

6th May 2005

Your Ref: Blood Testing

Our Ref:

1019
11 MAY 2005



STRATHCLYDE
POLICE

CHIEF CONSTABLE

William Rae QPM
Forensic Support Department
Police Headquarters
173 Pitt Street
GLASGOW
G2 4JS

Police Division 1
Scottish Executive Justice Department
Area 1W
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Tel : (0141) 532 2318

Fax : (0141) 532 2317

Dear Madam

Blood Testing Following Criminal Incidents where there is a Risk of Infection: Proposal for Legislation

The above document was forwarded to myself as part of the consultation process and the views of the Strathclyde Police Forensic Support Department, with respect to the 12 questions asked, are noted below.

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?

Response

Legislation should apply universally. For example, Forensic Support staff may receive an injury during examination of blood stained productions for a criminal case.

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

Response

Yes, however the length of time this would take could become an issue, as Post Exposure Prophylaxis may have to commence prior to the order being granted by the sheriff. This would result in the injured party enduring added stress and be more prone to infection if Post Exposure Prophylaxis is postponed.

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?

Response

Accidental injuries may occur during examination of bloodstained productions within the Forensic Support Department. However, such articles, e.g. knives, swords, may be contaminated with blood from the deceased/complainer who may be infected with a blood-borne virus. Also, scene examinations where there is no alleged crime (drugs death, non



INVESTOR IN PEOPLE

suspicious death), could result in an injury where infection with a blood-borne virus is a possibility. Would this type of incident be covered by the 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?

Response

Yes. Definition of “serious physical or sexual assaults” would require clarification however.

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?

Response

Yes. This order would therefore apply to an incident where a member of Forensic Support staff accidentally injured themselves during the course of the examination of productions (e.g. needle stick injury from a sharp item in a concealed area (e.g. pocket of trousers).

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

Response

No age restriction should apply as any age can become infected with the blood-borne viruses mentioned.

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 risk they may face?

Response

Yes.

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

Response

Yes.

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

Response

Time scales are perhaps too long in that they could easily extend to 4-5 days if the injury occurred on a Friday/Public Holiday. In addition, Post Exposure Prophylaxis would have to commence anyway as the earlier this is administered the more effective it is. In addition, would the Regional Virus Laboratories be in a position to “fast track” the testing of blood samples for the prescribed blood-borne viruses (I am not sure how quickly the assays can be performed).

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?

Response

There are advantages and disadvantages for retaining such information by the police. Advantages- if an individual was tested as HIV/HCV/HBV positive as a result of a previous mandatory order and an individual was injured at a later date, then application for another order would not be required (infected individuals do not clear e.g. HIV, although treatment can be effective against HCV/HBV) as database could be held.

Disadvantages- Human Rights, Data Protection issues and possible victimisation of infected individuals.

Question11 Do you agree that the costs of the testing process should fall to the applicant?

Response

Unsure- applicants may not be able to afford the testing, however, it would be reasonable for the organisation the applicant is responsible to pay the costs. What is the testing likely to cost? Union may be able to help?

Question12 Should some support organisations be empowered to act on an applicant's behalf and to provide support and advice as appropriate?

Response

Yes. Counselling would be required e.g. via GP/Police Surgeon/Occupational Health and Welfare Unit, as the possibility of infection with a blood-borne virus would place a great deal of stress on the injured party. Possible infection has a long term affect on the injured individual and indeed there family, friends and work colleagues. Often it is 6 months or so before an individual can be told that they are free from infection.

In summary, the proposed legislation would have a great benefit to the community and to emergency services personnel who are often at risk of infection with blood-borne viruses such as HIV, HBV and HCV. This legislation would also remove the issues of ethics and discretion where medical personnel may be asked by the police or the injured party if the suspect/accused is infected with a blood-borne virus. However, the timeous management of the application and granting of the mandatory order and subsequent viral testing and support would require efficient and effective co-ordination.

Yours sincerely,

PP. 

Mr Keith Eynon
Head of Forensic Support
Strathclyde Police