

Gatekeeper Guidance for Road Traffic Toxicology SFR2 Requests

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1.1	03/02/2022	Amendments to coincide with changes to the SFR Guidance	Paul Roberts
1.2	13/04/2022	Addition of acknowledgements section	Deborah Sharp

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Contents

1	Introduction	4
1.1	Definitions and Abbreviations.....	4
1.2	Acknowledgements.....	5
2	The Streamlined Forensic Reporting Process	5
3	Requests for SFR2 reports and analytical data-packs	5
3.1	SFR2 Requests	6
3.2	Analytical Data-Pack Requests.....	7
4	Supporting Documentation	7

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1 Introduction

This document provides general guidance to facilitate case management of Section 5A road traffic cases where the initial analytical findings presented on the MG22B (SFR1) form are not accepted by the Defence.

It contains useful information to assist investigating officers, case builders, CPS, defence, forensic services and FSPs in relation to SFR stage 2 and data-pack requests specifically for Section 5A road traffic toxicology cases.

1.1 Definitions and Abbreviations

Abbr.	Meaning
CBD	Cannabidiol
CPS	Crown Prosecution Service
CrimPR	Criminal Procedure Rules
CRM	Certified Reference Material
FCN	Forensic Capability Network
FSP	Forensic Service Provider
HMIC	HM Inspectorate of Constabulary
IDPC	Initial Details of the Prosecution Case
ISO	International Standards Organisation
MG	Manual of Guidance
PET	Preparation for Effective Trial
PTHP	Pre-Trial Preparation Hearing)
SFR	Streamlined Forensic Reporting
THC	Tetrahydrocannabinol
UKAS	United Kingdom Accreditation Service
Definition	Meaning
Can	indicates a possibility or a capability
May	indicates a permission
Shall	indicates a requirement
Should	indicates a recommendation

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1.2 Acknowledgements

In creating this document, the FCN has worked in consultation with Forces and other relevant stakeholders. The FCN would like to express thanks for the contribution made by policing (in particular, the Metropolitan Police Service) and suppliers of forensic services who gave their advice.

2 The Streamlined Forensic Reporting Process

The results of toxicological analysis of a defendant's blood sample for the purposes of Section 5A of the Road Traffic Act 1988 will be reported using the MG22B (SFR1) form. This form should be accompanied by a document entitled 'Supplementary Technical Notes for Road Traffic Toxicology SFR'. Copies are available from the following webpage:

<https://www.fcn.police.uk/services/science/streamlined-forensic-reporting-sfr>

If possible and to ensure that the case is prepared for trial without undue delay, the MG22B (SFR1) should be served by the prosecution as part of the Initial Details of the Prosecution Case (IDPC) at, or before, the first hearing in the Magistrates Court. Once the prosecution states its intention to rely on the result of the analysis set out in the MG22B (SFR1), there is a requirement on the Defence to comply with their duties under CrimPR 3.2(a); to identify the issues in the case as early as possible. There are only two possible responses required of the Defence when it is provided with the MG22B (SFR1):

- i. That the Defence respond within 10 business days, or as soon as is reasonably practicable (for example at a case management hearing), by identifying the issues, thus generating production of an MG22C/D (SFR2) by the prosecution team, which should be in section 9 Criminal Justice Act 1967 format;
- ii. That the defence sign (or provide written agreement that they will sign) an admission pursuant to section 10 Criminal Justice Act 1967 to the general effect that the exhibit/s listed were forensically examined and the examination produced the results / opinions described therein.

The CrimPR do not provide a set form for the defence response, but the case management forms completed by defence, prosecution and court when a not guilty plea is entered contain questions about expert evidence, what can be agreed and what is in dispute. In magistrates' court cases this is the PET (Preparation for Effective Trial) form and in the Crown Court it is the PTPH (Pre-Trial Preparation Hearing) questionnaire. All individuals who are involved in the commissioning of SFR2 and/or data-pack requests should have sight of the relevant documentation to ensure that the correct issues are addressed at Stage 2.

FCN-SP-MGT-GUI-0011 Supplementary Technical Notes for Road Traffic Toxicology SFR document should be consulted in the first instance, as this may provide generic information sought by the defence without the need to produce an SFR2.

