

PE1135 – blood donation

Submission to the Public Petitions Committee

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The Equality Network is a network of around one thousand lesbian, gay, bisexual and transgender (LGBT) individuals and organisations in Scotland, working for LGBT equality. We welcome the invitation to submit our views on petition PE1135 to the Public Petitions Committee. This submission is endorsed by our colleagues at LGBT Youth Scotland (www.lgbtyouth.org.uk).

We think that there is a broad consensus that blood donor selection is required in order to minimize the risk of transfusion-transmitted infection. The purpose of donor selection is to maximise the safety and availability of the blood supply. The prevalence of sexually transmitted infections means that some of the selection criteria will relate to sexual activity. The choice of such selection criteria, to best maximise the safety and availability of the blood supply, is the question at issue.

Donor selection criteria are recommended on a UK basis. We do not know how much scope there is for change in Scotland that is not part of a UK-wide change.

UK legal requirements for donor selection

UK law on blood safety (which is based on the requirements of EU law) is set out in the Blood Safety and Quality Regulations 2005 (SI 2005/50).

These require permanent deferral (ie, lifetime exclusion from donation) for “Persons whose sexual behaviour puts them at high risk of acquiring severe infectious diseases that can be transmitted by blood” (Schedule, Part 3, paragraph 2.1).

Temporary deferral is required for “Persons whose behaviour or activity places them at risk of acquiring infectious diseases that may be

transmitted by blood”. The length of the temporary deferral is specified: “Defer after cessation of risk behaviour for a period determined by the disease in question, and by the availability of appropriate tests”. (Schedule, Part 3, paragraph 2.2.2).

In relation specifically to sexual orientation issues, blood donation is legally a service, and is covered by the Equality Act (Sexual Orientation) Regulations 2007 (SI 2007/1263), which ban sexual orientation discrimination in the provision of services. Regulation 28 relates specifically to blood donation. It provides that donations can be refused even if that refusal constitutes sexual orientation discrimination, but only if “that refusal is determined by an assessment of risk to the public based on clinical, epidemiological and other data which was obtained from a source on which it was reasonable to rely, and the refusal is reasonable having regard to that data and any other relevant factors.”

This legislation therefore requires that the blood services in the UK base their choice of donor selection criteria on a proper risk assessment, based on good data, and keep that choice under review as new information becomes available.

Current donor selection rules in the UK

To comply with the Blood Safety Regulations the blood services must seek to determine whether an individual’s sexual behaviour has put them either ‘at high risk’ for severe STIs such as HIV (which mandates permanent deferral), or ‘at risk’ (which mandates temporary deferral). It is not possible to do this with 100% accuracy. Instead, donor selection questions must be devised which as accurately as possible identify people who are at risk or at high risk.

Donor selection questions seek to minimize the number of donors whose blood could transmit an infection. But it is also important to minimize the number of healthy people who are turned away, since there is a shortage of blood supplies. And it is important that the questions are understandable and reasonable to ask, because that will maximise compliance (ie, people providing accurate answers). Reduced compliance could undermine the effectiveness of the donor selection process.

Currently, potential donors are asked to complete a Health Check Questionnaire. This includes a range of questions about health and behaviour. The questions related to sexual activity are currently:

Have you ever been given money or drugs for sex?

Have you had sex **in the last 12 months** with:

- anyone who is HIV or HTLV positive;
- anyone who has **ever** been given money or drugs for sex;
- anyone who has **ever** injected drugs;
- anyone who may **ever** have had sex in parts of the world where AIDS/HIV is very common. This includes most countries in Africa. There are exceptions so please ask.
- anyone who has syphilis or any other sexually transmitted disease.

To be answered by men only. Have you **ever** had oral or anal sex with another man with or without a condom or other form of protection?

To be answered by women only. In the last 12 months have you had sex with a man who has **ever** had oral or anal sex with another man with or without a condom or other form of protection?

We understand that a yes answer to any of these questions will result in the person being asked not to give blood.

The overall effect is that any man who has at any time (even once) had oral or anal sex with another man (with or without a condom) is permanently deferred. They cannot ever give blood in the UK. This rule has been in place for around 25 years, since the early days of the HIV epidemic.

A woman who has had sex (with or without a condom) with a person known to be HIV positive, or with a injecting drug user, or with a person who has had sex in countries where HIV is endemic, or with a bisexual man, can give blood once 12 months have passed.

