



The Association of Scottish Police Superintendents

By email

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

Introduction

The Association of Scottish Police Superintendents welcomes the opportunity to respond to this consultation exercise on Blood Testing following criminal incidents where there is a risk of infection and there follows our response to the proposals.

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?

The Association recognises that it would be unrealistic to consider universal application of the proposal and has come to the view that the 'Ontario' approach referred to, i.e. restriction to the victim, police officers, other emergency services personnel and the 'good Samaritan' is most appropriate and realistic in the circumstances.

If a universal approach is taken it is unlikely that there will be sufficient resources available to deal with the large numbers of individuals making such requests and in particular persistent applicants, therefore we feel that this restriction is both realistic and hopefully manageable.

We would however seek assurances that a Sheriff will have the ability to be available within the timescales suggested, e.g. treatment for HIV infection is required within hours of contact.

Question 2

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

We agree with this proposal but again would reiterate our concerns regarding the ability of Sheriff's to be available around the clock to respond.

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?

We agree in principal with this proposal on the basis that individuals will give permission to testing. However, this proposition gives us some difficulty in relation to the notion that all individuals will agree to give permission to testing.

The Association, whilst appreciating the views of the 'professionals' expressed in the consultation, cannot accept that emergency workers should be put at risk and recognise that

Please address communications to:- General Secretary, 173 Pitt Street, GLASGOW, G2 4JS

Tel: 0141-221-1131 Fax: 0141-221-8407

E-mail: general.secretary@scottishpolic-supers.co.uk

Website: www.scottishpolic-supers.co.uk

whilst cases of refusal may be rare, where they do occur we feel that there is need to protect members of the emergency services.

Where such refusals occur we feel that the role of the Sheriff, who must consider all such requests, will inevitably ensure that the issue of a breach of an individual's human rights is taken into consideration and matters of proportionality addressed.

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?

Whilst we agree in principal, we cannot agree with any narrowing down, or restriction or limiting of the terms under which testing would be available, e.g., where an officer is spat upon.

Our response with regard to the principles referred to in Question 1 still stand.

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?

Yes. Our response to Question 1 refers.

Question 6

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

No

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?

Yes, however this seems to miss the point that in specific circumstances there is a need to move quickly, e.g. in respect of a risk of HIV infection.

Question 8

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

Yes

Question 9

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

We agree with the proposed process and the need for action to be taken as a matter of urgency. We would therefore suggest that in some circumstances it may be necessary for medical records to be accessed in the absence of the individual concerned.

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?

The Association cannot agree with this proposal since under some circumstances there will be individuals who are in regular contact with medical and police services and who may commit a series of violent acts which would require testing to take place. Under such circumstances it would be a waste of resources and time to apply each time such an individual was involved in an act of this type.

We would recommend that the PNC and SCRO should be able to hold such information on the understanding that the purpose of the information is to ensure the health and safety of victims, police officers and other emergency workers as well as 'good Samaritans'.

Question 11

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

No. We feel strongly that there should be a fund set up to enable testing to be resourced without impacting on the resources of other government or voluntary agencies.

Question 12

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

We consider it appropriate that there should be a support organisation that can act on behalf of applicants, however, we ask that our comments above, in relation to adequate resourcing are taken on board.

We hope that this response from the Association of Scottish Police Superintendents is of assistance in taking this initiative forward.