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To: The Lord Advocate and Crown Office Policy Team  
[Crown Office and Procurator Fiscal Service](#)

Subject: Request for Immediate Review of Prosecution Policy Concerning Prescribed Medical Cannabis Patients and Section 5A(3) Road Traffic Act 1988

Dear Sir/Madam,

I write to formally request an urgent review of current prosecution policy relating to patients lawfully prescribed cannabis-based medicinal products who are investigated or prosecuted under Section 5A of the Road Traffic Act 1988.

At present, medically prescribed cannabis patients continue to face criminal investigation and prosecution for exceeding the prescribed blood limit for delta-9-tetrahydrocannabinol (THC) whilst driving, despite the existence of the statutory medical defence contained within Section 5A(3) of the Road Traffic Act 1988.

The statutory defence clearly provides protection where:

1. The drug was prescribed or supplied for medical or dental purposes;
2. The medication was taken in accordance with directions; and
3. The patient's driving was not impaired.

The continued pursuit of prosecutions in circumstances where the Crown is aware that a statutory defence plainly exists places an unfair and disproportionate burden upon disabled individuals prescribed cannabis medicines for legitimate medical conditions.

In particular, I respectfully submit that prosecutions for:

- exceeding the THC blood limit alone; and
- failing to provide a roadside drug swipe or blood sample,

should not proceed where there is evidence or reasonable indication that the individual is a lawful medical cannabis patient.

A toxicology result establishing the presence of THC above the statutory limit is not, in itself, evidence of impairment. Impairment is ordinarily assessed through recognised observational methods including the Field Impairment Test (FIT), officer observations, and evidence of impaired driving ability.

Where no impairment is established, and where the statutory medical defence is available, it is difficult to see how prosecution remains compatible with principles of proportionality, fairness, or the public interest.

Furthermore, requiring disabled patients to undertake costly and stressful criminal defence proceedings in order to rely upon a defence already provided by Parliament risks creating systemic discrimination contrary to the provisions and spirit of the Equality Act 2010.

The current position places the practical burden of proof onto disabled prescribed-cannabis patients, many of whom face:

- substantial legal expenses;
- anxiety and reputational harm;
- barriers to employment;
- suspension or loss of driving entitlement; and
- disruption to medical treatment and daily living.

Reasonable adjustments are urgently required to prevent further discriminatory outcomes affecting this protected group.

Accordingly, I respectfully request that the Crown Office and Procurator Fiscal Service:

1. Issue immediate guidance to prosecutors to discontinue prosecutions against lawful medical cannabis patients where the Section 5A(3) statutory defence is evidently available and impairment is not demonstrated;
2. Review all ongoing and pending prosecutions involving prescribed cannabis patients under Section 5A of the Road Traffic Act 1988;
3. Consider discontinuing prosecutions for failure to provide samples where the underlying allegation concerns lawful prescribed cannabis use and no impairment evidence exists;
4. Issue operational guidance to Police Scotland confirming that impairment, not merely the presence of THC above the statutory limit, must remain the central evidential consideration in medically prescribed cannabis cases;
5. Implement Equality Act compliant reasonable adjustments to ensure disabled patients are not subjected to avoidable criminal proceedings where statutory protections already apply.

This matter raises significant concerns regarding equal treatment before the law, proportionality of prosecution decisions, and the protection of disabled patients prescribed lawful medication under UK medical regulations.

I would welcome confirmation that this matter is under active consideration and would appreciate a response outlining any proposed policy review or operational guidance.

Yours faithfully,

[Your Name]

