

**SPEAKING OUT
CHANGING LIVES**

**TRANSFORMING
THE UK'S
RESPONSE
TO HIV**



HIV discrimination and the law

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NAT

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Who we are...

TRANSFORMING
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TO HIV



- **Set up 22 years ago**
- **UK's leading charity dedicated to transforming society's response to HIV**
- **Actively campaigning on law and discrimination issues as well as health, social care, poverty and human rights.**
- **Range of publications available on our website:**
www.nat.org.uk

Overview

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Things we will cover today:

- Legal protection related to HIV
- Employment, discrimination and disclosure
- Criminalisation and disclosure
- WAD 2009



Legal protections

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- **Disability Discrimination Act (DDA) 1995** prohibits disability discrimination in employment and access to goods, services, education and housing
- **Disability Discrimination Act 2005** extended the definition of disability to cover HIV positive people from the point of diagnosis
- **DDA 2005 Section 18(3):**

“a person who has cancer, HIV infection or multiple sclerosis is to be deemed to have a disability, and hence to be a disabled person”

Concerns about work

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Discussion:

How do you think HIV discrimination affects employment opportunities for people living with HIV?



How does the law help people with these concerns?

- Under the DDA people living with HIV are protected against **unfair dismissal and/or discrimination in recruitment, promotion, training and benefits**
 - Employers should take steps to **prevent harassment or discrimination by colleagues or others in the workplace**
 - People living with HIV are entitled to **reasonable adjustments** – i.e employers have to make ‘reasonable adjustments’ to alter features of their workplace that put people living with HIV at a disadvantage
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Disclosure and the law

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Why disclose?

- Protections from the DDA only come into effect if an employee discloses to their employer
- You can't access reasonable adjustments if you don't disclose
- **However**, think carefully about how you disclose and seek guidance and support before doing so
- Unless you're working in certain healthcare professions there's no requirement to tell your employer you're HIV positive

Seeking redress

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- If people are discriminated against at work because of their status they can take their employer to a tribunal
- There are examples of successful cases – General Social Care Council, Armani
- Outside employment, where people face discrimination in access to services they can take a case to the County Court - endoscopy case, Northern Ireland
- However, there are concerns around confidentiality in tribunal and County Court hearings

Criminalisation – the law

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Offences Against the Person Act 1861

- Section 20 'Inflicting bodily injury with or without a weapon' – applies to reckless transmission
- All prosecutions to date have been under Section 20, maximum sentence of five years

Casestudy

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Casestudy

Charles is living with HIV but has not told his new partner about his status as he is worried about his reaction and is concerned to safeguard his confidentiality. Although they use condoms, recently they had sex and the condom broke.

Charles's partner found out from a friend about his status and has left him and gone to the police accusing Charles of giving him the virus. He has not provided the police with any evidence to show that he is HIV positive.

Recklessness

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To be considered 'reckless' you need to:

- Know you are HIV positive
- Understand risk of transmission
- Engage in behaviour which carries a risk of transmission
- Infect sexual partner with HIV



Criminalisation – responsibility

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- You might think that HIV negative people are responsible for protecting their own health through 'safer sex' and condoms
- But the law says responsibility lies with the person who is living with HIV
- Someone does not have to have intended their sexual partner to get HIV to be charged for reckless transmission - the issue is that they did not try to stop it happening

Criminalisation – consent

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- Consent of a sexual partner to risk of infection is a defence
- BUT it is not enough for your partner to understand in general terms the risk of HIV infection from unprotected sex – that is not ‘consent’ in law
- The person infected has to have been ***told*** of the defendant’s HIV positive status before sex if a condom is not used

Criminalisation - condoms

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What if you can't disclose?

- Using condoms and trying to stop HIV being passed on is seen as a sign that you are not being 'reckless'
- From the cases brought to court so far it seems you can't be prosecuted if you have used condoms for sex 100% of the time – recent Crown Prosecution Service guidance has clarified this
- If you tell your partner you have HIV and they decide to go ahead with unprotected sex and become infected as a result then you can not be prosecuted (they had consented)

Proving transmission

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- The crime is **infection**, not simply risk-taking behaviour
- If you have HIV and have unprotected sex but the other person doesn't get HIV, **no crime has been committed**
- The Crown needs to prove beyond reasonable doubt that the defendant infected the complainant
- Police have incorrectly assumed that the person diagnosed first was the person infected first
- Defendants may plead guilty because they 'felt guilty' – but that's not the same thing. Evidence of responsibility for transmission is also necessary

Discussion

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Case study discussion

Charles is living with HIV but has not told his new partner about his status as he is worried about his reaction and is concerned to safeguard his confidentiality. Although they use condoms, recently they had sex and the condom broke.

Charles's partner found out from a friend about his status and has left him and gone to the police accusing Charles of giving him the virus. He has not provided the police with any evidence to show that he is HIV positive.

WAD 2009: www.worldaidsday.org

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Discover real stories about HIV
Understanding the facts is the key to fighting
prejudice and protecting yourself and others

World AIDS Day is 1st December 2009

Latest Events

01.12.2009 ▶

Open air World AIDS Day in Bournemouth, Dorset

Gary's story ▶



World AIDS Day latest news

19.11.09 ▶

Prime Minister Gordon Brown has released a special video message to mark World AIDS Day 2009.

17.11.09 ▶

24 November is the last day to order free fundraising resources for guaranteed delivery by 1 Dec!

10.11.09 ▶

Red ribbon will be available across the UK this World AIDS

Keep in touch

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- **NAT are always keen to hear from people living with HIV and the organisations that support them**
- **Hearing about your experiences keeps us informed and helps with our campaigns**
- **If you'd like more information about the work mentioned today do get in touch:**

Eleanor.briggs@nat.org.uk or 0207 814 6755

www.nat.org.uk

Thank you for listening
