

**RCPE**



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**Royal College of Physicians of Edinburgh**

Consultation response

**The College promotes the highest standards of practice in internal medicine and related specialties wherever its Fellows, Collegiate Members and Members practise.**

**COMMENTS ON  
SCOTTISH EXECUTIVE**

**BLOOD TESTING FOLLOWING CRIMINAL INCIDENTS WHERE  
THERE IS A RISK OF INFECTION - PROPOSALS FOR LEGISLATION**

The Royal College of Physicians of Edinburgh is pleased to respond to the Scottish Executive on *Blood testing following criminal incidents where there is a risk of infection - Proposals for Legislation*.

Within the UK Blood Services the issue of determining cause and effect with regard to the transmission of a transfusion/blood associated infection and linking a donor with the recipient is often very difficult; the great majority of such investigations turn out to show no such link with the blood donation. In the case of an assailant, who is almost certain to have a higher risk of blood borne infection markers than a volunteer blood donor, a number of issues arise:

Who is going to identify the assailants and direct the order to test?

Who is going to agree the testing protocol?

Who is going to supervise the testing procedure? We assume this would be medical practitioners working with the police force as police surgeons but in any other areas such as paramedical workers, medical and nursing staff etc. this might be considered inappropriate.

We also need to consider that the testing systems, although effective at maintaining blood safety, are nevertheless not foolproof. All virus infections have an initial window period following exposure when tests will be negative. Using modern amplification methods for nucleic acids these window periods have been reduced, but they are still of the order of several weeks duration depending on the infectious agent. Therefore an initial negative test on an assailant may in itself be insufficient and may require a subsequent test.

The next issue of importance is whether the person assaulted was indeed negative for that virus marker prior to the assault. Detecting, for example, evidence of hepatitis C infection in an individual who had been recently assaulted does not automatically prove that the infection came from the assault. The incidence of hepatitis C infection in the general population in Scotland is not negligible being something in the order of 1 in 1,000. Molecular sequencing and genotyping tests can go a long way to showing linkage between an assailant and the assaulted but this takes time and also generates cost. Police officers may not be content to have regular testing of their blood to confirm that they are in fact negative for all the relevant markers prior to any possible assault taking place.

**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?**

This is a difficult area and probably should reflect defined groups of people who are injured or assaulted in going about their lawful work. If this was extended to all individuals there may be situations where even non-malicious casual trauma on the football or rugby field could be followed by a request for disclosure of blood borne virus information.

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

The College would agree that any mandatory blood testing must be carried out only by order of the Court. Existing legislation relating to the refusal to give samples after, e.g. road accidents might well be applied to those people who refuse to give such a sample.

**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?**

The College believes that mandatory blood testing should not be applied to anyone who has committed no crime for the reasons outlined above with regard to contact sports etc.

**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?**

A case can be made out for testing in this area. The College hopes that the initial response might be to obtain voluntary sampling. *We are not at all clear what is meant by "prescribed blood-borne virus(es)".*

**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?**

We are unsure of the background to this. Other than serious physical or sexual assaults, what other crimes might lead to exposure? *Again, what is meant by "prescribed blood-borne virus(es)"?*

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

If the provisions have to be brought into law there doesn't seem to be any logic behind having specific age limits.

**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?**

It is not clear what information the Fiscal would have in these situations but if there was a legal requirement to be tested then presumably this information would be made available.

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

The proposed criteria have a number of difficulties with them and in addition, as mentioned in our general comments, there are major difficulties over actually administering this since a single occasion test may not be sufficient (would not be sufficient) to guarantee that infection could not be transmitted.

**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 College believes that these results should be considered to be part of the medical record of the person being tested and we assume that this would not normally be retained by the police.

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

The costs of the testing process may be considerable and this would need to be borne in mind; also the costs of recovering these particularly when supplementary tests are required.

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

We are not entirely sure what support organisations are referred to here.

In conclusion, the main problem with this proposal is that it underestimates to a very substantial degree the complexity of testing individuals. There is an implication that testing someone for a blood borne virus infection is a single point test which will give a clear cut unequivocal answer as to whether they are a risk or not. Because of the sensitivity of tests used and the window period between an exposure to a virus agent and evidence of positivity of the test, a testing algorithm would need to be developed that will add considerably to the complexity and cost of this system.

In addition, any person who has had blood tests taken has a right to information and counselling about the results and treatment if appropriate. This is not addressed at all in the document; the only person who has been considered is the applicant - the person against whom the assault has taken place. The College would also be keen to add that the accused should have the same rights as the 'victim' in terms of access to advice, counselling and treatment.

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