

10 May 2005

Police Division 1
Scottish Executive Justice Department
Area 1W
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

**Blood testing following criminal incidents where there is a risk of infection
Proposals for legislation : Consultation**

Thank you for consulting SPT on the above proposals our comments are as follows:-

SPT General Policy 5 - Safety and Security states that SPT seeks 'to work with stakeholders to maintain and improve the safety and personal security of passengers and staff on public transport services and infrastructure. Therefore, the opportunity to respond to this consultation is welcomed by SPT.

Issues of principle

Question 1. Do you agree that any legislation giving rights to individuals to apply for information about blood-borne viral infections with which they may have been infected, should apply universally? Or should the protection be restricted to particular groups of people? If the latter, what groups should it be restricted to and what would be the justification for this?

Answer 1

SPT seeks to improve the safety and personal security of both passengers and staff on public transport services and infrastructure. It is understood that certain groups of people, such as the police and other front-line service employees, are more likely to be at risk from accidental or deliberate exposure to blood-borne viral infections. However, it is considered more equitable that all individuals, so affected, should be offered the same rights and protections.

Question 2. Do you agree that mandatory blood testing should only be ordered by a sheriff?

Answer 2

It is agreed that mandatory blood testing should only be ordered by a sheriff, given the serious nature of such a request and its implications, in particular in relation to human rights issues.

Question 3. Do you agree that mandatory blood testing should not be applied to anyone who has committed no crime but may *accidentally* have exposed another person to a prescribed blood-borne viral infection, so that such people should be free to decline to give a blood sample?

Answer 3

A balance of the rights of the individuals concerned has to be achieved. It is considered that where no crime is alleged to have been committed and potential exposure has been accidental that such individuals should be free to decline to give a blood sample. It would be inappropriate to take punitive action against individuals as the result of an accident and their subsequent refusal to provide a blood sample.

Proposals for legislation

Question 4. Do you agree with the principle of mandatory blood testing for those who commit serious physical or sexual assaults and thereby put the victim of the crime at risk of infection with a prescribed blood-borne virus?

Answer 4

The principle of mandatory blood testing for those who commit serious physical or sexual assaults and thereby put the victim of the crime at risk of infection with a prescribed blood-borne virus is considered appropriate.

Question 5. Do you agree that the provisions for mandatory testing should extend to any type of case where the applicant may have been exposed to a prescribed blood-borne viral infection as a result of a crime being committed by the other party?

Answer 5

It is considered appropriate to extend the provisions for mandatory testing to any type of case where the applicant may have been exposed to a prescribed blood-borne viral infection as a result of an alleged crime being committed by the other party. The cause of the potential infection remains the criminal act and the suspect remains thereby ultimately responsible.

Question 6. Do you think there should be any variation in these provisions for cases where the suspect is under age?

Answer 6

It is considered that there should be no variation in these provisions for cases where either the suspect or the victim is underage given that the potential risks faced are the same.

Question 7. Do you agree that persons at risk of infection from a criminal incident should be entitled to seek information from the Procurator Fiscal about the prescribed blood-borne viral infection risks they may face?

Answer 7

It is agreed that persons at risk of infection from a criminal incident should be entitled to seek information from the Procurator Fiscal about the prescribed blood-borne viral infection risks they may face.

Question 8. Do you agree with the proposed criteria for mandatory testing orders?

Answer 8

It is agreed that the proposed criteria for mandatory testing orders are appropriate.

Question 9. Do you have any comments on the proposed civil application process?

Answer 9

The proposed civil application process may lead to a significant delay in providing evidence as to whether the 'suspect' is infected and may be too late to assist in determining whether a painful process of prophylactic treatment should be undertaken. Therefore, if the purpose is to provide evidence as to whether prophylactic treatment should be undertaken then the effectiveness of the process is questionable. However, it is recognised that the process would have the advantage of providing definitive information and possible reassurance to the 'applicant' at a fairly early stage and that certain 'rights' and 'due process' can be accorded the 'suspect'.

Question 10. Do you agree that information provided from mandatory testing orders should be for the sole purpose of benefiting the applicant, and should not be retained by the police?

Answer 10

It is understood that the aims of the legislation are to assist victims of possible exposure to blood borne viral infections whilst safeguarding the rights of all individuals concerned. It is considered that the retention of this information by the police would go beyond this and has the potential to infringe the rights of individuals concerned.

Question 11. Do you agree that the costs of the testing process should fall to the applicant?

Answer 11

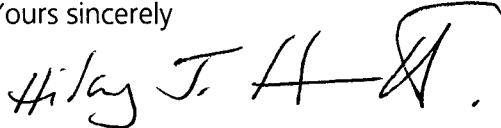
It is understood that when the information sought by the applicant can be provided as a by-product of a criminal investigation by the Procurator Fiscal that these costs would be covered. However, in the case of a civil application to the sheriff for a mandatory testing order it is proposed that a charge be made for the civil application, blood test and analysis. Civil legal aid could only be applied for regarding the cost of the civil application. The consultation states that 4.23 'In many cases a victim will be supported by his or her employer' and also 4.24 '...to allow appropriate support organisations to act on a victim's behalf....' It is considered that these proposals would not necessarily offer all victims the degree of guaranteed support desirable and that some victims may therefore be discriminated against. The proposed legislation should ensure that the responsibilities of employers in respect of employees are clear.

Question 12. Should some support organisations be empowered to act on an applicant's behalf and to provide support and advice as appropriate?

Answer 12

It is considered that there would be benefits from empowering and enabling, through funding, some support organisation to act on an applicant's behalf and to provide support, including financial, and advice as appropriate.

Yours sincerely

A handwritten signature in black ink, appearing to read "Hilary J. Howatt". The signature is fluid and cursive, with a large, stylized initial "H" and "A".

Hilary J Howatt

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