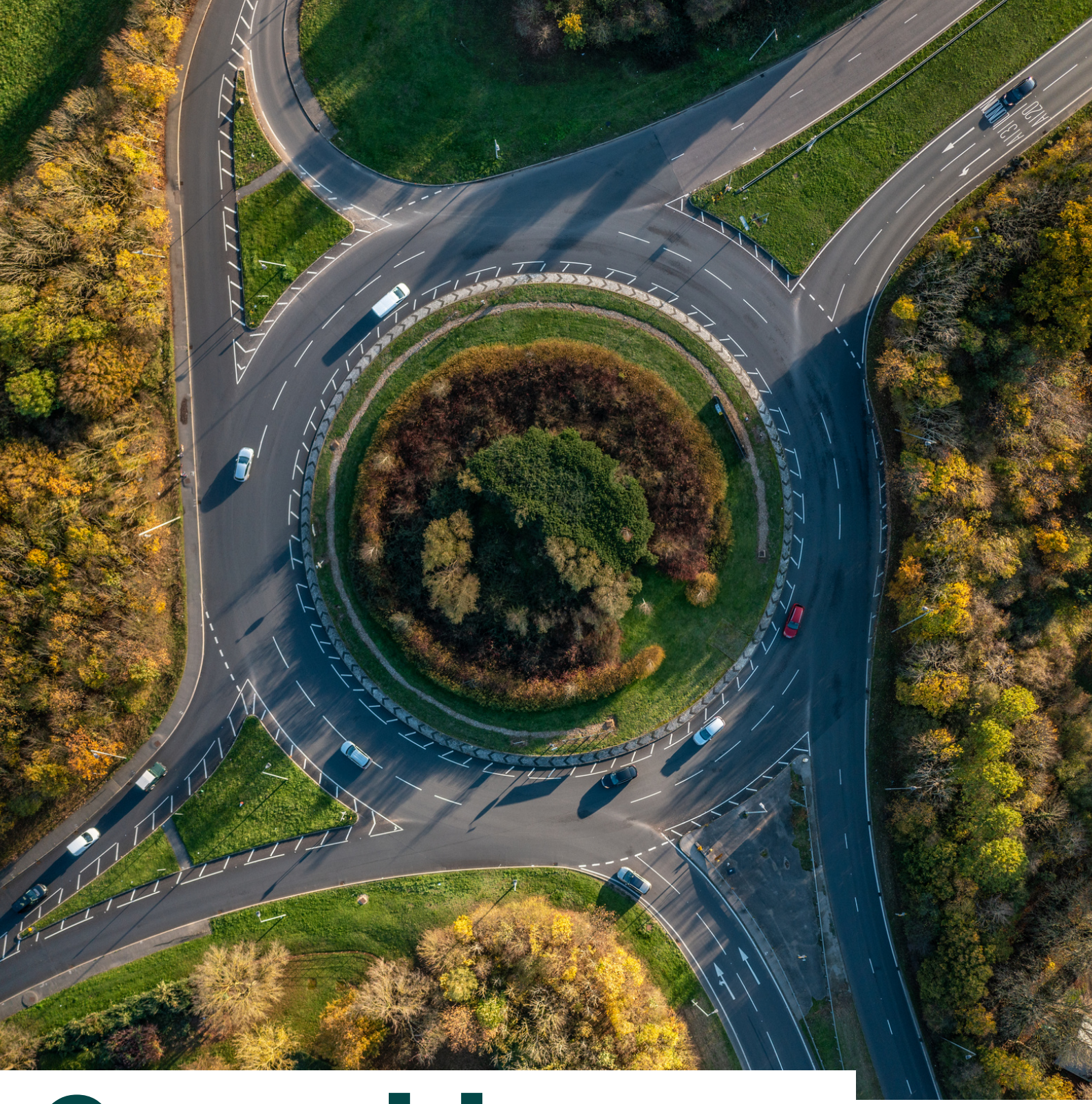

Cannabis & Driving

Cannabis Industry Council

Contributors

With thanks to the following contributors:

- Members of the CIC Standards Working Group
- Frances Crewdson, Ananda
- Guy Coxall, Seed Our Future
- Kirsty Morrison, Cancard
- Dr Callie Seaman, Aqualabs

Cannabis & Driving

Navigating the complex intersections of medical cannabis usage and driving is a challenging task, one that raises numerous questions of legality, health, and public safety.

