CMO Rape and Sexual Assault Taskforce
Tansy Main

Clerk
Health and Sport Committee

18 June 2020

Dear Clerk

Thank you for your email of 9 June requesting information about existing self-referral services in Scotland.

Specifically you asked about the evidence collected and stored by health boards and transferred to Police Scotland and how the security of evidence is ensured. I have collated answers to your questions from the two health boards who currently offer a self-referral service (NHS Greater Glasgow and Clyde and NHS Tayside).

A Forensic Medical Examination (FME) in both police and self-referral cases, is always carried out in a dedicated forensic suite within NHS premises, which has been decontaminated in accordance with the national decontamination protocol approved by Scottish Ministers and the Crown Office and Procurator Fiscal Service.

The FME is undertaken by a forensic physician or a sexual offences examiner, accompanied by a forensically trained nurse, who supports the person being examined and corroborates the evidence obtained. Multi-agency partners on the CMO Taskforce (including Police Scotland, the Scottish Police Authority and the Crown Office Procurator Fiscal Service), have agreed that both the sexual offence examiner and the forensically trained corroborating witness should:

- label and sign all productions taken during the examination in accordance with the Faculty of Forensic and Legal Medicine (FFLM) guidance;
- in police referral cases, provide the police with witness statements and ensure that the productions are passed to the police officer in attendance;
- in self-referral cases, ensure that the productions are stored securely;
- be prepared to attend court to give evidence if cited.

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The police officer in attendance at the FME in police referral cases is primarily there to support the criminal investigation; ensure the chain of evidence is recorded and to protect the forensic integrity of productions seized from the forensically trained nurse or healthcare professional corroborating the examination.

Prior to the FME, clear information is provided to the person to ensure that they understand the implications of deferring police engagement. For example, it is explained that self-referral aims to minimise the loss of potential biological evidence but it does not avoid the weakening or loss of other forms of potential evidence such as CCTV images, text messages or crime scene evidence. Providing this information is essential to support the person to make an informed decision regarding which option is best for them. If the person wishes to proceed, a consent form is signed.

The limits of confidentiality regarding the self-referral process are also made clear early in the consultation. Information about the alleged incident will only be shared with the police without that person's consent, if there is concern for the safety or wellbeing of a child, other vulnerable individuals, if it is in the public interest, or is required by law. This acknowledges one of the cornerstones of medical ethics in respecting an individual's autonomy and right to make their own decisions regardless of the view of the professional.

The person will be asked to provide information regarding the incident to allow the clinician to make an assessment and offer appropriate forensic capture. This is currently documented in a pro-forma which will soon be replaced with a national, standardised form. It is made clear to the person that the gathering of incident information is not a police statement and should not be viewed as an alternative or replacement for a formal investigative process.

The biological samples obtained in a self-referral case are no different to that obtained in a police referral case. Decision making as to which samples to take are based on the account given by the person and in accordance with FFLM guidance about the capture of forensic evidence following a rape or sexual assault.

FFLM produce recommendations on the samples to be taken based on DNA persistence data, however as in all criminal investigations, it is preferable to secure evidence as soon as possible to maximise the opportunity for successful forensic capture. The maximum DNA capture window in rape and sexual assault cases is seven days.

As part of the FME, the doctor and nurse will also ensure that the person's immediate healthcare needs are met and that a safeguarding assessment is carried out to ensure that they have a place of safety to return to. A psychosocial assessment will be undertaken and referral made to any other aftercare, support and advocacy services as appropriate.

The FME is undertaken for clinical and forensic reasons. From the forensic perspective, the examination is seeking to support any future criminal investigation or judicial process. As such, all the evidence is sealed in tamperproof evidence bags; logged with a unique identification number and stored securely in accordance with robust processes agreed with Police Scotland and the Scottish Police Authority to ensure forensic integrity and to secure the chain of evidence – as happens in any police referral case.

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Biological samples are stored in locked freezers within a locked room and any other items (such as items of clothing) are stored securely in a locked area within a locked room. The medical notes and other documentation including signed consent, are stored in a locked filing cabinet.

Should the person decide to make a police report at a later date, the police will require individuals to sign a mandate to allow the transfer of documentation of the incident along with any potential productions. The evidence can then be released to the investigating team to maintain the chain of evidence. A copy of the signed mandate is stored in the case note held by the health board.

Under a national self-referral model, both NHS Tayside and NHS Greater Glasgow and Clyde share the view that to ensure a consistency in approach across Scotland, health boards should not retain large or bulky items such as clothing (other than in exceptional circumstances e.g. if there is clear evidence of external ejaculation), and that only biological samples and small items such as underwear, sanitary wear or condoms should be retained in self-referral cases. Similarly, both share the view that the retention period should be relatively short (18 months to 26 months) in order to avoid ‘anniversaries’; to provide closure for the person and to manage the storage capacity within boards.

I hope this information is helpful but if you require anything further, please do not hesitate to get in touch.

Yours Sincerely

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