

HTA Board meeting, 19 September 2024

Agenda item	3.2 Police Referral and Warrants Policy (HTA-POL-023)
For information or decision?	For Decision (further paper in March 2025)
Decision making to date?	Police Referral and Warrants Policy was last approved by the Board in February 2022
Recommendation	The Board is asked to agree to a review of the Police Referral and Warrants Policy (and related scheme of onward delegation) with a view to bringing a revised version to the Board for approval in 2025
Which strategic risks are relevant?	Risk 1: Regulation
Strategic objective	Approach to Regulation
Core operations / Change activity	Core operations
Business Plan item	Regulation – fulfilling our licensing, inspection, incident management and approvals functions, providing technical advice and superintending compliance across the sector
Committee oversight?	N/A
Finance and resource implications	Business resource to complete the review and develop and engage with the Board on proposed revisions
Timescales	Second half of 2024/25 / first quarter of 2025/26
Communication(s) (internal/ external stakeholders)	Internal – Policy is used internally to manage police referral considerations and the issue of warrants as required to support investigations
Identified legislative implications	None

Review of the HTA Police Referral and Warrants Policy

Purpose of paper

1. To seek the Board's approval for reviewing and updating the HTA's Policy for managing and referring potential criminal breaches of human tissue legislation ("Police Referral and Warrants Policy") (HTA-POL-023), which is a Board policy.

Action required

2. The Board is asked to **approve** that the Executive review and propose changes to the Board's Police Referral and Warrants Policy:
 - a) amend the onward delegation scheme to enable some police referral consideration decisions to be delegated further within the Executive below the Senior Management Team (SMT);
 - b) amend and update the criteria to be taken into account when making police referral decisions, in line with relevant CPS guidelines, to ensure they include suitable criteria more relevant to potential offences of commercial dealing in organs or people trafficking for organ transplantation;
 - c) update, as required, any references to relevant human tissue or other legislation to take into account any legislative changes since the last update;
 - d) identify and propose revisions to any other aspects of the policy to improve its functioning;
 - e) review the material relating to investigations that had been included in the previous version of the Policy but was removed in the current version, to determine if it should be revised and reincorporated or developed into a discrete Investigations Policy.

Background

3. The HTA's Policy for managing and referring potential criminal breaches of human tissue legislation ("Police Referral and Warrants Policy") (HTA-POL-023) is primarily intended to assist HTA decision makers in reaching a view on whether or not to refer an apparent criminal breach of human tissue legislation to the police for investigation.
4. Implementation of this policy sits within the HTA's Decision Making Framework, which also includes the onward scheme of delegation for making decisions on regulatory matters, including potential police referrals.

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5. The [HTA's Decision Making Framework \(HTA-POL-037\)](#) sets out the principles of decision making within the HTA and, in the HTA's Onward Delegation Scheme (replicated at Annex B to HTA-POL-037), confirms the delegation of decision making for potential police referrals to the SMT.
6. The Police Referral and Warrants Policy was last revised in February 2022 [HTA 5/22 and HTA 5a/22]¹ with the main changes being to:
 - a) Update the references to relevant human tissue legislation;
 - b) Remove the section on investigations (with the intention of creating an overarching investigations policy); and
 - c) Make changes to the Standing Orders to correct an inadvertent omission that had arisen when they were previously amended.
 - d) Consider if any further changes may be required
7. Since then, significant changes have been made to aspects of the HTA's work in Organ Donation and Transplantation, arising from:
 - a) the extension of scope of the offences relating to commercial dealing in organs (*s32A Human Tissue Act 2004 came into force 1 July 2022 with a commensurate change to s20 of the Human Tissue (Scotland) Act 2006*);
 - b) the introduction of The Human Tissue Act 2004 (Supply of Information about Transplants) Regulations 2024, known as 'Duty to Report', which came into effect on 1 April 2024;
 - c) The Ekweremadu Trial, which highlighted the risks of exploitation and people trafficking for the purpose organ transplantation;²
 - d) Ongoing experience of working with the clinicians and the police and other relevant authorities on complex cases of living organ donation or transplants.
8. These changes have significantly increased the HTA's operational emphasis on the risks of potential offences related to exploitation in the organ donation and transplantation sphere, including commercial dealing in organs or people trafficking for organ transplantation.
9. The HTA has found the current Police Referral and Warrants Policy and related Regulatory Decision Making onwards scheme of delegation overly burdensome and prescriptive in terms of the criteria to be considered when making a police referral decision, and the extent of the delegation permitted.

¹ EDRMS link to Board Paper: <[HTA 5-22 Police Referral Policy .docx](#)> [Link accessed 13 August 2024] and Minutes of the February 2022 Board Meeting <[HTA 17-22 Minutes of 10 February 2022.docx](#)> [Link accessed 13 August 2024], as published.

² R -v- Obeta and others <[R -v- Obeta and others - Courts and Tribunals Judiciary](#)> [Link accessed 10 September 2024]

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10. Similarly, over the past few years, the HTA has increasingly considered police referrals on what are frequently technical licensing breaches, often arising from the complexity of the legislation and licensing framework and the impact of changes in import and export licensing requirements since EU Exit.
11. The HTA considers that it is now timely to review the Police Referral and Warrants Policy to identify scope for improved efficiency and effectiveness by updating criteria for consideration of some referrals (particularly in ODT) and developing criteria for further delegation of decision-making in some circumstances beyond SMT.
12. The HTA proposes to undertake this work over the course of the remainder of this year and will engage with the Board as revisions are identified and proposals developed, with a view to finalising any changes at the Board meeting in Spring 2025.

Recommendation

13. It is recommended the Board **approves** a review of the Police Referral and Warrants Policy and related scheme of onward delegation. The HTA Executive propose to bring a revised policy to the Board for formal consideration in Spring 2025.