This paper collates research, stakeholder perspectives, and legal references, with the ultimate objective of influencing policy change in the interest of public safety, patient rights, and a clear regulatory environment.

Elisabetta Faenza
Chair, Standards Working Group

While medicinal cannabis has been legal in the UK since 2018, the repercussions for patients who are also drivers remain clouded in ambiguity, partially due to the inconsistent standards and regulations around the usage of Cannabis Based Products for Medicinal use in humans (CBPMs) and driving.

This positioning paper has been prepared by Frances Crewdson on behalf of the CIC Standards Group, with input from its members and lawyers with specialised subject knowledge.

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Executive Summary

The CIC Standards Group recommends the following in relation to medical cannabis and driving in the UK:

01 Standardise medical cannabis and driving guidelines to focus on impairment (Section 4 of the Road Traffic Act 1988), rather than the "illegal drugs, accidental exposure, zero tolerance" threshold limit (Section 5A of the Road Traffic Act 1988). Medical cannabis patients have a statutory medical defence to exceed the specified limit of 2 micrograms per litre in blood so long as they are not impaired and have followed the guidance of their practitioner/manufacturer (i.e: do not drive if impaired).

Responsibility: Government & Police

02 Continue to use the Field Impairment Test (FIT) as the method of identifying impairment until other alternatives are available. THC concentration in blood and saliva are inconsistent markers for a driver's impairment, due to the long half-life of cannabis in the body.

Responsibility: Police

03 Standardise the driving warnings around impairment on medical cannabis product labelling.

Responsibility: Industry & MHRA

04 Review the consistency and effectiveness of communication to medical cannabis patients around their statutory rights, and put plans put in place to improve it where necessary.

Responsibility: Industry

05 Review the consistency and effectiveness of law enforcement training around the legalisation of medical cannabis and patients' statutory rights and put plans in place to improve it where necessary. As an example, Seed our Future is developing basic training for police, defence solicitors and the CPS due to lack of knowledge of CBPM's lawful status and confusion within the RTA legislation.

Responsibility: Police

06 Review the consistency and effectiveness of safe driving communication to CBPM prescribers and put plans in place to improve it where necessary.

Responsibility: Industry and Clinics

The Issue

Cannabis Based Products for Medicinal use in humans (CBPMs) were legalised in the UK in November 2018.

There are now thought to be between 25,000 - 30,000 legal cannabis patients, with around 20 clinics prescribing privately and these numbers are expected to increase significantly by the end of 2023. [1]

However, the policies, procedures, and guidelines for CBPM use and driving, where they exist, are unclear, inconsistent, and poorly communicated and existing drug tests are not an accurate measure of impairment.

At the same time, according to an analysis carried out by Volteface, the number of arrests for drug-driving and, more specifically, driving under the influence of cannabis, has increased substantially (+81% and +72% respectively between 2016/17 to 2020/21).[2]

These convictions primarily fall under Section 5A of the Road Traffic Act (exceeding threshold limits) rather than Section 4 (failing impairment tests).
This has significant implications for medical cannabis users that need to be addressed.

