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**Blood testing following criminal incidents where there is a risk of infection: proposals for legislation February 2005**

I am responding on behalf of the Medical Foundation for AIDS and Sexual Health (MedFASH) to the above consultation.

MedFASH is a charity, supported by the British Medical Association, which aims to promote excellence in the prevention and management of HIV and other sexually transmitted infections. We work by informing and advising health professionals on excellence in practice, and by briefing policy-makers.

We recognise the anxiety about the risk of possible infection with a blood-borne virus (BBV) experienced by those who believe they may have been exposed. The concerns and resulting petition of the Scottish Police Federation, which have prompted this consultation on possible legislative change, are in many ways similar to the concerns and demands of healthcare professionals during the late 1980 and early 1990s in relation to HIV. However, since then detailed guidance<sup>1 2</sup> has been developed and successfully implemented for minimising such risks and for offering post-exposure prophylaxis in healthcare settings. It does not include any provision for mandatory testing. We believe such guidance should be applied to other professional groups, including the police, who face the possible risk of exposure to BBVs in the course of their work. We also believe the same principles should apply when dealing with members of the public who may have been exposed to the risk of infection, including when this has happened during or after a criminal incident.

<sup>1</sup> UK Health Departments (1998) *Guidance for clinical health care workers: protection against infection with blood-borne viruses. Recommendations of the Expert Advisory Group on AIDS and the Advisory Group on Hepatitis*. London: Department of Health.

<sup>2</sup> Department of Health (2004 revised) *HIV post exposure prophylaxis: guidance from the UK Chief Medical Officers' Expert Advisory Group on AIDS*. London: Department of Health.

The Medical Foundation for AIDS and Sexual Health is a registered charity.

We do not believe the specific proposals put forward by the Scottish Executive are justified on scientific or ethical grounds, nor do we believe they are workable.

Hepatitis B is a preventable infection. All those who face the possible risk of exposure to this virus through their work, such as police officers, should be immunised against hepatitis B and fully informed as to the reasons for this. For those who have not already been immunised, including members of the public who may have been exposed through assault, immunisation should be given after the possible exposure. Once started, the full course of immunisation should be completed.

For hepatitis C, there is no immunisation or post-exposure prophylaxis (PEP) available, and therefore no benefit relating to treatment decisions to be gained from ascertaining whether the potential source individual is infected.

The risk of infection with HIV from a single exposure in the UK is extremely small. PEP using antiretroviral drugs is available, although for some people side effects can be unpleasant and the course of drugs difficult to adhere to, and the evidence regarding its effectiveness and long-term side effects is still limited. However, when indicated, it should be started as quickly as possible, ideally within an hour of exposure. Therefore, the decision to offer PEP after a possible exposure, whether occupational or non-occupational, needs to be made immediately on the basis of a careful risk assessment by a clinician, using information immediately available (which would be very unlikely to include the source individual's HIV status, unless that was already known to the potentially exposed individual before the potential exposure).

If such a risk assessment indicated there was sufficient risk to opt for HIV PEP, a negative HIV antibody test from the potential source individual would be unlikely to provide a good enough rationale to stop treatment before the end of the course. There is evidence that HIV infectivity is at its highest during the early stages of infection (primary infection) when an HIV antibody test is likely to be negative (the 'window period')<sup>3</sup>.

In the vast majority of cases where a possible exposure has taken place, infection with a BBV will not occur. In addition, to summarise the points above, hepatitis B is preventable through immunisation, the risk of acquiring hepatitis C infection cannot be reduced post-exposure regardless of information available about the potential source individual, and the decision to offer PEP for HIV would be made based on a range of factors, with any subsequent information about the potential source's HIV antibody status unlikely to affect decisions about completing the course of treatment.

What arguments might therefore remain for the legislative proposals in this consultation? There may be some marginal benefit in ascertaining that a potential source individual has HIV (to inform the selection of drugs in ongoing PEP), and for this reason we believe it can sometimes be desirable (as advised in the Chief Medical Officers' guidance on HIV PEP) to seek consent for an HIV test or access to medical records from the potential source. However, we do not believe that this benefit (to the person potentially exposed) is such that it should outweigh the right of another individual to withhold consent to testing, whether accused of a crime or not. We believe that mandatory testing in this situation would be

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<sup>3</sup> Wawer MJ, Gray RH, Sewanakambo NK et al (2005) Rates of HIV-1 transmission per coital act, by state of HIV-1 infection, in Rakai, Uganda. *JID* 2005;191 (1 May) 1403-1409

unethical and would breach the fundamental confidentiality and trust of the doctor-patient relationship.

The other argument for mandatory testing put forward in the legislative proposals is to relieve the anxiety of those who may have been exposed. In view of the information set out above, and in particular the very low risk of acquiring infection, we do not believe this would provide adequate justification for infringing the right of another individual to withhold consent to testing. Mandatory testing in this context would be a completely disproportionate response.

Instead, we believe that:

- the police and other relevant employers should aim for universal hepatitis B vaccination for their employees who may face the risk of exposure,
- guidance and procedures should be put in place for minimising the risk of occupational exposure to BBVs and for managing incidents where exposure may have occurred,
- measures should be taken to educate both those occupationally at risk, such as police officers, and the professionals they would consult regarding possible exposure, as to the degree and nature of the risks of acquiring a BBV occupationally,
- support for individuals who fear they have been exposed to a BBV should be provided at the time of the incident and on an ongoing basis as needed,
- each incident of possible exposure should be handled urgently, with expert clinical advice based on risk assessment.

We urge the Scottish Executive to withdraw its proposals for mandatory testing, in favour of the measures above.

Yours sincerely

Ruth Lowbury  
Executive Director