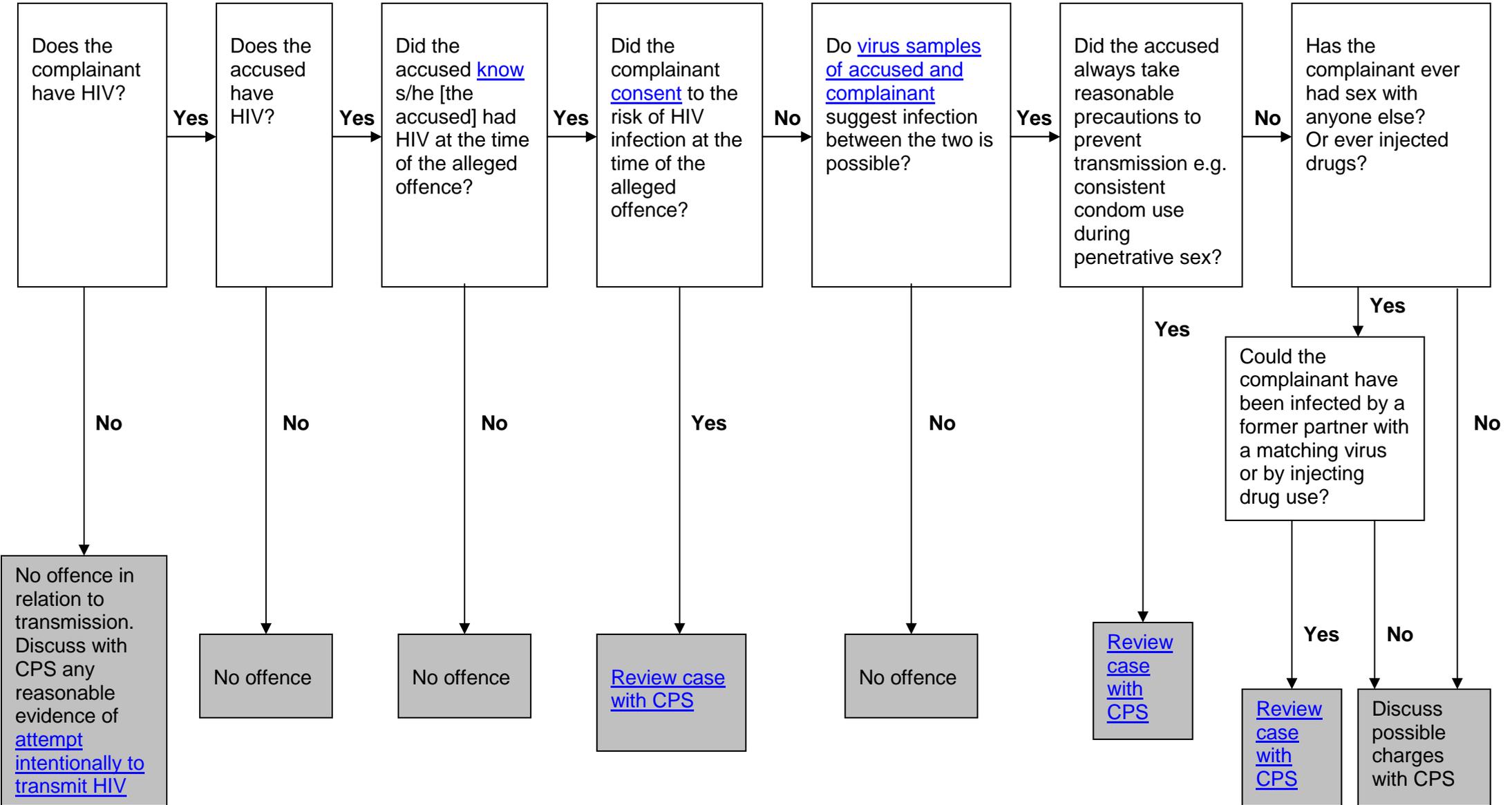




Security Classification:		NOT PROTECTIVELY MARKED	
Disclosable under FOIA 2000:		Yes	
Author:	DCI Gerry Campbell	Force / Organisation:	ACPO – MPS
Date Created:	19 January 2010	Telephone:	0207 321 9127

Evidential Flowchart - HIV





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‘Attempt intentionally to transmit HIV’

There is no crime of ‘attempting recklessly’ to infect someone with HIV. There is a possible crime of ‘attempting intentionally’ to transmit HIV.

Where the complainant is not infected him/herself there is therefore usually no crime and so no further action for police. But there should before closing the case be a check that there is no evidence the accused was deliberately trying to infect the complainant. Such cases will in all probability be very rare but any possible evidence of such intention should be discussed with the CPS.

‘Did the accused know’

For recklessness to be proved it will be necessary to show the accused knew s/he had HIV at the time of the alleged offence. The CPS state that ‘the best and usual evidence’ will be that the accused had previously received an HIV positive medical diagnosis.

The CPS does consider that ‘on rare occasions’ someone might know they are infected even without such a diagnosis, though these cases will be ‘exceptional’ [see CPS Legal Guidance paras.6.10-6.11].

In the absence of a diagnosis no further investigation of the allegation should occur without first discussing with the CPS what other evidence might exist to demonstrate the accused knew s/he was infected at the time of the alleged offence.

‘Did the complainant consent .’

There is no crime if the accused reasonably believed that the complainant had consented to the risk of HIV infection at the time of the alleged offence.

Such informed consent exists when **the complainant knows that the accused has HIV at the time of the alleged offence.**

This will usually be the case when the complainant has been informed by the accused of his/her HIV positive status. But the CPS states this is not the only way that a complainant might be considered to be ‘informed’ for the purposes of consent. Other possibilities include the complainant being informed of the HIV status of the accused by a third party, or learning of the HIV status of the accused through other circumstances [see CPS Legal Guidance para.5.4].

The defence of consent may be undermined if the accused and complainant had agreed always to use condoms to avoid HIV transmission, but the accused has then deliberately abandoned condom use without the complainant’s knowledge during one or more acts of sex, and transmission has occurred as a result.



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'Review case with CPS'

For all boxes which advise 'Review case with the CPS', the probability is that there is no offence or no likelihood of a successful prosecution but given the complexity of some of these cases it is worth the CPS reviewing the case before any decision to end the investigation. **It is extremely important this review process takes place in a timely way** so that any investigation of innocent individuals is not prolonged beyond what is absolutely necessary.

'Virus samples of accused and complainant'

See 'HIV: Key facts for police section 12' and CPS Legal Guidance paras.6.1-6.8