1. Current legislation does not reflect the legalisation of medical cannabis

UK law states that it is illegal to drive for any reason that impairs your ability to drive. This law is embodied in Section 4 of the Road Traffic Act (RTA), where evidence of impairment is required for a conviction. In 2015, the RTA was amended to include Section 5A, which made it an offence to drive, attempt to drive, or be in charge of, a vehicle with a concentration of a specific controlled drug, above the specified limit, unless you have a prescription. Section 4 still exists and can still be used but Section 5A requires no evidence for conviction except for blood levels. Under Section 5A, a road safety risk-based approach was applied to 8 drugs most associated with medical uses, including diazepam, morphine & methadone. It is legal to have these drugs in your blood, if you have been prescribed them, you have followed advice on how to take them by a healthcare professional and "they are not causing you to be unfit to drive even if you're above the specified limits." [3]

A zero-tolerance approach was taken to 8 drugs most associated with illegal use, with limits set at a level where any claims of accidental exposure could be ruled out. These drugs are benzoylecgonine, cocaine, delta-9-tetra-hydrocannabinol (cannabis), ketamine, lysergic acid diethylamide, methylamphetamine, methylenedioxymethamphetamine (MDMA) and 6-monoacetylmorphine (heroin).

In 2023, cannabis remains on the illicit, zero-tolerance list, with a legal limit of 2 micrograms (µg) per litre of blood, despite medical cannabis being legalised in 2018. This anomaly is compounded by the fact that THC concentration in blood and saliva are inconsistent markers for a driver's impairment, due to the long half-life of cannabis in the body.

The DVLA guidelines require patients to be "free from any medication effects that would impair driving" as a condition for continuing to drive or resuming driving following medication. The elements required for safe driving include attention and concentration, good reaction time and coordination. However, it is down to the individual driver to judge whether their ability to drive safely is impaired, as with any other prescribed medication.

Despite this, under current UK laws, any driver who is stopped by police can expect to be swabbed and if THC is identified, a blood test is enough to secure a conviction. A conviction may lead to a 12-months driving ban, an unlimited fine, up to 6 months in prison and a criminal record. Their driving licence will show the conviction for drug driving, and this will last for 11 years. [4] Many examples have been cited of CBPM patients being discriminated against because they were over the legal limit, despite following the guidance of their prescribing doctor and being fit to drive.

In a letter from the DVLC on 4 July 2022, responding to a Freedom of Information Request, the DVLA interpreted the minutes from a Secretary of State's Honorary Advisory Medical Panel on Alcohol, Drugs and Substance Misuse and Driving meeting in October 2019 [5] to state that "generally patients prescribed medicinal cannabis were likely to be unfit to drive due to the severity of their medical condition".

This highlights a lack of clarity in guidelines and the potential for positive discrimination against medical cannabis users.

2. Existing drug tests for cannabis are not an accurate measurement of impairment

Medical cannabis prescriptions vary by level of THC and cannabidiol (CBD), by THC:CBD ratio, and by mode of administration (for example ingestion of oils or vaping of dried flowers), depending on the type and severity of the condition being treated. Individuals' endocannabinoid systems will react differently to the various products available for healthcare professionals to prescribe.

In the NatCen Research for the Department of Transport in June 2021 [6] interview, participants agreed that higher THC levels might impact on the nature and level of impairment, but CBD was not regarded as a concern for road safety. The studies reviewed by NatCen found similar results, although some reported that CBD may worsen THC-based impairment in some cases.

Cannabis produces hundreds of cannabinoids which all have a different effect on the individual's endocannabinoid system and are metabolised in different ways, depending on the mode of administration. Inhalation through the lungs results in a much faster onset (3-10 minutes) and shorter half-life than taking orally in either the acid form or the neutral form. After as little as 8 minutes, the peak plasma level of delta-9-THC is observed which is further metabolised into 11-OH-THC, which peaks 15 minutes after inhalation. This 11-OH-THC form has been found to be more intoxicating, increasing impairment.

Within 3-4 hours there is a rapid drop in the plasma THC concentrations [7] and the intoxicating effects have worn off.