3 Requests for SFR2 reports and analytical data-packs

Data provided by Forensic Service Providers who are contracted to conduct toxicological analysis of road traffic blood samples on behalf of policing shows that there has been a

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steady increase in the number of SFR1 reports that are not being accepted by the defence. Given that there is a significant capacity gap in this area, and SFR2/data-pack requests put additional strain on the limited resources available, it is essential that local measures are put in place to ensure robust triage of all Stage 2 requests, regardless of the current commercial model for delivery (i.e. whether or not the FSP charges the Force for the additional work). This should involve a multi-agency approach, with local triage teams being established to assist CPS, Force Criminal Justice Units and Force Forensic Services Departments in dealing with these requests.

3.1 SFR2 Requests

Not all cases will involve the commission of a 'data-pack'. An SFR2 can be provided in isolation, and in fact, this is commonplace in all other forensic evidence types utilising the SFR process and should be viewed as the default position.

Remember: Based on previous experience, some common generic challenges have been addressed proactively in the form of a Toxicology Technical Note, which should accompany the SFR1. These include:

- Reliability and accuracy of results
- Number of tests and averaging
- Internal quality controls and Certified Reference Material (CRM)
- Contamination and carry-over
- Lack of name or signature on the SFR1
- HMIC guidance on timescales for analysis
- Sample storage, continuity, integrity
- Results close to the specified limit

Therefore, if a request for an SFR2 is made based on one (or more) of these generic issues, it may be appropriate to respond with a link to the Toxicology Technical Note, referencing the relevant section, and seeking agreement to the original SFR1.

The following list provides examples of circumstances in which an SFR2 will normally be required:

- The driver is claiming post-incident consumption of drugs;
- The driver is claiming that passive inhalation/exposure is the reason for the drugs detected;
- The driver claims to have consumed CBD oil and not cannabis/THC;
- The driver claims that prescribed medication has interfered with the analysis.

The SFR1 cannot be used in evidence by the prosecution other than as agreed fact, and the scientist cannot be called to give oral testimony at court having issued only an SFR1. Hence, there will be occasions when the laboratory conducting the analysis may be asked to provide an SFR2 even though no specific issues have been identified by the defence. For example, the response may be:

- The result is not consistent with the defendant's account of their consumption, or
- The driver claims not to have been under the influence of the detected drug(s).

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In these circumstances, the contents of the SFR1 will need to be converted into an SFR2 in order to comply with CrimPR 19.3(3).

In most cases, the Stage 2 response will involve expert evidence, and hence the MG22C form should be used. However, factual responses such as those involving full continuity evidence, can utilise the MG22D.

3.2 Analytical Data-Pack Requests

In cases where the defence are unable to agree the findings contained in an SFR1, there may be a request for the production of a 'data pack' (such data packs are "records of tests" under CrimPR 19.3(3)(d)). The technical information provided within this pack is complex and requires an understanding of the scientific methodology used in order to interpret the findings accurately. Hence, the defence will need to instruct their own expert, who understands the scientific methodology, before requesting a data-pack. It may be appropriate for the prosecution and defence experts to consider the analytical results together. If necessary, the appointed defence scientist can attend the prosecution laboratory to facilitate this; it is recommended that any such meeting should occur well in advance of the trial date.

Those individuals who are representing themselves are unlikely to be able to interpret the content of a data-pack unless the defendant understands the scientific methodology used in the case.

4 Supporting Documentation

List of all supporting documentation referred to within this document:

Document name	Document reference
Supplementary Technical Notes for Road Traffic Toxicology SFR	FCN-SP-MGT-GUI-0011
MG22A	SFR MG22A
MG22B	SFR MG22B
MG22C	SFR MG22C
MG22D	SFR MG22D
SFR Annex A	SFR2 Expert Witness Declaration
SFR Annex B	SFR2 Mitigation Table
SFR Annex C	SFR2 Expert Witness Self-Certification
SFR Annex D	SFR2 Disclosure Schedule
Case Management Risk Form	SFR Case Management Risk Form
National Guidance for Streamlined Forensic Reporting	FCN-SP-MGT-GUI-0003

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