Protecting the public from repeat drug driving offenders

RoSPA's response to Department for Transport's call for evidence

June 2022

Response to Department for Transport's call for evidence: Protecting the public from repeat drug driving offenders

Introduction

This is the response of The Royal Society for the Prevention of Accidents (RoSPA) to the Department for Transport's consultation on protecting the public from repeat drug driving offenders. It has been produced following consultation with RoSPA's National Road Safety Committee. We have no objection to our response being reproduced or attributed.

The consultation seeks views on the creation of a drug-drivers:

- high-risk offender scheme that requires clearance at a medical level to regain a drivers licence
- rehabilitation course to help offenders tackle their issues

The government is exploring how to build on the well-established rehabilitation and high-risk offender courses for drink drivers, through the introduction of specific drug driving components.

The Department is simultaneously considering what scope there is for changing the way blood samples are taken, as well as seeking evidence on the relationship between medicinal cannabis and road safety to ensure the current legislative framework remains robust.

Response to Department for Transport's call for evidence: Protecting the public from repeat drug driving offenders

Drug drive rehabilitation scheme

What evidence, if any, do you have that the absence of a drug driving rehabilitation scheme is a problem? Please provide a rationale for your answer.

RoSPA response

The North Report, published in 2010, recommended that the Government should consider the case for the introduction of drug-driver rehabilitation courses. Currently, there is no rehabilitation course offered to those convicted of drug driving under the drug driving legislation which first came into force in March 2015. The evidence suggests that the absence of a drug drive rehabilitation scheme is a problem.

Since the law changed in 2015, making it illegal to drive with 16 specific drugs, above specified levels, present in the blood, convictions for drug driving have increased each year. Over 12,000 people were convicted for drug related driving offences in 2019. Drug driving places not only the driver or rider under the influence of drugs but other innocent road users at risk.

Unfortunately, there is not reliable data on the number of people killed or seriously injured in accidents involving drug drivers. Contributory factors data, published by the Department for Transport, shows the number of collisions where a police officer noted that a 'driver/rider impaired by drugs, illicit or medicinal' contributed to the collision. However, this may not be definitive, as this data represents the opinion of an officer at the scene, based on the evidence available at the time. Gathering this evidence can be particularly challenging, as there may be little evidence of impairment, particularly if the driver is killed or seriously injured[1]. With this in mind, in 2020, contributory factors data shows that there were 84 fatal and 562 serious injury accidents in which a driver/rider involved in the accident was impaired by drugs, illicit or medicinal. This is in comparison to 2014, where data showed 47 fatal accidents and 232 serious injury accidents. This is likely to be an underestimate of the true number of collisions in which drugs were a factor. Whether these increases are due to a true rise in the number of people taking drugs and driving, or that the technology available has enabled us to be better at detecting drivers under the influence of drugs, is not clear.

There has also been an increase in the number of people self-reporting driving under the influence of drugs. The E-survey of road user attitudes (ESRA)[2], showed that 7.5% of car drivers surveyed in the UK had driven 1 hour after using drugs (other than medication) over the last 30 days in the UK (the highest of countries with a similar

[1] PACTS (2021) 'Drug driving: the tip of an iceberg?'
https://www.pacts.org.uk/drug-driving-the-tip-of-an-iceberg-a-report-from-pacts/
[2] ESRA (2019) 'Driving under the influence of alcohol and drugs 2018'
https://www.esranet.eu/en/publications/

road safety record, the average across the European countries was 5%). It also showed that 13% of car drivers had driven after taking medication with a warning that it may influence driving ability.

There is also still, in the absence of a rehabilitation programme, a large number of drug driving reoffenders. Since 2010, 24% of drug drive offenders (14,224) have been reoffenders. These reoffenders have committed 34,178 offences, making up 44% of all drug drive offences[3].

Despite enforcement of drug driving law, RoSPA believes that a rehabilitation programme is required to supplement this and reduce the rates of reoffending. Criminological literature[4,5] suggests that rehabilitation, rather than punishment, has a positive effect on behaviour change. The introduction of a drug drive rehabilitation scheme, carefully considered and based on behavioural change theory, could reduce reoffending rates. RoSPA believes that should a course be created, it should be based on the principles of the drink drive rehabilitation course, but should be run as a separate course. Given that the reasons people use drugs, and the drugs they use, vary, offenders should be screened for dependence issues, to ensure that the appropriate rehabilitation route is offered.

