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### Question 1

**Terminology is important in relation to road traffic cases - are we talking about samples or specimens?**

#### ANSWER

The Road Traffic Act 1988 (RTA) and Road Traffic Offenders Act 1988 (RTOA) use the word specimen throughout when referring to preliminary alcohol and drug tests, specimens of breath and saliva/sweat, and for evidential breath, blood, or urine specimens.

The word sample is used only once in 'unconscious driver' provisions where it says under section 7A(3):

*It shall be lawful for a medical or health care practitioner to whom a request is made under this section, if he thinks fit -*

*(a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and*

*(b) to provide the sample to a constable.*

In sec 15(5) and (5A) RTOA which is about dividing of specimens only the word specimen is used.

*15(5) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless -*

*(a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and*

*(b) the other part was supplied to the accused.*

*15(5A) Where a specimen of blood was taken from the accused under section 7A of the Road Traffic Act 1988, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless -*

*(a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the accused was divided at the time it was taken; and*

*(b) any request to be supplied with the other part which was made by the accused at the time when he gave his permission for a laboratory test of the specimen was complied with.*

In the Police and Criminal Evidence Act 1984 (PACE) the statute refers to samples (sec 62 Intimate Samples), except at the end of this section it says PACE does not apply to 'specimens' taken under the RTA (or similar Rail provisions).

It is common practice to use sample when a specimen is divided although probably, we should say part of a specimen.

### Question 2

**How much blood is required when a blood sample is taken under the RTA?**

#### ANSWER

This will depend on the individual forensic toxicology laboratory/forensic science provider (FSP). It may be possible to test for alcohol with 1ml of blood divided into two samples.

However, if a test is required for alcohol and/or drugs than ideally the blood specimen obtained should be divided into the two (preferably) glass vials containing at least 1.5% sodium fluoride + potassium oxalate or EDTA. Approximately 7.5ml into 10ml/2x5ml tubes (no more than  $\frac{3}{4}$  full).

Smaller quantities of blood maybe submitted to the FSP for testing. The exact amount of blood required depends on the FSP (see Appendix 1 - Advice from Eurofins) and the FSP will try and work with less if only a small amount of blood has been obtained.

Ideally samples should be refrigerated, but if there is no refrigerator available, they can be frozen as long as the sample tubes are no more than  $\frac{3}{4}$  full.

*Recommendations for the Collection of Forensic Specimens*

### Question 3

**If the HCP fails to obtain a blood specimen on the first attempt how many further attempts are allowed?**

#### ANSWER

If the HCP fails to take a blood specimen, then further attempts to take a specimen may only be taken with the consent of the individual. As to whether a refusal to allow further attempts is reasonable will depend on the circumstances.

It maybe that after an examination of potential sites from which to take a blood specimen the HCP concludes that there is a medical reason for failing to provide a specimen because of poor venous access.

It was held where after three unsuccessful attempts to take a blood specimen the driver 'had lost all confidence in the doctor' they were entitled to say, 'enough is enough'. This was deemed to be a reasonable excuse for not providing a blood specimen (R v Harling [1970] RTR 441).

If the individual moves during the taking of the blood sample and/or does not comply with the procedure there may be an argument for a second and third attempt to take enough blood. The HCP will need to be certain that there is a failure on the individual to comply, after previously consenting, and the clinical notes should document the procedure in detail.



## Question 4

If the HCP manages to take only a small amount of blood, e.g. 1-2mls, can they take another specimen?

### ANSWER

If the HCP has only obtained a small amount of blood that potentially is not enough to test for alcohol, or the drugs suspected, it is questionable if the individual has complied with the requirement of the RTA as potentially a specimen has not been provided. Any blood obtained in the syringe should be divided into the two vials and labelled accordingly with the exact time.

The HCP should explain to the individual that in their opinion the small amount of blood obtained is insufficient to be a specimen which could be analysed. If the individual consents to a further blood specimen being taken the HCP may do so. It is essential that a new kit is opened, and a separate syringe and needle are used. The second specimen, if obtained, must be put into the different vials.

It is a legal requirement that to constitute a blood specimen it has to be taken on a single occasion and blood from separate 'takings' cannot be mixed (Dear v DPP (1988) RTR 148, Crim LR 316, 20th Nov 1987, QBD DC.)

The two vials from the first attempt, and two vials from the second should be handed to the police officer. The specimens (vials both from the first and second procedure) should be offered to the individual as usual by the officer and then sent to the laboratory for testing. Each set of specimens should be labelled with the exact time of taking of the specimen.

The procedure undertaken must be fully documented in the HCP's contemporaneous clinical notes (written or electronic).

If the individual refuses to allow further attempts to take blood after the initial potentially insufficient volume was obtained, consideration should be given as to whether their refusal is reasonable or not in all the circumstances.

## Question 5

If the HCP only obtains a small amount of blood does the blood specimen have to be divided?

### ANSWER

The legal answer is no in a conscious driver case, but yes in a hospital unconscious driver case.

In a conscious driver case, if there is only a small amount of blood in the syringe which potentially if not divided would be sufficient for analysis, the individual can be asked at that stage whether they want part of the specimen for their own analysis and if they say no then the HCP can put the contents of the syringe into one vial, which can be submitted to the laboratory. This should be fully documented in the HCP's contemporaneous clinical notes (written or electronic).

## Question 6

How much urine is required when a urine sample is taken under the RTA?

