

POLICE INVESTIGATION OF HIV TRANSMISSION

A guide for people living with HIV in England, Wales and Northern Ireland



TRANSFORMING
THE UK'S
RESPONSE
TO HIV



Introduction

People with HIV can be prosecuted in England, Wales and Northern Ireland for passing on HIV, but only if they were reckless or intended to infect someone. To find out more about how the law works please read the NAT/THT leaflet '*Prosecutions for HIV Transmission*'ⁱ.

There have also been prosecutions in Scotland but a different law applies there so the advice in the NAT/THT leaflet on prosecutions and in this one on police investigations is not relevant to Scottish cases. If you are concerned about a police investigation in Scotland ring THT Direct on 0808 802 1221 (freephone). This leaflet refers only to the situation in England, Wales and Northern Ireland.

Prosecutions for HIV transmission are complex and sensitive and all allegations should:

- be fairly investigated
- not be begun or continued if a successful prosecution is not considered realistic
- respect the dignity and confidentiality of people with and affected by HIV.

Official Police Investigation Guidance

The Association of Chief Police Officers (ACPO) has approved '*Investigation Guidance relating to the Criminal Transmission of HIV*'ⁱⁱ for police forces in England, Wales and Northern Ireland.

This Guidance, though not mandatory, sets the standard for police investigating these complex and unusual cases. Police investigators will find the guidance very helpful and can find it on the national police information and training website 'POLKA.' The public can find the Guidance on the **NAT website**.

What is in the Investigation Guidance?

This leaflet explains the main parts of the Guidance. People involved in any way in a police investigation of HIV transmission, will find it useful to know how police officers are advised to investigate these cases.

It is worth checking that the police know about and are using the Guidance. If you think the Guidance is not being used, talk about this with your lawyer and HIV support organisation.

i This leaflet '*Prosecutions for HIV transmission: a guide for people living with HIV in England and Wales*' is on the NAT website: <http://www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Criminal-prosecutions.aspx>

ii From now on we will refer to it simply as 'the Guidance'. You can read all the documents in the Guidance at: <http://www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Police-investigations.aspx>

What should I do if someone goes to the police (or threatens to) accusing me of giving them HIV?

It is very important to get expert advice as soon as possible. The law is complicated and people, including the police, can often make mistakes about HIV and the law. Find an HIV support organisation which has practical experience of these investigations, or phone THT Direct.

If an allegation has been made against you, get experienced legal advice immediately. Few solicitors have any useful experience and experience is very helpful. THT Direct can suggest solicitors or put your solicitors in touch with HIV legal experts for advice.

How much will the police know about HIV?

Police officers are not experts on HIV. But for these investigations, the police will need a basic understanding of HIV, how it is transmitted, of PEP, HIV testing and the effectiveness of treatment. Police must also be free of the myths, misconceptions, and prejudices about HIV that are common, because these will harm the investigation.

The ACPO Guidance includes '*HIV - Key Facts for Police*'. Read it yourself and ask the police to study it, if they have not already read it.

The Key Facts for Police includes six 'immediate things' the police need to know:

1. You cannot get HIV from someone through everyday contact. There is absolutely no need for gloves, masks or any form of additional protection or precaution for normal interaction. For spillages of body fluid, or handling of sharps, universal precautions apply as usual.
2. It is unlawful to discriminate against someone with HIV. This can include abusive or judgemental comments whether around HIV, sexual behaviours, sexual orientation or race. All communication should be respectful and supportive.
3. Use the word 'HIV' – avoid using the term 'AIDS'
4. If someone tells you they are worried they may have been infected in the previous 72 hours, you must advise them to go immediately to either an open sexual health clinic or the nearest hospital Accident and Emergency Department to ask for PEPⁱⁱⁱ, which can prevent HIV infection.
5. If someone tells you that they or someone else has HIV, take care to protect the confidentiality of the HIV positive person.
6. If someone is in custody with HIV it is essential to find out whether they are taking drugs for their HIV treatment, and, if they are, ensure that they have continuing and uninterrupted access to their medication.