Do you agree that the Government's proposal to introduce a drug driving rehabilitation scheme is the right approach? Please provide a rationale for your answer.

RoSPA response

In principle, RoSPA agrees with the proposal to introduce a drug driving rehabilitation scheme. However, it is not clear from the paper how the course will be implemented and run. Consideration will need to be given to who will deliver the training and what training would be required for providers. Whether the course will be run centrally, as the drink drive rehabilitation course was in the early stages, or whether the devolved administrations will have responsibility for managing the course, will also need to be made clear.

Should a scheme be introduced, it could, to some extent, be based on the principles of the drink drive rehabilitation scheme, which has been successful. The effectiveness of the drink drive rehabilitation course was

[3] PACTS (2021) 'Drug driving: the tip of an iceberg?'
https://www.pacts.org.uk/drug-driving-the-tip-of-an-iceberg-a-report-from-pacts/

[4] Epstein, H. (2011) 'America's Prisons: Is There Hope?'
URL: https://www.nybooks.com/articles/2009/06/11/americas-prisons-is-there-hope/

[5] Taxman, F. S. and Piquero, B. (1998) 'On preventing drunk driving recidivism: an examination of rehabilitation and punishment approaches', *Journal of Criminal Justice,* 26(2): 129-143.

first assessed by the Transport Research Laboratory (TRL)[6] during a trial period where the course was offered in some areas of the UK, but not others. TRL found that the course successfully reduced reoffending with the reoffending rate of those who did not attend the course being almost three times higher than the reoffending rate of those who did attend it three years after taking the course. Monitoring of the course was carried out in 2003 and 2007 and it was found to continue to be effective. Non-attendees were 2.15 times more likely to reoffend within three years of conviction.

However, the approach to creating a drug drive rehabilitation scheme could be somewhat different to the drink drive scheme, and there are a number of issues that will require careful consideration. Firstly, whilst the drink drive scheme deals with users of one substance, alcohol, there is a much larger variety of drugs available. While the effects of alcohol are broadly the same regardless of the type of alcohol consumed, the effects of drugs vary significantly depending on what drug was consumed. There are also very distinct differences between groups that may commit a drug-drive offence. For example, some offenders may have taken prescription drugs that have impaired their driving, some may be casual users of illicit drugs and some will also have an addiction to illicit drugs. Those who have an addiction to a substance will need much more help than a rehabilitation course is likely to provide. The needs of these groups and the individuals within them are likely to vary, perhaps even more so than is the case for drink drive offenders.

RoSPA also believes that the drug drive rehabilitation programme should be completely separate from the drink drive course. The possibility of including drug driving education in drink drive rehabilitation courses was considered in an evaluation of the drink drive rehabilitation course[7]. This found no major concerns about the practicability of expanding the drink drive course to include drug driving. However, concerns were raised about whether including drug drivers would impact the effectiveness of the course. Course providers and behaviour experts interviewed suggested that as drink and drug drivers are two distinct groups, they may struggle to interact. Others suggested that the inclusion of materials not directly relevant to some offenders may reduce the impact of the course, causing attendees to lose focus or disengage. Concerns were also raised about the challenge of including an additional audience when it is already challenging to cater to the different needs of those who do and do not have alcohol issues. If the proposal is that the course would be catered towards both drink and drug drivers, further research should be conducted to understand the feasibility of achieving effective learning outcomes within a combined course. Any further work should involve engaging with both drink and drug drive offenders.

[6] Davies, G., Harland, G., and Broughton, J. (1999). *Drink/driver rehabilitation courses in England and Wales.* TRL Report 426.

7 Ipsos MORI (2019) 'Review of the Drink Drive Rehabilitation Course' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061736/review-of-the-drink-drive-rehabilitation-course.pdf

Drug-drive high-risk offender scheme

If a HRO drug-driver scheme is introduced, and with reference to the Expert Panel report, what criteria should be set for inclusion on the scheme? Please provide a rationale for your answer.

