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Dear Bill Barron

**Blood testing following criminal incidents where there is risk of infection:
Proposals for legislation**

GMC Scotland is the Scottish policy office of the General Medical Council and has been established as part of the comprehensive reform of the General Medical Council, shaping a GMC that is fit for purpose in today's conditions. The General Medical Council functions to ensure the application of commonly held standards across the whole of the UK and is committed to contributing actively to the delivery of excellence in medical practice in Scotland, working with Scottish health organisations, patients and public.

The General Medical Council welcomes the opportunity to comment on this proposal, which addresses a recurring problem of how best to balance the rights and health care needs of those with serious communicable conditions, against the rights and needs of those serving the community, in providing health care, policing and other fields.

We understand the difficult role police officers play and the risks which they necessarily face in order to help protect the rest of society. It is clearly right that their needs and concerns are fully considered and addressed, and the risk of contracting a serious condition – and the anxiety and distress which may be incurred while waiting test results – minimised. However, we do have a number of concerns about the proposals as set out in the current proposals for legislation.

First, we believe that compulsory testing should be a last resort, when all other avenues have failed. We are concerned that the introduction of compulsion in health is damaging to the doctor/patient relationship and alters the public perception of doctors. Overall our society benefits when each individual trusts their doctors to (in the overwhelming majority of cases) act in their best interests. This encourages people to seek treatment and to confide fully and honestly in their doctors, improving the health of both individuals and of the community as a whole. Clearly, there are circumstances when it is essential to use compulsory treatment or testing, or to use health information within the criminal justice system. However, we believe that each

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case must be carefully considered and justified as the least damaging option, before its introduction.

We would therefore ask that greater consideration is given to alternative strategies for reducing and assessing risk, for example, encouraging police officers to be immunised against hepatitis B; considering risk of transmission and prevalence of conditions within the community. Studies have shown, for example, there are considerable differences in infectivity of viruses with hepatitis B transmission risk being around 1 in 3, against HIV 1 in 319 (following a single needlestick exposure to HIV infected blood). The risk of seroconversion after a mucocutaneous exposure to HIV infected blood is estimated to be about 0.03% (1 in 3000), much lower than the risk estimated for percutaneous exposure.

The circumstances in which testing would be of significance in decision-making may therefore be relatively small in number, and may well be resolved by accessing medical records by consent, or by individuals giving consent to testing.

In relation to your questions our responses are:

Question 1. We are concerned about justifying mandatory testing on the grounds that exposure occurred during a criminal act. This necessarily involves reducing the rights of those who have not been convicted of any crime, where testing will not be in their own interests, nor in the interests of justice. The testing would, however, benefit victims, and could be justified on those grounds – however, the same benefits would apply to all other people exposed to risk of infection, for example health and care workers, and people who risk infection as part of sexual or social contact. If mandatory testing were to be introduced, we believe that it should be open to anyone who has been exposed to a serious risk of infection in the course of their work, or without their consent, to apply for information about the blood-borne viral infections of another person.

Question 2 Yes, we believe that any mandatory blood testing needs careful scrutiny and stringent controls.

Question 3 Section 3 exposes the difficulties of justifying mandatory testing on the basis of criminality. It entails a judgment being made about whether an assault was 'deliberate' and whether there is credible evidence that the accused is guilty. The reference in paragraph 3.13 to an 'innocent person' raises the question whether particular groups of people – for example drug users – are not regarded as innocent of other crimes until proved guilty through a judicial process. We suggest that if mandatory testing is to be introduced it should be justified on the basis of the level of risk to the individual exposed to infection and that the exposure occurred without consent, or in the course of a person's work.

Questions 4 and 5 Again, we have concerns about justifying mandatory testing on the basis of the intent of the person who is the source of potential risk. A police officer's distress and possible infection with a serious communicable disease will not differ according to whether the exposure was intentional or a criminal act. The distinction appears to suggest that mandatory testing is in some way punitive –

appropriate to those who have been accused of a crime, even though there has been no conviction.

Question 6 This question exposes another difficulty with the proposal. Presumably a person with parental responsibility would be asked to consent to disclosure of information or to testing, and sanctions for non-compliance could be applied to them. But this would prove problematic if the child were deemed competent to make decisions for themselves, or was between 16 and 18 years old. The fines and imprisonment proposed for non-compliance do not seem appropriate sanctions for children.

Question 7 Yes, we agree that where information is obtained for the judicial process, it should be made available to the victim of the crime.

Question 8 Our concerns about these criteria are addressed in our responses to questions 3-6. If legislation were introduced, we would argue that the sheriff would need some credible evidence that the suspect was the actual perpetrator and that a crime had been committed (for example in allegations of sexual assault). We also believe that the level of risk should be quantified – is 1 in 3000 risk sufficient to warrant this intrusion in the rights of an individual?

Question 9 This falls outside the GMC's area of expertise.

Question 10 Yes, if mandatory testing is introduced, it should be clear that its sole purpose is to benefit the applicant.

Questions 11 and 12 These questions fall outside the GMC's area of expertise.

I hope that these comments are helpful.

Yours sincerely,

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