### ANSWER

The amount of urine required must be large enough to be divided into two parts by the constable and each part must be capable of analysis (R v Coward (1976) 63 Cr App R 54 (Ct of Appeal)).

The minimal amount for analysis will depend on the individual laboratory and which drugs are of interest. A rough guide is 5mls and then the laboratory will prioritise the testing i.e. they proceed stepwise to try and get the full testing completed, starting with the drug of highest priority.

## Question 7

HCPs may see individuals arrested under the RTA who are taking cannabis-based products (CBPM cannabis-based products for medicinal use in humans) where the level of tetrahydrocannabinol (THC) in the blood may be above the legal limit currently 2micrograms/L. What is the statutory medical defence?

### ANSWER

The Road Traffic Act Section 5A(3) states that: *'it is a defence for a person ("D") charged with an offence under this section to show that —*

- (a) *the specified controlled drug had been prescribed or supplied to D for medical or dental purposes,*
- (b) *D took the drug in accordance with any directions given by the person by whom the drug was prescribed or supplied, and with any accompanying instructions (so far as consistent with any such directions) given by the manufacturer or distributor of the drug, and*
- (c) *D's possession of the drug immediately before taking it was not unlawful under section 5(1) of the Misuse of Drugs Act 1971 (restriction of possession of controlled drugs) because of an exemption in regulations made under section 7 of that Act (authorisation of activities otherwise unlawful under foregoing provisions).*

(4) *The defence in subsection (3) is not available if D's actions were —*

- (a) *contrary to any advice, given by the person by whom the drug was prescribed or supplied, about the amount of time that should elapse between taking the drug and driving a motor vehicle, or*
- (b) *contrary to any accompanying instructions about that matter (so far as consistent with any such advice) given by the manufacturer or distributor of the drug.*

(5) *If evidence is adduced that is sufficient to raise an issue with respect to the defence in subsection (3), the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.'*



The defence applies when a person has been charged, not at the investigation stage. Whilst the claim should be carefully considered by the HCP (and officer), a blood procedure may still be undertaken as it can be difficult to assess the truthfulness of a claim of medical use at this early stage. A subsequent analysis of the specimen may well assist in proving or disproving the defence.

As with other prescribed medication e.g., benzodiazepines, driving ability may be impaired. Individuals should be particularly careful when they start medication that has the potential to cause drowsiness and reduce reaction times.

If the police have evidence of impaired driving due to drugs, prescribed or not, then they can prosecute under the existing offence of driving whilst impaired due to drugs Section 4 RTA. Under this section the evidence may be provided by witnesses at the scene of driving, the police, the HCP, and the forensic scientist.

The decision with regard to impairment is made by the Court based on all the evidence presented (*Leetham v DPP* QB 488 (1998)).

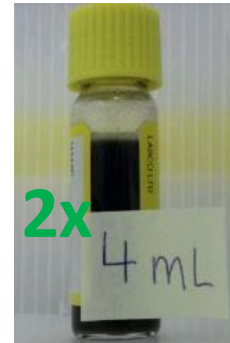


## Appendix 1 - Advice from Eurofins

**Ideal** – allows us to complete all drug and alcohol testing:

- Sample volume of **8mL** to be taken.
- Split into 2 vials of **2 x 4mL** samples for submission.

*NB: Although the vial holds 5mL, it is recommended that only 4mL is added to avoid the vial cracking if the vial is ever frozen (we recommend refrigeration only for RTA cases).*

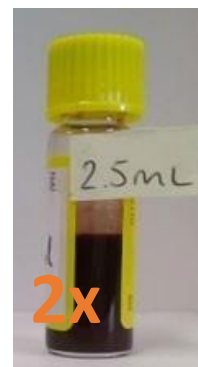


**Minimum** – the lowest volume with which we should be able to complete all drug and alcohol testing:

- Total sample volume of **5mL** taken.
- Split into 2 vials and **2 x 2.5mL** samples for submission.

Depending on the type of testing, ideal volumes are as follows:

- |                                  |              |
|----------------------------------|--------------|
| • Drugs only (THC & other drugs) | <b>2mL</b>   |
| • Drugs (all) and alcohol        | <b>2.5mL</b> |
| • Alcohol only                   | <b>0.5mL</b> |



**Insufficient** – Cases with sample volumes of **< 2.5mL** will be assessed individually. Testing will need to be prioritised and staged (customer must state drug to be targeted). The results may be delayed, and cases may be lost if the testing cannot be carried out.

Volumes stated below are those submitted after splitting:

### Less than 1.5mL

- Analysis will be conducted in a staged manner; one test at a time in to preserve the sample volume. State the drug to be prioritised. e.g. THC only or other drugs (excluding THC).

### Less than 1mL

- Analysis will be conducted in a staged manner based on the customer's request. State the drug to be prioritised. For e.g., THC only or other drugs (excluding THC).

### Less than 0.5mL

- Insufficient for **all** Section 5A drugs analysis. State the drug to be prioritised, however, no repeat analysis can be conducted should the initial analysis not meet our strict criteria.
- Ok for S4.
- Ok for alcohol **ONLY**.

### Less than 0.25 mL

- Insufficient for **any** Section 5A drugs analysis.
- We are unlikely to be able to complete S4 analysis. If testing can be done it will be completed on reduced sample volume and low levels of drugs may not be detected. Such cases will be assessed individually.