When delta-9-THC (the neutral form, which has been decarboxylated) is ingested orally the time to take effect is 30-60 minutes depending on what the patient has eaten. This is due to the time it takes to reach the blood-brain barrier. Maximum THC plasma levels are reached 1-2 hours after ingestion.

Once delta-9 THC has been absorbed by the gut it is further metabolised by the liver to 11-OH-THC in much higher concentration than inhalation. This form of THC is much more intoxicating and is often described as the second wave of intoxication. The higher concentration of 11-OH-THC in the plasma and extensive metabolism by the liver results in a longer lasting effect. Before THC enters the body it can also be oxidised naturally over time to produce the degradation product CBN (cannabinol), which has been shown to have an intoxicating effect [7,8] which could affect the ability to drive.

The amount of any of these compounds should also be taken into consideration if impairment is to be judged based on compound concentration in the system.

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The process for drug testing

The UK process for drug-testing drivers is similar to many other jurisdictions. The Drug Recognition Expert (DRE) protocol asks officers to perform Field Impairment Tests (FITs) manually, including a pupillary examination and a series of tests measuring markers such as balance and vital signs. Only officers trained in FIT tests can conduct these and they must record the test on body cameras. If a conviction goes to trial, the video needs to be assessed by a medical practitioner witness in court. The Criminal Prosecution Service must prove, beyond reasonable doubt, that the defendant was impaired. This protects patients as only those who are clearly impaired, should not have been driving in the first place.

The preliminary saliva swab test does not indicate a level of cannabis in the body and cannot be used as evidence in court. It is just an assessment tool to identify the presence of illicit drugs (cannabis and cocaine) and a patient who shows evidence of a medical cannabis prescription does not need to provide a sample.

Furthermore, the existing urine and blood tests are inadequate markers of impairment as they cannot discern whether the THC detected is causing intoxication or if it is simply drug residue in a patient's system originating from days or sometimes weeks ago.

Results of a study by the University of Sydney in 2021 [9][indicated that blood and oral fluid THC concentrations are relatively poor or inconsistent indicators of cannabis-induced impairment.

This contrasts with the much stronger relationship between blood alcohol concentrations and driving impairment.

The evidence reviewed in the NatCen research, indicated that the usual duration of neurocognitive impairment associated with the use of medical cannabis containing THC is generally 2-4 hours if the drug is vaped and up to 6 hours if it is taken orally.

However, this also depends on how regularly the person uses cannabis, with tests being less accurate for people who use cannabis regularly. In an occasional cannabis user, THC can be detected in saliva for around 12 hours after use, but for a regular user, it can be detected for up to 30 hours. Urine testing can detect THC for up to 30 days after taking cannabis.

Accurate drug impairment testing is an essential tool for a society with any level of drug use and anyone driving with an impairment should be penalised. THC is unquestionably a psychoactive substance with side effects that could impair driving ability. However, the existing blood and urine tests to measure cannabis levels in the body are not accurate markers of impairment so should not be used to convict or support any conviction.

3. There is insufficient communication to medical cannabis patients and training for law enforcers and prescribers in relation to medical cannabis use and driving

01

Patients

Much of patients' concern around medical cannabis use & driving could be alleviated if there was more communication around the regulations and users' rights.

Seed Our Future provides a leaflet for patients and materials to share with police officers should they be stopped whilst driving. However, additional information should be provided by prescribers and dispensers as well as on medical cannabis packaging.

02

Law enforcers

While some police officers are aware of the legalisation of medical cannabis, the majority are still unaware and there are numerous incidents of officers stopping and charging legal users. This is despite efforts from patient support groups such as Cancard and Seed our Future to provide medical cannabis users with documentation to validate their legal use of cannabis.

Cancard recently hosted a roundtable with the police including a Force Impairment Lead to discuss the issue of policing medical cannabis patients on the roads.