RoSPA response

RoSPA does not have the expertise to comment on what the criteria should be for inclusion in the proposed high risk offender drug driver scheme. The criteria will require further investigation with a panel of experts and a multi-agency approach. However, we recognise that the criteria for the current high risk offender drink drive scheme, established in 1983 could be adapted as a starting point for the criteria for a drug driver course. The criteria for the drink drive scheme is that a driver will be placed on the scheme if they have:

- been convicted of two drink driving offences within 10 years,
- were driving with an alcohol reading of at least 87.5 microgrammes of alcohol per 100 millilitres (ml) of breath, 200 milligrammes (mg) of alcohol per 100 ml of blood, or 267.5 mg of alcohol per 100 ml of urine
- refused to give the police a sample of breath, blood or urine to test for alcohol, or
- refused to allow a sample of blood to be analysed for alcohol (for example, if the sample had been taken when they were incapable of giving consent).

RoSPA believes that should a criteria of being convicted of two offences being committed be set, this should apply to both alcohol and drugs, i.e. if someone commits one alcohol and one drugs offence within 10 years, they should be assigned to the high risk offender scheme.

The challenge again will be that alcohol is one substance, but there is a large range of drugs available, medical and illicit, with different effects and limits, meaning the criteria will not be as straightforward. There are also distinct groups of drug users, in that some users will have been prescribed legal drugs for medical reasons, which they have no choice but to take, whereas a casual user will most likely have made a conscious choice to take an illicit drug. There is also a group of users who are addicted to medical or illicit drugs.

Despite challenges of setting criteria, RoSPA feels that a high risk offender scheme could be a useful tool for identifying dangerous drivers and preventing them from regaining their licence until the underlying cause of their drug driving is addressed, with referrals for treatment if necessary.

Should consideration be given to creating an offence of causing death by dangerous driving whilst under the influence of drink and / or drugs? Please provide a rationale for your answer.

RoSPA response

RoSPA agrees that the penalties of any offence should reflect any aggravating circumstances, but we do not agree with the creation of a new offence.

We believe that the offence of causing death by dangerous driving, regardless of the circumstances, is the offence, but that aggravating circumstances, such as doing so whilst impaired by alcohol or drugs, should be dealt with as a sentencing issue. Creating new offences creates more complexity and RoSPA has concerns that if too many offences are created under the umbrella of dangerous driving, that if an offender is tried for the incorrect offence, they could escape conviction.

RoSPA believes that instead, the sentencing guidelines should be reviewed and that if necessary, the maximum sentence for the offence of dangerous driving is reconsidered so that the full extent of the law can be upheld in aggravating circumstances. For us, creating a new offence would simply create more conditions that must be proved, beyond reasonable doubt. By reviewing sentencing guidelines and/or the maximum penalty, this would create less burden of proof and more flexibility.

RoSPA would call sentencing to be reviewed in light of the fact that there is currently no additional penalty for a driver who may have consumed alcohol and drugs. Driving having consumed both alcohol and other drugs is significantly more dangerous than driving with an equivalent amount of alcohol or drugs[8]. This is because the interaction of alcohol and other drugs can be significantly more impairing than in isolation[9]. This can be true for both illicit and medicinal drugs. Drivers could also have low levels of drugs and alcohol in their system and therefore be below the drink and drug driving limit, but still be significantly impaired. Furthermore, while the courts could consider this to be an aggravating circumstance, drivers generally do not receive more severe sentences for driving with both alcohol and drugs in their system and are usually prosecuted, and convicted, for one offence only.

We understand that this proposal is driven by a desire to be more severe, but we believe severity is reflected in the sentencing of the offender, rather than the offence.

[8] Duboi et al, (2015). The combined effects of alcohol and cannabis on driving: Impact on crash risk. *Forensic Sci Int.* 248(1), 94-100 cited in PACTS (2021) 'Drug driving: the tip of an iceberg?' https://www.pacts.org.uk/drug-driving-the-tip-of-an-iceberg-a-report-from-pacts/

[9] Australian Drug Federation (2007). *Drugs and Driving in Australia*. http://www.onlinelibraryaddictions.stir.ac.uk/files/2017/07/Drugs_and_Driving_in_Australia_fullreport.pdf and and Sewell, R. A., Poling, J., & Sofuoglu, M. (2009). The effect of cannabis compared with alcohol on driving. *The American journal on addictions*, 18(3), 185–193 cited in PACTS (2021) 'Drug driving: the tip of an iceberg?' https://www.pacts.org.uk/drug-driving-the-tip-of-an-iceberg-a-report-from-pacts/

Should consideration be given to creating an offence of causing serious injury by driving whilst under the influence of drink or drugs, or failing to provide a specimen? Please provide a rationale for your answer.

