

Forth Valley NHS Board

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

Further to Bill Barron's letter of 28 February, please find below the response from NHS Forth Valley on the above Consultation Document.

Blood borne viral diseases have always contributed to the occupational risk associated with certain professions, and unfortunately this risk is likely to continue and perhaps grow with time. However the key elements of the Scottish Police Federation (SPF) petition reproduced in Appendix A of the consultation paper does not provide any realistic or evidence based assessment of the risk to police officers or any other profession or private individual from these diseases. A clear evidence based assessment of the true extent of this risk should ideally be undertaken before any consideration is given to amendments to the Data Protection Act, and the granting of concessions against any individuals Human Rights.

Before the major legislative changes suggested in this paper are considered there should be an in depth look at the current protective measures currently in place against blood borne viral infections within the police forces across Scotland; with a view to ensuring that these measures are as robust as they could possibly be. For example, in the occupational setting of the police service the Hepatitis B virus is the most readily transmissible of the three discussed in this paper, but thankfully there is an effective vaccine that provides protection against infection with this virus. Our experience has been that facilities for administering this vaccine are not uniformly available across Scotland. Of the 229 'incidents' that took place in 2003-2004 only one officer was actually infected, and this was with Hepatitis B. The other two viral diseases are not readily transmissible across intact skin or from old needles, and as such should not routinely pose a significant risk to a police officer.

While there is recognition of the importance of early post-exposure prophylaxis against HIV for individuals who have had a significant exposure following an 'incident'. The risk assessment preceding this treatment should ideally take place within minutes or hours. Mandatory testing of a 'suspect' is not likely to yield information quickly enough to influence that assessment. Thus, the results of a mandatory test would be more weighted towards providing psychological reassurance than influencing the early treatment of the individual. However, the false positive results that may occur with 'suspects' who have not sero-converted may provide false reassurance.

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Chairman Ian Mullen
Chief Executive Fiona Mackenzie
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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?

Answer: Before such legislation is considered there should be a comprehensive risk assessment exercise undertaken to ascertain which professions are most at risk as well as the likelihood of risk to the lay person. Only then should consideration be given to which groups should benefit from amendments to the Data Protection Act, and the granting of concessions against an individual's Human Rights.

Question 2. Do you agree that mandatory blood testing should only be ordered by a sheriff?
No comment

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?
No comment

Question 4. Do you agree with the principal 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?

Answer: Individuals who have had a significant exposure incident should have a risk assessment carried out as soon as possible to determine if 'treatment' is necessary. The risk assessment preceding this 'treatment', if any, should ideally take place within minutes or hours. Mandatory testing of a 'suspect' is not likely to yield information quick enough to influence that assessment. Thus, the results of a mandatory test would be more weighted towards providing psychological reassurance than influencing the early treatment of the individual. However, the false positive results that may occur with 'suspects' who have not sero-converted may provide false reassurance.

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?

Answer: No

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

Answer: Age is not a critical factor.

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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 that they may face?

No comment

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

Answer: The phrase 'reasonable suspicion' as stated in 4.14.2 would have to be clarified.

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

No comment

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?

No comment

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

No comment

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

No comment

While there is no clear evidence provided for taking forward this legislation at this point in time, this does not mean that the evidence does not exist. Health Protection Scotland is the national body that is charged with monitoring the epidemiology of blood borne viral disease in Scotland, it probably would be efficacious for them to work with the SPF in undertaking a comprehensive needs assessment of the risk posed by these diseases before significant action is taken.

Thank you for giving NHS Forth Valley the opportunity to comment on this important Consultation Document.

Yours sincerely

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