

Scottish Police Authorities Conveners Forum

Response to the Consultation Paper: -

'Blood Testing Following Criminal Incidents Where There Is A Risk Of Infection'.

For ease of reference this response has been arranged to offer comment in accordance with the questions posed in Appendix B – Summary of Questions within the Consultation Paper.

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?

We would agree with the principle that the legislation should apply to all persons within the defined circumstances.

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

We would agree that mandatory blood testing should be ordered by a Sheriff.

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 would agree that mandatory drug testing should not be applied where *accidental* exposure may have occurred.

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?

We would not wish to see the criteria for mandatory blood testing being 'narrowed down' as suggested at paragraph 4.4, page 13. Any 'checks and balances' could be applied through the consideration to grant the order, or not, by a Sheriff. The example provided of an officer receiving an accidental needlestick injury while searching a person is not valid. Officer safety training should result in any arrested / suspected person being advised that they are to be searched, and being specifically asked if they have any article on their possession likely to cause injury. On occasions persons have answered 'no', while in the knowledge that they a needle in their pocket, with a view to an officer being careless in the search process and likely to receive an injury.

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?

As we have discussed at Question 4 above, we would agree to mandatory blood testing where potential exposure arises as a result of any crime being committed by the other party.

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

We are of the opinion that these provisions should apply irrespective of 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?

We would agree that persons exposed to a risk of infection arising from a criminal incident should be entitled to seek information from the Procurator Fiscal.

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

We would agree to the criteria at paragraphs 4.14.1 and 4.14.3. The criterion at paragraph 4.14.2 stating that 'there is reasonable suspicion that the suspect may be the carrier....' appears unnecessary. Paragraph 4.14.1 directs the inclusion of all criteria stated in paragraph 4.3 which further states that 'where.... as a result of that contact the applicant could reasonably believe that they might be at risk of infection....'

In such circumstances, we believe that where potential exposure to a blood borne virus has occurred it is of the utmost importance to ensure that the victim is provided with the necessary re-assurances, support and receives clarification as quickly as possible.

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

We would be in general support of the proposed civil application process. We note that at paragraph 4.17 reference is made for the court to be satisfied with each of the three items in paragraph 4.14. As stated above, we would consider the inclusion of paragraph 4.14.2 as being unnecessary. We thoroughly support the view expressed at paragraph 4.19 that, **'The whole point of the process would be to let a person who is concerned that they have been infected have information about the risks, one way or the other, as soon as reasonably possible.'**

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?

We would agree that the information provided by mandatory testing orders should not be retained by the police.

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

We would agree that the costs of the testing process should fall to the applicant.

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

We believe that the empowerment of some support agencies to (potentially) act on behalf of an applicant would prove to be beneficial.