

Guidance for police investigating allegations of criminal HIV transmission

Aims

To end inappropriate police investigations and ensure, when they are considered necessary, that police forces and officers investigate allegations of criminal HIV transmission in a way which is:

- consistent with prosecution policy
- appropriately informed about HIV from both a clinical and a social perspective
- respectful of human rights and confidentiality
- and which does not prolong an investigation longer than necessary.

Background

Since 2003 it has been possible to prosecute people with HIV in England and Wales for reckless or intentional HIV transmission. Strong and concerted action by civil society, led by NAT (National AIDS Trust), resulted in the Crown Prosecution Service (CPS - the state prosecution authority) agreeing legal guidance on prosecutions which has resulted in greater clarity and fewer cases getting to court.

Though prosecutions and convictions have decreased there have continued to be a large number of police investigations of alleged HIV transmission. The vast majority of such investigations have had little or no likelihood of resulting in a prosecution since they do not meet the basic evidential requirements of the prosecution guidance. Furthermore, a number of investigations have revealed:

- poor respect for confidentiality
- 'fishing expeditions', where police search past sexual contacts of people with HIV in the absence of an infected complainant trying to find someone criminally infected
- inadequate understanding of HIV, how it is transmitted, HIV treatments and social context, and
- inadequate understanding of evidence necessary for a prosecution to occur.

Community and Police Response

A review of selected past police investigations undertaken by Terrence Higgins Trust (THT) in partnership with the Metropolitan Police Service and supported by other voluntary sector organisations. The resulting report identified good and bad practice, with recommendations for Guidance (see 'Policing Transmission' THT 2008).

An approach from NAT and THT to the Association of Chief Police Officers (ACPO), responsible for policing guidance, calling on ACPO to develop Investigation Guidance to complement that produced for prosecutors.

ACPO working group established March 2009, under auspices of LGBT ACPO workstream, to develop Investigation Guidance - includes police officers, representatives of the CPS and the National Police Improvement Agency, and NAT representing HIV civil society. A small consultative group of further civil society representatives convened to support NAT.

ACPO guidance published May 2010 on Police Online Knowledge Area (POLKA), hosted by the National Police Improvement Agency.

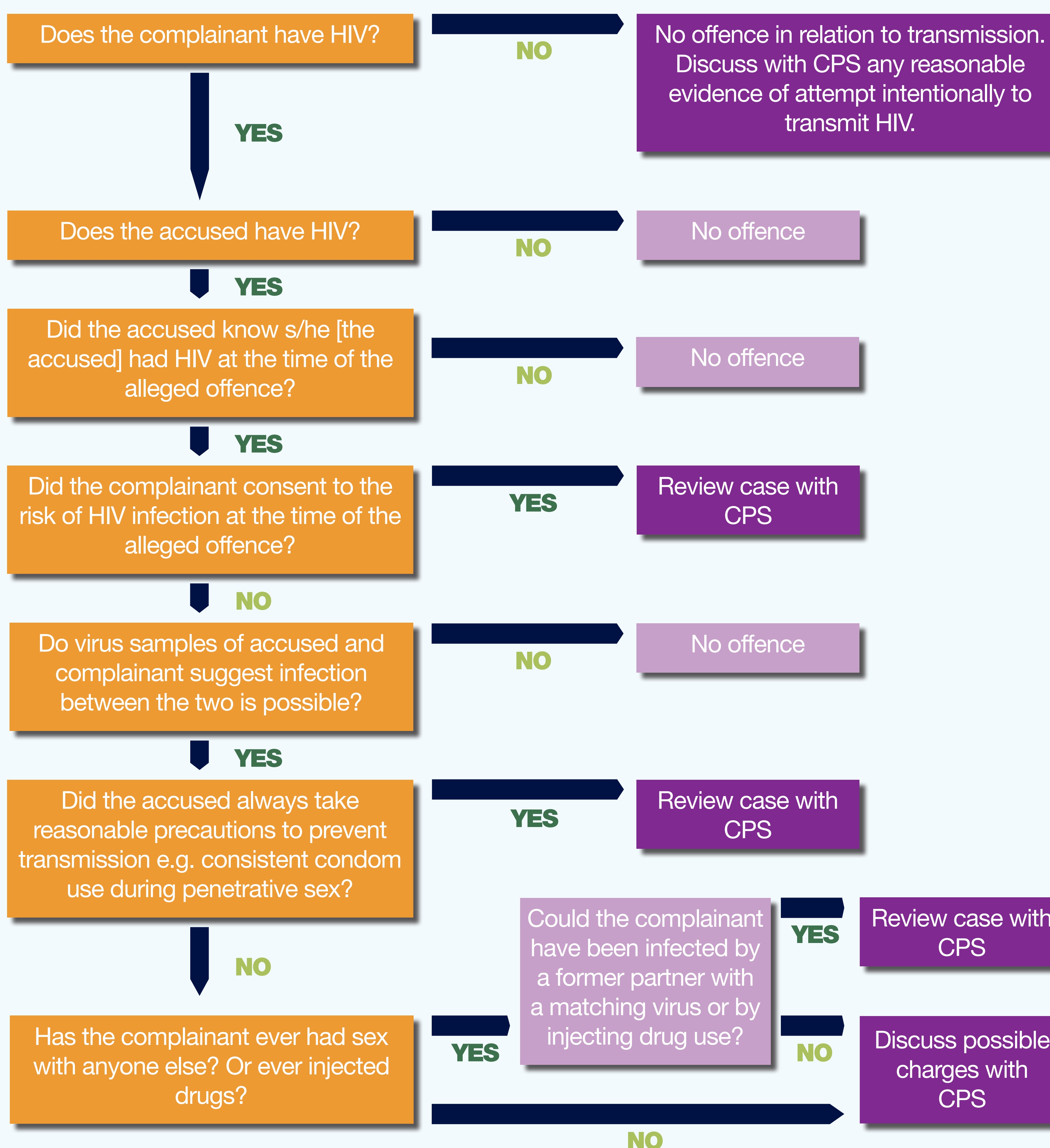
Result: The Investigation Guidance

The Investigation Guidance consists of a flowchart of the recommended police investigative process, from which at various stages the user can link to additional explanatory information. Go to <http://www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Police-investigations.aspx> for the full set of documents.

Key benefits arising from the Guidance include:

- An 'evidential flowchart' which guides the police officers through a step-by-step approach to gathering evidence - this should ensure investigations do not continue unnecessarily where there is no basis for a prosecution
- No investigation for reckless transmission if there is no infected complainant
- No 'fishing' for past infected sexual partners in the absence of an infected complainant
- Better understanding of HIV, the effectiveness of treatment, how HIV is transmitted, the possibility of PEP for those recently exposed to HIV, HIV testing and the law on discrimination
- Improved emphasis on confidentiality of HIV status - for example, in media strategies and when contacting third parties during an investigation.

The Evidential Flowchart



HIV: Key facts for police officers

Six immediate things you 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 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 PEP, which can prevent HIV infection.
- 4 If someone tells you that they or someone else has HIV, take care to protect the confidentiality of the HIV positive person.
- 5 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.
- 6 Use the word 'HIV' - avoid using the term 'AIDS'.

Next steps

The new Guidance will be extensively publicised to police forces and to people with HIV and their support organisations, using websites, media and conferences.

Voluntary sector organisations, police forces and the National Police Improvement Agency will monitor experience of investigations over the coming twelve months. There will then be a one-year-on review by the same working group of how the Investigation Guidance is working in practice, with the possibility of recommending revision.

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About NAT

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.

Shaping attitudes. Challenging injustice. Changing lives.

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