

UK law and HIV

Discrimination against people with HIV is unlawful in the UK. There are a number of ways people with HIV are protected from discrimination in UK law.

The Equality Act 2010, which now incorporates the protections of the Disability Discrimination Act (DDA) 2005, defines everyone diagnosed with HIV as disabled and, therefore, entitled to the same protection against discrimination – in employment, getting goods and services, education, trade union membership and accommodation (including letting and selling property) – as any other disabled person. The Act also contains provisions to protect people with HIV from dual discrimination, based on their HIV status and their sexual orientation or their HIV status and race for example. It prohibits discrimination by association and perception, thereby protecting partners, families and carers of people living with HIV, as well as those sometimes assumed to be HIV positive such as gay or bisexual men or African men and women from high prevalence countries.

The UK Data Protection Act 1998 also protects people with HIV. Personal details, including health information, cannot be used or disclosed without authorisation.

People with HIV are also further protected in the law against hate crime. This means that if a person is a victim of crime because of their HIV status, this is considered an aggravating factor by the courts, leading to enhanced sentences for the perpetrators of such crimes.

Infection and the law

Since 2003, prosecutions for the ‘reckless transmission’ of HIV have been brought under section 20 of the 1861 Offences Against the Person Act (OAPA) in England and Wales. In Scotland, someone can be charged with ‘reckless injury’.

Recklessness (‘the conscious taking of an unjustifiable risk’) occurs when a person, knowing that they are HIV positive, doesn’t act as responsibly as they should to avoid passing on HIV and, as a result, someone else is infected. It is important not to include in a report unfounded speculation as to why someone acted recklessly.

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It is important to describe this charge/offence accurately. It is misleading to state that reckless transmission involves ‘knowingly infecting’ a sexual partner. HIV infection is not inevitable following exposure and it is therefore impossible to ‘know’ that you have infected someone from a particular action.

The phrase also gives the impression of deliberate or intentional infection which is not the charge in cases of reckless transmission.

As at July 2010, there had been no prosecutions in the UK for the intentional transmission of HIV, an entirely different offence under Section 18 of the OAPA Act 1861 in England and Wales.

Scotland has a different legal system to the rest of the UK. In Scotland there has been a case where a man was convicted of ‘reckless endangerment’ – in other words, exposing sexual partners to the risk of HIV infection without actually infecting them. Such

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a charge is not possible in the rest of the UK.

UK law surrounding court reporting is far stricter than in some countries. Formally trained and qualified journalists appreciate how legal proceedings and evidence are covered by complex rules of privilege which do not extend to comments made outside. Incorrectly reporting charges or someone's criminal record could be defamatory, so – regardless of any question about the morality of someone's (sexual) behaviour – accuracy is vital.

Reporting Court Cases

On occasion the HIV positive status of an individual may be referred to in court, coroner or tribunal proceedings even when not directly relevant to the matter being considered. Although the information has been put in the public domain, journalists should consider carefully whether the HIV status of the individual is relevant to the story they are reporting. If their HIV status is not relevant it should be left out of the story, even if it has been mentioned in court proceedings. It is personal medical information and its dissemination may cause significant distress and difficulties for an individual and his/her family. Irrelevant reporting of HIV status could possibly also be in breach of the Press Complaints Commission Code.

Further information

Equality Act and Legal Protection

NAT – www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Human-rights-and-discrimination.aspx

Criminal prosecutions for reckless HIV transmission

NAT – www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Criminal-prosecutions.aspx

Criminal HIV Transmission Blog – <http://criminalhivtransmission.blogspot.com>