Cancard also has efforts in place to train traffic officers to use the Field Impairment Test, rather than drug tests, at the roadside. The training highlights that "a drug test is not sufficient to make a decision and with the litigations of the screening test, it should not be conclusive" (UK Police Force Impairment Lead). However, more training is required to ensure all police officers are aware of the legislation and act accordingly.

Some defence solicitors are also confused by the legislation and are giving incorrect advice in and out of court. Seed Our Future works with patients to reinvestigate cases where prosecutions were wrongly made but more education is needed to prevent these prosecutions in the first place.

Overall, the level of ignorance within the police, Criminal Prosecution Service and courts is concerning and needs to be addressed.

03 Prescribers

In line with DVLA guidelines, as with other medicines, CBPM prescribers should give their patients advice on driving, including informing them that they should not drive if they feel impaired. However, there is no official guidance on the level of medical cannabis that can be taken before impairment will occur because this varies, dependent on many factors, including the physical attributes of the patient, how regularly they use cannabis, whether it was inhaled or used as a tincture & the actual level of THC in the flower, which can vary from batch to batch.

UK law requires that drivers tell the DVLA about any medical condition that could potentially affect their driving. The only condition requiring mandatory notification for which a CBPM is commonly used is epilepsy. [10] There is no requirement for patients to inform the DVLA of their prescription, unless related to epilepsy. However, in research carried out by NatCen on behalf of the Department of Transport in June 2021, some prescribers claim to have advised patients to notify the DVLA of their prescriptions "to comply with the law".

Guidance from prescribers should be to follow the prescription and do not drive if impaired. They should not advise on the legislation nor the limits.

What happens if nothing is done?

The issues above have, and will continue to have, an immeasurable impact on patients' lives if they are not addressed.

The uncertainty surrounding CBPMs and driving, and the procedures the police adopt when they stop drivers, causes patients a significant amount of anxiety, to the point where some feel they can't drive at all. The implications of being drug tested and convicted, given a criminal record, fines, up to six months in prison and a driving disqualification are insurmountable. Even if, following a roadside arrest, further investigations lead to no charges being made, the unfair criminalisation has still taken place and the shame, embarrassment and stigma cannot be undone.

This could lead to barriers for seeking employment, discourage patients from using their medicine altogether or lead to patients turning to stronger drugs with more serious side effects, such as opioids, which have a much shorter half-life in the body.

All of this causes unnecessary harm to individuals, their families, society, and the UK economy. With the UK's medical cannabis market projected to reach 340,000 patients by 2024 [11], it is clear there is a need to address these issues urgently.

Recommendations

01 Standardise medical cannabis and driving guidelines to focus on impairment (Section 4 of the Road Traffic Act 1988), rather than the "illegal drugs, accidental exposure, zero tolerance" threshold limit (Section 5A of the Road Traffic Act 1988). Medical cannabis patients have a statutory medical defence to exceed the specified limit of 2 micrograms per litre in blood so long as they are not impaired and have followed the guidance of their practitioner/manufacturer (i.e: do not drive if impaired).

Responsibility: Government & Police

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Responsibility: Police

03 Standardise the driving warnings around impairment on medical cannabis product labelling.

Responsibility: Industry & MHRA

04 Review the consistency and effectiveness of communication to medical cannabis patients around their statutory rights, and put plans put in place to improve it where necessary.

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Responsibility: Industry and Clinics

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About the CIC

The Cannabis Industry Council (CIC) is a leading membership organisation representing the entire UK cannabis industry. Membership is open to organisations and business which either work within or operate from the United Kingdom, the Channel Islands, and the Isle of Man.

Together, our mission is to lead the industry to success and enable it to speak with one voice – for, and by, the sector.

Learn more

A collective voice for the medical cannabis, CBD, and hemp sector across the UK.

Contact

Cannabis Industry Council
64 Nile Street
London N1 7SR

enquiries@cicouncil.org,uk
cicouncil.org.uk

Cannabis
Industry
Council

cicouncil.org.uk