Police officers need to both know and act on this information.

iii <http://www.tht.org.uk/informationresources/hivandaids/postexposureprophylaxis/gettingpep/content.htm>

Should the police investigate if the person complaining does not have HIV?

No, in almost all cases. There can only be a crime of reckless HIV transmission in England, Wales and Northern Ireland if someone becomes HIV positive. This means no investigation should take place without an HIV positive complainant.

If the person complaining has not yet had an HIV test, the *'Police Investigation Flowchart'* makes clear that they must have an HIV test before any investigation is pursued. The complainant should also be advised to go for emergency PEP treatment to prevent HIV infection, if within 72 hours of possible exposure to HIV.

In the past the police sometimes pursued an investigation even where there was no HIV positive complainant. But the Guidance makes clear that an investigation should not go any further before the complainant has tested HIV positive.

In rare cases, where the sex was very recent, the police may decide, even before an official investigation of a complaint, to examine the scene to preserve relevant evidence.

If the complainant does not have HIV, there is normally no crime to investigate. However if there has been an attempt to intentionally infect the complainant, that is a crime and can be investigated. There has never been a case of attempted intentional transmission in the UK and it is unlikely.

If there is any police investigation of 'attempted intentional transmission' please tell the Director of Policy and Campaigns at NAT (ring 020 7814 6767). If you are investigated for this, you urgently need expert legal advice.

When will police end the investigation?

Unnecessary investigation wastes police time and resources, and causes distress and worry for the accused, the complainant and their family and friends.

The *'Evidential Flowchart'* in the ACPO Guidance shows what key evidence should be collected, in what order, and when to end the investigation if there is no evidence of a crime.

Sometimes the evidence suggests there was no crime but the police are advised to review the case with the Crown Prosecution Service (CPS), before they end their investigation. The ACPO Guidance makes clear that this police consultation with the CPS should be 'timely ... so that any investigation of innocent individuals is not prolonged beyond what is absolutely necessary'.

If you think that the case is taking too long, please contact your solicitor, your local HIV support organisation or THT Direct.

Will the police keep HIV status confidential?

The Guidance makes clear that police have to maintain the highest standards of confidentiality in relation to all people with HIV involved in a police investigation.

There are limited circumstances where the Senior Investigating Officer may consider it necessary to disclose a person's HIV status to someone else, but this should only ever be done after they have taken legal advice. It is very rare that police will need to tell anyone that the accused has HIV.

Can the police see my medical records?

Your doctors should not release your records to the police without your agreement. But even if you do not agree, the police can nevertheless see confidential medical records after getting a court order. The police do not usually need to see the whole of your medical file. The court will normally grant the police an order allowing them to see your medical records.

Should the police comment to the media?

The ACPO Guidance includes a *Communication Strategy*. This says that only appropriate and respectful language should be used about people with HIV (see NAT '*Guidelines for reporting HIV*'^{iv} for more information). The police should also obey any reporting restrictions about names and identifying details made by a court. If you have concerns talk to your local HIV support organisation or THT Direct.

Police are unlikely to discuss a case publicly during a trial. In any comments made after a trial, the Guidance emphasises that police should, if the accused is convicted:

- report the charge accurately,
- not indulge in any speculation about the motive for any offence, and should
- be aware of the harm to people with HIV and affected communities caused by comments which encourage sensationalised or irresponsible reporting of HIV.

What if the person accused is under 18?

The Guidance stresses the need for great care with any investigation involving young people under 18. It is especially important that:

- an appropriate adult (normally a parent) is involved who can act in the interests of the young person
- the young person's HIV clinician is involved
- confidentiality is strictly maintained
- the CPS is contacted as soon as possible.

No one under 18 has been prosecuted for HIV transmission in the UK.

Remember:

If you are accused of reckless or intentional HIV transmission

- Get advice from a HIV voluntary sector organisation with experience in HIV prosecutions or ring THT Direct
- Get legal advice when the police start to investigate
- Make sure the police know about and use the ACPO Investigation Guidance

NAT (National AIDS Trust) is the UK's leading charity dedicated to transforming society's response to HIV. We provide fresh thinking, expert advice and practical resources. We campaign for change.



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