

Blood testing following criminal incidents where there is a risk of infection: proposals for legislation by the Scottish Executive

**Response from the British HIV Association (BHIVA) to the Consultation process
May 2005**

1. The British HIV Association (BHIVA) is a national organisation committed to excellence in the care of HIV-infected individuals. Membership is multidisciplinary and includes doctors from a wide range of specialities involved in HIV/AIDS, pharmacists, clinical psychologists and other professions allied to medicine. BHIVA has partnerships with the Children's HIV Association of the UK and Ireland (CHIVA), National HIV Nurses Association (NHIVNA) HIV Pharmacy Association (HIVPA) and Dieticians in HIV/AIDS Group (DHIVA). Patients and patient organisations are also represented within the Association. BHIVA's activities include educational conferences, provision of national clinical treatment and adherence guidelines, clinical audit, and publication of an academic journal, *HIV Medicine*. Members of BHIVA work directly with people who fall within the scope of the proposed legislation and have extensive experience of the needs and concerns of people both affected by and infected with HIV.
2. The Scottish executive is proposing a change in legislation consequent upon requests from the Scottish Police Federation for access to information on the blood borne virus infection status of those accused of criminal offences where there has been a possible infection transmission risk. Mandatory blood testing for HIV, Hepatitis B and Hepatitis C to inform the management of those exposed to potential risk by individuals who are alleged to be perpetrators of crime will be sought through the courts, with failure to comply becoming a punishable offence by fine or imprisonment.
3. We fully appreciate the anxiety that follows occupational exposure to potentially infected material. BHIVA is fully committed to minimising risks of transmission of HIV and to ensuring that those who may be accidentally exposed to HIV and other blood borne viruses (BBV) have rapid access to the highest quality advice and care. However we oppose the proposals made by the Scottish Executive to introduce mandatory blood testing on scientific, clinical and ethical grounds.
4. We do not believe that the proposed legislation will achieve its objectives to reduce either the risk of transmission or the levels of anxiety experienced by those who are exposed to potentially infected material. Indeed, it is unlikely that the management of the victim will be affected by the outcome of the test. We believe the negative impacts that such legislation would have on individual autonomy, medical confidentiality, potential reactions to a positive diagnosis and patient- doctor relationships are substantial. We further believe the ethical position of clinicians who may be requested to take blood for examination for specific medical diagnostic reasons from an individual who does not freely consent is highly contentious.

5. Universal precautions, which work on the assumption that all material and individuals are dealt with as if infected, and risk assessment, when likelihood of infection transmission is examined in the context of potential exposure, are central tenets of risk minimisation. Such approaches are standard practice in health care settings and should be similarly implemented in any service that is dealing with people where there is risk of injury or contamination.
6. There is no post exposure prophylaxis for Hepatitis C. For Hepatitis B all workers who may face risk of exposure should be offered vaccination by their employing authority which confers high levels of protection. Furthermore, where there is uncertainty about vaccination history, post-exposure immunisation is still protective and safe.
7. If post exposure prophylaxis (PEP) for HIV is to be given effectively the first dose should be taken as soon as possible after the incident, preferably within an hour. The process outlined in the consultation document is lengthy, and there may be no test result for a number of days. In this situation if there is thought to be a risk, PEP should be initiated and will need to be taken until the HIV antibody result is available. Nevertheless, where the initial risk assessment has indicated that PEP should be commenced, the negative result can only indicate the absence of risk where **one can be certain** that the assailant has not participated in any activity that put him or her at risk of HIV in the preceding 3 months. This is because it can take up to three months for antibodies to HIV to appear (the window period). Given the situation and potential assailants, the veracity of their response may be questionable. Recipients in such circumstances may, in any event, elect to take a complete four-week course of PEP and still have the anxiety of a wait before knowing the outcome of an incident.
8. Health service workers may also suffer injury or contamination with potentially infected biological materials from patients in settings where the BBV status may or may not be known. Robust guidance exists from the Expert Advisory Group on AIDS¹ on the management of such events. Although many source patients agree to testing for BBVs this is certainly not universally the case. In circumstances where the source patient declines to test for HIV and other BBVs or is not in a position to give informed consent the situation is managed in discussion with the recipient on the best approach to interventions for prophylaxis. Resort to mandatory source testing or testing without consent has been completely dismissed in this setting. A suitably trained occupational health service has the resources and skills to support individuals through this often difficult process.
9. A new positive HIV diagnosis is a highly significant event. Long-term psychological adjustment to such news is influenced by the way in which the test is done and the information imparted. We believe that making an HIV diagnosis in the setting of a mandatory test carried out under the duress of criminal sanction is unacceptable clinical practice and may compromise the long term adjustment and medical management of the patient.
10. The proposed legislation substantially compromises the medical confidentiality of the source, given that the sole purpose of the test is to inform a third party of the results. General Medical Council guidance² on breaching medical confidentiality requires there to be significant benefit to the third party to justify disclosure. We do not believe that the benefit accorded to a third party in this setting is sufficient to warrant such action.

11. A doctor being asked to undertake procedures such as venesection and diagnostic tests on an individual who does not freely consent is problematic. Even if acting within legal boundaries a physician would need to be sure that the potential benefits compensated for the risks of harm in proceeding without free consent. Such actions by doctors in this setting could be construed as an abuse of power and although the action may be lawful it would still be unethical.
12. In summary BHIVA is strongly opposed to the proposals. We do not believe that recourse to legal and criminal intervention will achieve the stated objectives of the Scottish Executive, and is in fact likely to hamper good clinical practice and prevention initiatives.
13. We suggest that the implementation of universal precautions, immediate access to expert advice for people exposed to potentially infected material, together with a programme of hepatitis B vaccination to vulnerable staff would achieve the stated objectives far more effectively than a change in legislature.
14. Given our fundamental opposition to the proposal we have not made any comment on the points concerning implementation, which we simply believe should not take place.

References

1. HIV Post-Exposure Prophylaxis: Guidance from the UK Chief Medical Officers' Expert Advisory Group on AIDS. Department of Health. February 2004
2. General Medical Council. Good Medical Practice. 3rd edition May 2001.
(<http://www.gmcuk.org/standards/good.htm>)