RoSPA response

Please see our response to the previous question. If the appropriate sentencing outcomes are not available, the sentencing guidelines and maximum penalty should be reviewed, rather than creating a new offence.

Should consideration be given to amending the HRO drink-driver scheme to include offences of dangerous and careless driving, together with any offences involving death and serious injury? Please provide a rationale for your answer.

RoSPA response

RoSPA is unable to respond to this question and seeks clarity on the meaning of this.

Should consideration be given to ensuring HRO drug-driver scheme includes offences of dangerous and careless driving, together with any offences involving death and serious injury? Please provide a rationale for your answer.

RoSPA response

RoSPA is unable to respond to this question and seeks clarity on the meaning of this.

Blood sample screening

In order to comply with current medical practices, should the admissibility requirements in respect of a "specimen", set out in section 15(5) and (5A) of the Road Traffic Offenders Act 1988 be amended to enable vacuum blood extraction? Please provide a rationale for your answer.

RoSPA response

RoSPA does not have any expertise on the detail of obtaining blood samples. We would support any method of blood extraction providing that it reflects current medical practice, relevant consents are obtained, it is performed safely and is forensically safe (i.e. cannot be contaminated by other samples).

As the paper states, healthcare techniques for taking blood, and our awareness of blood borne viruses, has changed significantly since 1988 when the legislation was introduced. There are a number of medical professionals and medical organisations who now deem this practice of splitting blood into two separate vials to be an unacceptable risk to healthcare professionals.

Our understanding is that vacuum tube blood extraction is used the vast majority of the time by health professionals in the UK (e.g. for taking blood for medical testing). It is a more efficient method of taking a blood sample and safer for healthcare professionals and patients. It would also enable blood to be taken in more cases.

Medical cannabis

Are there any comments on the relationship of medicinal cannabis to road safety that you would like to raise?

RoSPA response

RoSPA is not in a position to comment on the effects of cannabis on the body, but if it is being used by a driver, either recreationally or for medicinal reasons, if it has an effect on the user's ability to drive safely, it becomes a road safety issue. The threshold based offence of driving with blood concentrations of two microgrammes of THC per litre, regardless of fitness should remain for both medicinal and recreational use.

The relationship of cannabis to road safety largely concerns the impact of the psychoactive effects of delta-9-tetrahydrocannabinol (THC) on people's ability to drive safely. Medical cannabis may make people safer drivers by reducing impairments from illnesses which medical cannabis is treating, including pain, stiffness and mental distraction due to anxiety and ADHD. On the other hand, the psychoactive effects of THC clearly increase impairment through drowsiness and other cognitive impacts. The direct impact of such impairment on road safety is not clear, as patients will receive medical advice to only drive if they do not feel impaired[10]. Cannabis has a wide range of potential effects, and individual responses to the drug are subjective. Drowsiness and sedation, impaired judgement, slower reaction time, poorer control of motor skills, lack of concentration, confusion, and blurred vision are all effects that could have an impact on driving safety[11]. A literature review conducted for the DfT suggests that people who have consumed cannabis have an increased chance of being involved in motor vehicle collisions. However, much of the evidence on risk comes from studies in jurisdictions with general decriminalisation, or relate to illicit use, and as outlined, there is some evidence that legalisation for medical use does not increase crash risk at population level[12].

For RoSPA, the reason a person is using cannabis is not relevant to whether they should be allowed to drive or not. Rather, the risk to the driver, their passengers and all other road users must be considered.

[10] NatCen (2021) 'Medical cannabis and road safety' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061737/medical-cannabis-and-road-safety.pdf
[11] NatCen (2021) 'Medical cannabis and road safety' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061737/medical-cannabis-and-road-safety.pdf
[12] NatCen (2021) 'Medical cannabis and road safety' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061737/medical-cannabis-and-road-safety.pdf

Response to Department for Transport's call for evidence: Protecting the public from repeat drug driving offenders

RoSPA has no further comments to make on the consultation process, other than to thank the Department for the opportunity to comment. We have no objection to our response being reproduced or attributed.