



BLOOD TESTING FOLLOWING CRIMINAL INCIDENTS WHERE THERE IS A RISK OF INFECTION

The Scottish Executive Consultation Paper: Blood Testing Following Criminal Incidents Where There Is A Risk Of Infection

The UNISON Scotland Response

May 2005

Executive Summary

- UNISON Scotland welcomes the opportunity to respond to and comment on the Executive's proposals on "Blood Testing Following Criminal Incidents Where There is A Risk of Infection". UNISON is Scotland's largest trade union representing 150,000 members delivering public services. We represent the majority of the employees in the National Health Service in Scotland, almost 6000 members in the voluntary and community sector and over 3000 police staff.
- UNISON Scotland believes that members should be able to access information about blood borne viral infections following a criminal incident. The UNISON Scotland Trauma report found that UNISON members had experienced 242 specific violent incidents. We therefore believe that any legislation should at a minimum offer protection to all public sector workers.
- UNISON Scotland believes that in order to ensure that the human rights of all concerned are fully protected the decision should be made in such a way as to ensure that both sides are able to set out their case. A sheriff seems the appropriate person to hear the cases and make a decision. There is though little detail on how this would impact on an already busy court timetable
- UNISON believes that it is important that the criteria for allowing individual to access information about potential infection are based on the risk of infection. For example spitting contains a risk of infection and may not be covered by the proposal.
- UNISON believes that if individuals are assaulted at work that employers should bear the costs involved. We believe that any legislation should make this clear. Further detail is needed about funding for the process. The consultation appears to suggest that support organisations can finance this process but gives no detail on what organisations it is referring to and how this would impact on their finances. Further detail is needed.

Introduction

UNISON Scotland welcomes the opportunity to respond to and comment on the Executive's proposals on "Blood Testing Following Criminal Incidents Where There is A Risk Of Infection". UNISON is Scotland's largest trade union representing 150,000 members delivering public services. We represent the majority of the employees in the National Health Service in Scotland, almost 6000 members in the voluntary and community sector and over 3000 police staff.

UNISON members are often subject to assaults and intimidation when carrying out their work. This proposal will have a direct impact of the working lives of many UNISON members. We are therefore keen to ensure that members get as much protection as possible in order to allow them to continue to provide vital services to the community

This paper constitutes UNISON's response to the consultation paper "Blood testing following criminal incidents where there is a risk of infection".

Responses

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?

UNISON Scotland is pleased that the Executive recognises that public and voluntary sector workers are at risk from attack at work. UNISON Scotland believes that these workers should be able to access information about blood borne viral infections following a criminal incident. The British Crime Survey highlighted that care workers face twice the national average risk of assault. The UNISON Scotland "Trauma Report 2003" found that UNISON members had experienced 242 specific violent incidents. Many respondents indicated that assault at work was a "daily occurrence" or "too many to record". Most of those who experienced a serious injury were women. These figures do not include incidents such as spitting which can carry a risk of infection, albeit small. We therefore believe that any legislation should at a minimum offer protection to all public sector workers.

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

UNISON Scotland believes that in order to ensure that the human rights of all concerned are fully protected it is important that a decision of this magnitude should be made in such a way as to ensure that both sides are able to set out their case. A sheriff seems the appropriate person to hear the cases and make a

decision. There is though little detail on how this would impact on an already busy court timetable.

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?

UNISON Scotland believes that this legislation should only apply where a criminal incident takes place and not when any accidental risk of infection occurs.

UNISON Scotland also believes that, while it is difficult to find a balance between the rights of individuals, once an individual commits a crime then the rights of those affected by that crime take precedence. Therefore even if the risk of exposure is as an indirect result of a criminal incident, for example while examining a crime scene, then the person involved should have a right to know what exposure risks they face.

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?

As stated above UNISON agrees with the principle of mandatory blood testing in the above circumstances. As stated above, while it is difficult to find a balance between the rights of individuals, once an individual commits a crime then the rights of those affected by that crime take precedence. Therefore even if the risk of exposure is as an indirect result of a criminal incident, for example examining a crime scene, then the person involved should have a right to know what exposure risks they face. It is also important to note that bites and spitting are not considered to be serious assaults but do carry risks of exposure to blood borne viruses. We believe that it is the risk of exposure that should trigger the right to information not the seriousness of the assault and that legislation needs to make that clear to be effective.

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?

UNISON Scotland believes that it is important that any response to a criminal incident must be proportionate. As stated above UNISON believes that once a crime has been committed those exposed to a risk have the right to know what that risk entails in order to take action to protect themselves or to prevent them putting others at risk of exposure. The legislation would need to make a clear definition of criminal incident. For example would exposure following a needle stick injury at the scene of a drugs overdose or suicide give an individual the

rights to know the results of a post mortem. UNISON believes that the legislation should include such incidents.

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

UNISON sees no reason for any variation for cases where the subject is under age.

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?

UNISON agrees that a person at risk should be able to seek information from the Procurator Fiscal.

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

UNISON agrees with the proposed criteria.

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

The process seems clear although UNISON has some reservations about the ability of the system to meet these time scales. It is important to note that if a person is at risk of infection following an incident that occurred during the course of their employment then their employer should be handling the process and the costs. UNISON believes that legislation should make this clear.

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?

UNISON sees no reason why the police should retain this information.

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

UNISON believes current Health and Safety legislation means that members exposed at work would have any costs covered by their employer. We believe that the legislation should make this clear.

As a matter of principle UNISON believes that no one should be disadvantaged by his or her financial circumstances. Current Legal Aid rules could leave some individuals unable to use the proposed legislation. Therefore more thought needs to go into the funding of this process for those individuals whose costs would not be covered by their employer.

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

UNISON Scotland acts to provide support and advice to its members and is able to provide a range of legal and counselling services and would expect to be involved if any members were at risk. As stated above if the incident took place at work then their employer would be expected to bear the costs. The consultation though gives no detail about which "support organisations" the proposal intends to be involved. The specific services, suggested in this section, would have cost implications for UNISON and any other "support organisation". Empowering "support organisations" would not solve the question of access to testing unless funding is provided to support organisations for providing these services.

UNISON Scotland supports the general principle behind this proposal but feel that more detail is required particularly about funding.

For Further Information Please Contact:

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