09	Road Traffic Conversion	Sec 5a to sec 4

**FS Testing Protocol (correct as at November 2024):**

***For Section 5A cases:***

- For cases where the driver failed the roadside test for THC only, any blood sample subsequently taken is only tested for THC. No further analysis would be carried out even if the results for THC is below the legal limit unless there was some information relating to impairment.
- Where a driver failed the roadside test for Cocaine only, we process the data for all 16 drugs. We do not test for THC in these cases. In essence, we test for 16 of the 17 Section 5A drugs (excluding THC).
- For cases where a driver failed the roadside test for **both** THC and Cocaine, any blood sample taken is initially only tested for THC (if less than 4 months old). If more than 4 months old the blood is initially only tested for 16 of the 17 Section 5A drugs (excluding THC). If any drug from the above analysis is above the limit, the case is reported without any further work. If either of these analyses are negative, or below the specified limit, the complementary analysis is undertaken (e.g. if negative/below the limit for THC, the analysis is undertaken for the remaining 16 drugs. The converse is also true).

**For Section 4 cases:**

- For a sample taken pursuant to a section 4 investigation, scientists run the sample through the Section 5A panel of drugs.
- If the sample is over the limit for a Section 5A drug, the SPA scientists will not conduct any further analysis and will provide a report that the accused was over the limit in relation to a Section 5A offence.
- If the results are under the Section 5A limits, the SPA scientists consider whether there is evidence of a combination of drugs, each under the relevant limit, which would have caused impairment. If the scientists are content either one drug or the

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combination of drugs would cause the impairment, then they don't do any further analysis, and provide a report setting this out.

**Outsource Partner (Eurofins) Testing Protocol (correct as at Nov 24):**

***For Section 5A cases:***

- For cases where the driver failed the roadside test for THC only, any blood sample subsequently taken is analysed for the full Section 5A panel of drugs.
- For cases where a driver failed the roadside test for Cocaine only, any blood sample subsequently taken is analysed for the full Section 5A panel of drugs.
- For cases where a driver failed the roadside test for **both** THC and Cocaine, any blood sample subsequently taken is analysed for the full Section 5A panel of drugs.

***For Section 4 cases:***

- For cases where the driver failed the roadside test for THC only, any blood sample subsequently taken is analysed for the full Section 5A panel of drugs and Section 4 panel simultaneously. Initially, the data will only be processed for Section 5A drugs and if any Section 5A drug is over limit, it will be reported as a Section 5A. If under limit process data for remaining Section 4 drugs and, if any significant drug(s) found, it will be reported as Section 4. If further analysis is required, following SPA approval, there will be an expanded screen for other drugs, e.g. prescribed medication not on Section 4 panel.
- For cases where the driver failed the roadside test for Cocaine only, any blood sample subsequently taken is analysed for full Section 5A panel of drugs and Section 4 panel simultaneously. Initially, the data will only be processed for Section 5A drugs and if any Section 5A drug is over limit, it will be reported as a Section 5A. If under limit process data for remaining Section 4 drugs and, if any significant drug(s) found, it will be reported as a Section 4. If

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further analysis is required, following SPA approval, there will be an expanded screen for other drugs, e.g. prescribed medication not on Section 4 panel.

- For cases where the driver failed the roadside test for THC and Cocaine, any blood sample subsequently taken is analysed for full Section 5A panel of drugs and Section 4 panel simultaneously. Initially, the data will only be processed for Section 5A drugs and if any Section 5A drug is over limit, it will be reported as Section 5A. If under limit process data for remaining Section 4 drugs and, if any significant drug(s) found, it will be reported as Section 4. If further analysis is required, following SPA approval, there will be an expanded screen for other drugs, e.g. prescribed medication not on Section 4 panel.

