

Response from NHS Grampian Health Protection Team

### **Blood Testing following criminal incidents where there is a risk of infection**

Thank you for the opportunity to comment on the above document. This document has resulted in a lot of lively discussion within NHS Grampian's Health Protection Team. Much of the discussion has been generated because we do sympathise with police officers and understand their reasons for requesting changes to the legislation to permit mandatory testing. However we have major concerns, particularly regarding risk assessment, confidentiality and follow up of positive cases. I hope these comments are of some help to you.

### **GENERAL COMMENTS**

We are not opposed to the concept of testing the source, following exposure to blood or blood stained body fluids if an individual sustains **significant** exposure as a result of criminal activity. However, we cannot reach consensus over whether this should be mandatory. We have serious concerns that the document implies that testing the suspect is a solution in itself, there is no mention that this may provide a false sense of security as the suspect maybe in the "window period" of infection. Furthermore if the exposure has been deemed significant and treatment of the victim has been advised the treatment regime would be nearing completion before the blood test results are available.

### **Risk Assessment**

The document does not discuss risk assessment and before agreeing to mandatory testing we would require reassurance that there is a fully documented risk assessment process which would be undertaken by a fully trained NHS expert in Blood Borne Viruses (BBV). We suggest that the NHS model of risk assessment following exposure to BBV be adopted. The adoption of the NHS process may reduce to a minimum the number of situations where mandatory testing is required.

### **Confidentiality**

We have grave concerns regarding confidentiality. It is essential that all results receive the maximum degree of confidentiality that the situation will allow. We believe the NHS is best placed to provide sensitive, confidential risk assessment, counselling, testing and provision of results to both the victim and suspect. It should be remembered that the victim might already be infected with a BBV. There are other issues that need clarification such as where results will be recorded and who will have access to them. Please also see the points discussed in Answer 10.

## **Management**

Testing is part of a holistic process and cannot be seen in isolation. In the NHS setting, testing is part of a much wider process that includes risk assessment, counselling, testing, giving results, the effects of receiving negative and positive results and further management of positive cases. In the NHS, informed consent is obtained from both parties to take post exposure bloods and this approach should be adopted in all incidences. Many individuals do not want to know if they are positive or not and do not want treatment even if positive. We believe these rights should be upheld.

## **Immunisation**

Hepatitis B vaccination is known to be safe and effective. As a result we suggest an "opt-out" rather than an "opt-in" system for vaccination i.e. vaccination to be offered to **all** officers but they can choose not to take it. It is the responsibility of the employer to assess the risk and offer Hepatitis B vaccination if required.

## **Transmission routes**

The transmission routes described in the document are not clear or accurately described. Wording such as potential/possible exposure may be open to different interpretations.

We believe that the document should contain:

- An accurate description of the routes of transmission of infection for example infection may occur when a person comes into contact with blood and blood- stained body fluids (not just blood). Saliva should not be identified as a high-risk body fluid (except in dentistry) unless it is blood stained, accordingly being spat at is not usually a high-risk incident. With regard to bites it should state that for transmission to occur the bite would have to break the skin.
- Descriptions of high, medium and low risk incidents and body fluids.

All police officers should have an awareness of basic precautions to take at all times in order to minimise the risk of transmission, should they be exposed to potentially infected blood or body fluids. For example, police officers should have access to personal protective equipment to prevent contact with blood at the scene of an accident.

## **Non NHS testing**

If the testing is not performed in an NHS setting we have major concerns regarding the whole process including:

1. Appropriate continuing training, guidance and monitoring of the person(s) who:
  - undertake the risk assessment
  - counsel the suspect and victim
  - test the suspect and the victim
  - discuss the results with the suspect and the victim
2. Who will process the bloods and how long this will take
3. The need for a referral pathway for positive individuals
4. Confidentiality of both the victim and the suspect

### ***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?

**Answer:** In principle, we agree that any individuals who have potentially been exposed to blood borne viruses (BBV) should be offered risk assessment which will be undertaken by a specialist in blood borne viruses (BBV). If the specialist considers that a significant risk has occurred **and** the suspect has refused to be tested then mandatory testing could be requested from the Sheriff. The risk assessor should be available to discuss the application with the Sheriff.

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

**Answer:** Yes. Every case should be treated individually according to circumstances accordingly we agree that mandatory testing should only be permitted by a sheriff but this decision **must** be informed by a thorough risk assessment done by a qualified specialist in BBV. Both the suspect and the victim should have legal representation and the application should be heard in private. Furthermore the expert witness, the BBV specialist who undertook the assessment of risk, should be present.

**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?

**Answer:** We are undecided about this.

### ***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?

**Answer:** We feel there is no easy answer to this question. The problem of testing someone before they have been proved guilty or innocent is a serious drawback. Serious physical or sexual assaults are not good predictors of the infectivity of the suspect although sexual assaults would be considered high risk. This takes us back to our initial comment regarding the importance of risk assessment.

**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:** Yes, if mandatory testing is accepted. However there is a huge assumption that the applicant has not previously been exposed to BBV's through other means. Again, each incident will require a thorough risk assessment to be made and the balance of risk to be judged by a sheriff.

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

**Answer:** Yes. We feel that it is unlikely that most underage individuals will fully understand the implications of being tested and having a positive result, for example NHS testing guidance states that individuals tested should have full understanding of the consequences and actions of both tests and results. As with all applications for mandatory testing we feel that the specialist who made the risk assessment would be the best person to advise. It is essential that there is a robust system in place to ensure comprehensive counselling and management for all parties.

**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?

**Answer:** Yes, anyone should be allowed to seek information from the PF if they have been the victim of a crime. However we believe the giving of results should be part of the overall management of the suspect and victim by the NHS. Whilst a negative result regarding the suspects status might offer some reassurance, it is still vitally important that further testing is undertaken to check that seroconversion has not occurred.

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

**Answer:** See answer to question 1. In addition it is vital re-testing is done following a negative result as the source could be in the "window period" at time of testing.

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

**Answer:** As we are not legally qualified we feel unable to comment on the application process, although we agree that the hearing should be held in private. See answer to question 1 and overall comments.

**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?

**Answer:** The police should not retain the information. However we have serious concerns about medical confidentiality and would like to suggest that the most appropriate way forward is for the risk assessment, testing and further management to be undertaken by the NHS rather than the police or judicial system. We have concerns that individuals who have not undergone the due process of law are being tested and their results made available to the long list of people in the document.

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

**Answer:** We do not agree. If, as suggested the testing were undertaken in the NHS no cost would be incurred.

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

**Answer:** This would be provided through the patient care pathway for both applicant and suspect as part of the risk assessment and management.