Alternative approaches

Around the world, a range of different approaches is taken to deferring potential blood donors who are gay or bisexual men. Some countries (e.g., US, Germany) operate similar rules to the UK. In other countries (e.g., Italy, Spain), more detailed questions are asked about sexual activity, and only those who have engaged in less safe activities are deferred. In other countries (e.g., Australia, Japan, Hungary), a man who has had sex with another man is temporarily deferred, e.g., for one year.

Perceptions of the current UK selection criteria

A significant number of people question the approach taken in the current UK Health Check Questionnaire. By turning away all men who have ever had oral or anal sex with another man – effectively excluding almost all gay and bisexual men – rather than seeking to identify more closely the particular individuals who are at high risk, the rule may be perceived as discriminating on grounds of sexual orientation, rather than on grounds of risky sexual behaviour.

To pick a problematic example: a gay man who has always practised safer sex and has been celibate since before his last negative HIV test knows that he is at low risk for HIV. He is nevertheless permanently excluded from giving blood. He can see from the Questionnaire that for example a woman who has had repeated unprotected vaginal and anal sex with an HIV+ man would be deferred for only 12 months afterwards.

This perception of unreasonableness relates to the approach taken in the Health Check Questionnaire of using a relatively small number of broad-brush questions that identify cohorts of people with a higher per cohort rate of infection, rather than examining in more detail the specific infection risk for each individual donor.

Inconsistency with the safer sex message

Part of the concern that many gay and bisexual men have over the current blood donation rules is that the rules appear to run directly counter to the safer sex message that has been promoted so strongly amongst gay and bisexual men for 25 years. The blood donation rules appear to imply that all men who have ever had sex with men are at high risk of HIV and other STIs. In contrast, the key safer sex message is that it is perfectly possible for gay and bisexual men to be sexually active without being at high risk for HIV.

For example, SNBTS' own 'Position Statement: Why we ask gay men not to give blood (version dated 14/8/07)', states: "The risk of [HIV] infection does not relate to any individual sexual practice but to the sexual partner". The safer sex message says the opposite: that the risk of infection very strongly relates to the kind of sex and to whether a condom is used.

This obvious clash between the safer sex message and the current blood donation rules is undoubtedly one reason that many gay and bisexual men are unconvinced of the justification for the current blood donation rules.

The safer sex criteria have made a crucial contribution to reducing new HIV infection amongst gay and bisexual men, and have been personally very successful for many men applying them. This suggests that the blood services should consider carefully how their criteria relate to the safer sex messages applied by gay and bisexual men, and should review their criteria accordingly.

The blood services must also do better at explaining their current criteria to gay and bisexual men, including explaining why these are so different from the safer sex criteria that are so central to many men's sexual choices.

This explanation should include an acknowledgement that because the donor selection questions are broad brush, rather than about more detailed sexual history, the blood services are aware that they are excluding significant numbers of gay and bisexual male donors who are at low risk of HIV and other infections.

Transparent review of selection criteria

The UK blood services state that they review the risk factors associated with HIV and other infections annually, and consider changing the donor selection criteria. This regular review is very necessary, given that there are large uncertainties in the assumptions on which the risk/benefit assessments of different donor selection criteria are based (see for example, the discussion in Soldan and Sinka 2003¹).

¹ Evaluation of the de-selection of men who have had sex with men from blood donation in England, K. Soldan & K. Sinka, *Vox Sanguinis* (2003) 84, 265-273

The results of this review, and the evidence and calculations on which those results are based, should be promptly made public each year. This is not happening at present. The minutes of the two relevant committees, JPAC and SaBTO², are published on the web, but not, as far as we can find, the papers containing the evidence and analysis on which the committees base their decisions.

Summary

In order to maximise the safety and availability of blood supplies, and to ensure public confidence in the donor selection criteria, we consider that:

- The UK blood services should be transparent in their annual review of the donor selection criteria. The review, including the evidence collected, details of the analysis, and the results, should be made public as soon as it is completed each year. This is not happening at present.
- The review should consider a range of alternative donor criteria including the possibility of more detailed questions about sexual behaviour, and/or the use of temporary deferral.
- The review should look closely at the evidence on blood supply safety in the increasing number of countries that no longer permanently defer men solely because they have at some time had sex with another man, and should consider the implications for the UK.
- The UK blood services should explain better to the public the existing selection criteria. The blood services should make clear that they know that the criteria will, as a result of being broad brush, exclude many gay and bisexual men who are actually at low risk for HIV and other infections.

² Joint United Kingdom Blood Transfusion Services and National Institute of Biological Standards and Control Professional Advisory Committee, and Advisory Committee on the Safety of Blood, Tissues and Organs