**NOTE:** further alignment of outsourced and in-house testing is likely to incur additional cost for outsourcing.



**APPENDIX B**

MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH POLICE AUTHORITY, POLICE SCOTLAND AND COPFS – KEY PERFORMANCE INDICATORS APPLICABLE TO THE PERFORMANCE OF THE AUTHORITY

FS Current Departmental capacity (Section 4 and Section 5A cases only):

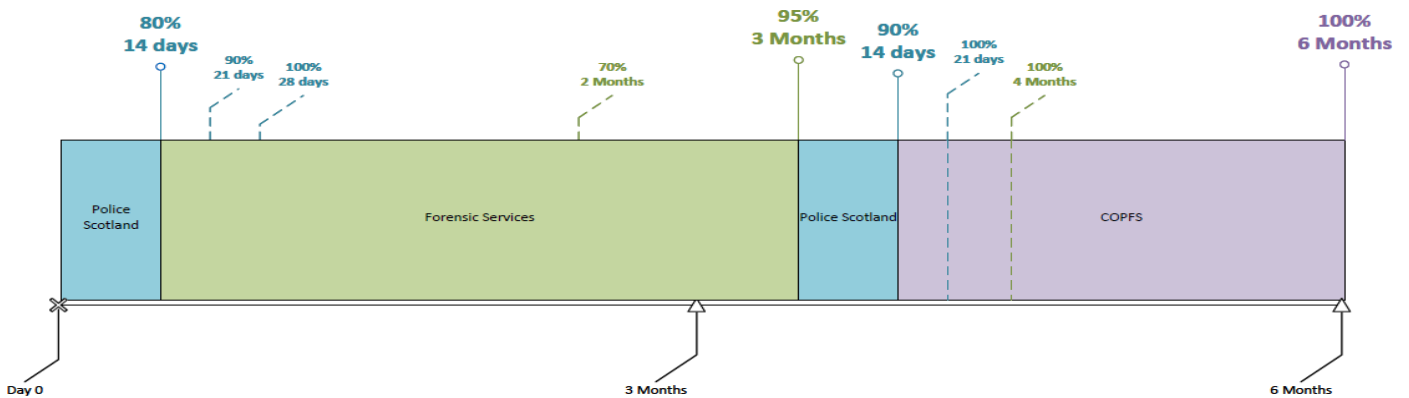
Department	Current cases per month	Projected cases per month from Q4 FY 2024-25
Toxicology	250 <sup>1</sup>	270 <sup>2,3,4</sup>

NOTES:

- (1) Current capacity is based on current level of resourcing, including overtime and current level of demand for other Criminal Toxicology casework.
- (2) Projected capacity is based on the additional development work being completed as planned.
- (3) Projected capacity will be realised on an incremental basis, as a result of improvement activities being undertaken in the Toxicology Development Plan. As such, internal capacity has now stabilised at 250 cases per month.
- (4) It is intended that outsourcing of Section 4 and Section 5A drug driving cases will continue to supplement the internal capacity during 24/25 in order to meet customer demand (subject to available funding).

APPENDIX C

MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH POLICE AUTHORITY, POLICE SCOTLAND AND COPFS – END TO END PROCESS TIMELINE, INCLUDING TARGETS (< 6 MONTHS)



Drug Driving 6 Month STL all Partners Timeline with Stretch Targets

**NOTE 1:** As the end-to-end timescale for completion is 6 months, this requires an increased level of compliance by each of the partners. Non-compliance will lead to increased risk of not meeting Statutory Time Limit.

The end-to-end timescale provides each partner agency with agreed stretch targets. This is intended to increase flexibility and to promote collective responsibility to achieve the overall six-month timeline.

**NOTE 2:** Where cases are identified as being out with the agreed stretch targets, each partner agency will endeavour to take appropriate measures to ensure compliance. The following table gives a service standard which SPA FS, Police Scotland and COPFS feel is achievable and realistic, based on the current position (Oct '24), resources and performance, and can be agreed under the MOU:

Stage of end-to-end Process	KPI	% Target
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Police to submit Section 5a and Section 4 drug driving case	14 days	80%
Police to submit Section 5a and Section 4 drug driving case	21 days	90%
Police to submit Section 5a and Section 4 drug driving case	28 days	100%
FS to analyse and report case from receipt – Section 5a and Section 4	2 months	70%
FS to analyse and report case from receipt – Section 5a and Section 4	3 months	95%
FS to analyse and report case from receipt – Section 5a and Section 4	4 months	100%
Police to process case and submit to COPFS	14 days	90%
Police to process case and submit to COPFS	21 days	100%
COPFS to mark case with sufficient time to initiate proceedings	2 months	100%

The table above provides turnaround time for cases completed by SPA Forensic Services. Outsourced cases are excluded, and turnaround times are as detailed in the contract.