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British Association for Sexual Health and HIV

Established 2003 through the merger of MSSVD (est.1922) and AGUM (est.1992)
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BLOOD TESTING FOLLOWING CRIMINAL INCIDENTS WHERE THERE IS A RISK OF INFECTION: PROPOSALS FOR LEGISLATION FEBRUARY 2005.

1. Summary of response

We respond to the proposed legislation on behalf of the British Association for Sexual Health & HIV (BASHH). BASHH is a multidisciplinary professional organisation which represents sexual health and HIV clinicians in the UK. BASHH Scotland has co-ordinated this response on behalf of the UK organisation.

- BASHH acknowledges the high level of distress and anxiety to individuals following a needlestick injury.
- We recognise that there are specific challenges facing police officers relating to needlestick incidents.
- BASHH does not believe that the proposals for legislation are scientifically or ethically sound, nor workable in practice.
- The proposals for legislation are disproportionate to the true risk of HIV transmission and contradict the Scottish Executive's existing policies on HIV health promotion in Scotland and also the principles enshrined within the recent sexual health strategy 'Respect & Responsibility'.
- BASHH proposes that the way forward is to provide training and support to reduce the distress and anxiety following a needlestick injury with access to immediate expert advice. Universal hepatitis B vaccination is also recommended for police officers.
- BASHH calls on the proposals for legislation to be abandoned in their current form.

2. Specific comment: The health risks to police officers from blood borne viral infections (Chapter 2)

a) Timing of PEP

The legislation has been stimulated by a petition from the Scottish Police Federation citing 24 serious exposures significant enough to commence post-exposure prophylaxis (PEP) for HIV. However no further data are available on the circumstances or the decision process for initiating PEP. It is therefore not possible to determine whether the proposed interventions would have prevented the need for PEP on any of the occasions. As PEP must be ideally commenced within an hour of injury it is unlikely that a test result from a 'suspect' will be known in time to influence the decision of whether or not to initiate therapy.

b) Risk of HIV transmission

The UK Chief Medical Officer's expert advisory group on AIDS issued clear guidance on HIV PEP in February 2004;-

- The average risk following a mucocutaneous exposure is less than 1:1000 and there is no risk of HIV transmission where intact skin is exposed to HIV infected blood (*EAGA guidance, paragraph 14*). Percutaneous (e.g. needle-stick) injury carries a risk of around 3 per 1000 injuries in health-care settings.
- Four factors are associated with increased risk of HIV infection, namely:
  - Deep injury;
  - Visible blood in the device causing injury;
  - Injury with a needle which has been placed in a person's artery or vein;
  - Terminal HIV related illness in the source person.
- The risk of an assailant being HIV+ will vary depending on their risk group. Amongst over 2000 injecting drug users undergoing attributable HIV testing in 2003 in Scotland, HIV prevalence was **0.4%** (*personal communication, Glenn Codere, Health Protection Scotland*). HIV prevalence in Scotland amongst men who have sex with men attending sexual health clinics in 2003 was **3.2%** (*Unlinked Anonymous Prevalence Monitoring Programme*). In people outwith these risk groups HIV prevalence is less that 1:1000.

Using these data we can crudely estimate the approximate risk of HIV transmission in Scotland to police officers in the line of duty. Assuming (in the absence of any data) that:

- All 24 'high risk' cases reported by the SPF were injecting drug users with a prevalence 0.4%
- The risk of HIV transmission from the assault is 3 per 1000 (as for health-care acquired needlestick injury, although in practice it is likely to be much lower)

The risk from a single assault is **1.2 transmissions** per **100,000 assaults**, or with 24 serious assaults per year about **one** police officer infected with HIV by this route approximately every **3400 years** (risk = 0.000288 events per year).

c) Importance of Hepatitis B vaccination

The only instance of actual BBV transmission was of hepatitis B, which is entirely preventable by vaccination. Employers must ensure that all staff at risk are properly vaccinated (as at para 2.5).

d) Dealing with the injured person

BASHH acknowledges the distress and anxiety of individual officers following a needlestick injury. We believe that a proportionate response to this petition is to:

- Improve the management of anxiety around the injury, particularly communicating the true nature of the risk as outlined above. In this regard GUM clinic sexual health advisers have a particular role.
- To ensure that hepatitis B vaccination is universally given before officers are at any risk of possible assault.
- To ensure that there is expert advice available to force Medical Officers who are considering initiating PEP which takes into account the true risk of HIV transmission.

3 Specific comment: Issues of principles raised by the petition (Chapter 3)

a) Overriding autonomy in someone not convicted of a crime

The proposed legislation, for the first time, would make it a criminal offence to refuse to undergo testing for blood borne viruses where the result of this test is not required as part of a criminal investigation. BASHH believes this is a major step that will have significant impact on the doctor/patient relationship of any person diagnosed positive with HIV or hepatitis. These people will have been tested as a result of their allegedly committing a crime but well before the courts have decided their guilt beyond reasonable doubt. We therefore disagree with the reasoning of paragraph 3.7, especially in the light of the actual numerical risk to police officers as outlined above, that the autonomy of the suspect should be over ridden by any legal process, except where this is required to establish or refute their guilt.

b) Fears of false allegations and misuse of legislation

BASHH is particularly concerned about the potential extension beyond police officers to other individuals in comparable circumstances. This opens the way for people who have been allegedly injured by an assailant to require them to undergo mandatory HIV and hepatitis testing before the details of the assault and the criminal investigation are complete. It also opens the way for hospital staff who have received an injury from a source patient and where a source patient declines to undergo HIV testing to also use this legislation to attempt to compel the source patient to undergo testing. We agree with response question 3 that mandatory blood testing should certainly **not** be applied to anyone who has committed no crime, and emphasise that an allegation of committing a crime is not the same as being legally convicted

4: Specific comment: Proposals for Legislation (Chapter 4)

Our arguments against compelling suspects who have committed alleged crimes are outlined above. BASHH therefore **disagrees** with the principle of mandatory blood testing for those who are alleged to have committed a crime.

a) Procurator Fiscal's existing powers

It appears there are already sufficient powers by the Procurator Fiscal to obtain information about blood borne viral infections which are material to a criminal case (*Paragraphs 4.9 to 4.12*). BASHH agrees with response question 7 that this information should be made available to persons who are at risk of infection, as it is likely this information will be disclosed during any trial. However, it is essential that any criminal suspect discovered to be infected and who finds this out as a result of this existing mechanism be offered confidential urgent and appropriate medical care and support.

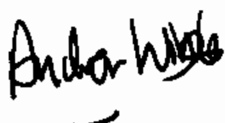
b) 'Reasonable suspicion' of HIV

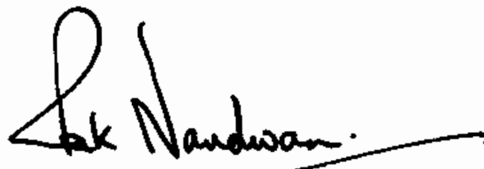
BASHH has serious concerns as to how 'reasonable suspicion' that a suspect may be a carrier of a prescribed blood borne viral infection can be assessed without stereotyping and stigmatising gay men or people suspected to be from countries with high HIV prevalence (*paragraph 4.14.2*). It would be helpful to amplify precisely how a Sheriff is supposed to come to a conclusion in this circumstance.

5 Conclusion

BASHH is unable to support the proposals for legislation in their present form. We believe more effective methods can be put in place to support police officers who receive a needlestick injury during the course of their duties. BASHH would be willing to assist in drawing up alternative proposals.

Yours sincerely





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On behalf of BASHH UK