

## England and Wales

Table of cases of people charged with Grievous Bodily Harm under Section 20 of the Offences Against the Person Act 1861, for reckless sexual transmission of serious infections in England and Wales



Name	Age	Court	Date of trial	Complainants	Plea	Court Verdict	Sentence	Comments
Mohammed Dica*	38	Inner London	Oct 2003	2 women	Not Guilty	Guilty	8 years	2 counts of 42 and 54 months to run consecutively
Mohammed Dica		Appeal Court	May 2004	-	-	Appeal Allowed - re-trial ordered	-	Judge ruled to have mis-directed the jury
Mohammed Dica		Central Criminal Court	Mar 2005	1 woman	Not Guilty	Guilty	4 years 6 months	Dropped to one count First retrial Jun '04 halted
Kouassi Adaye	40	Liverpool	Jan 2004	1 woman	Guilty	Guilty	4 years	Convicted of other offences
Feston Konzani*	28	Teesside	May 2004	5 women	Not Guilty	Guilty (2 acquittals)	10 years	4 years, 3 years and 3 years to run consecutively
Feston Konzani		Appeal Court	Feb 2005	-	-	Appeal Dismissed	-	Sentence unchanged despite support from one complainant for a reduction
Paulo Matias	38	Leicester	Jul 2005	1 woman	Guilty	Guilty	3 years	Died Jan 2006
Anonymous woman	20	Cardiff	Jul 2005	1 man	Guilty	Guilty	2 years	First woman charged
Derek Hornett	44	Exeter	Dec 2005	1 woman	Guilty	Guilty	3 Years 3 months SOPO	Also given a Sexual Offences Act Prevention Order requiring disclosure before any future sexual relationship
Mark James	47	Isleworth	Apr 2006	1 man	Guilty	Guilty	3 years 4 months	First case involving gay men
Sarah Porter	43	Inner London	Jun 2006	1 man	Guilty	Guilty	2 years 8 months	
Male	20's	Kingston	Aug 2006	1 man	Not Guilty	Not Guilty	Acquitted	First acquittal after defence expert disputed the virological evidence
Clive Rowlands	43	Liverpool	Nov 2006	1 woman	Guilty	Guilty	2 years 6 months	Both complainant and defendant had previously diagnosed psychiatric conditions

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Anonymous man	35	Bournemouth	Jan 2007	1 woman	Guilty	Guilty	3 years 6 months	
Male	51	Preston	Apr 2007	1 man	Not Guilty	Not Guilty	Acquitted	Dismissed by the judge but convicted of another offence
Male*	39	Manchester	Feb 2008	1 woman	Not Guilty	Not Guilty	Acquitted	Dismissed by the judge
Ercan Yasar#	29	Gloucester	Nov 2008	1 woman	Guilty	Guilty	2 years	Prosecuted and convicted for Hepatitis B only not HIV
James Cawley	41	Preston	Nov 2008	1 woman	Guilty	Guilty	1 year	Woman went on to infect another man
Male	33	Leicester	Nov 2008	1 woman	Not Guilty	Not Guilty	Acquitted	CPS dropped the case but convicted of other offences
Nicolas Richards	32	Maidstone	Aug 2010	1 woman	Guilty	Guilty	1 year SOPO	Sentence concurrent with another one for 'GBH with intent' unrelated to HIV.
Nkosinathi Mabanda	44	Wolverhampton	July 2011	1 woman	Guilty	Guilty	4 years + 1 year on licence.	Also received a ASBO
David Golding#	28	Northampton	Aug 2011	1 woman	Guilty	Guilty	14 months	Convicted for Herpes. Released on bail pending appeal.
Simon McClure	38	Teesside	Oct 2011	1 woman	Guilty	Guilty	2 years 8 months	

\*No one has been convicted under Section 18, or 'intentional transmission' although Mohammed Dica and Feston Konzani were initially charged under Section 18 and the charged subsequently dropped to section 20, or 'reckless transmission'. The man tried at Manchester Crown Court in February 2008 was charged both with intentional and reckless transmission with the former charge dropped and the latter dismissed. Nicolas Richards was convicted for a section 18 offence, intentional GBH, but this was a physical assault on a separate person and unrelated to the HIV transmission charge.

#Ercan Yasar was convicted for sexual transmission of hepatitis B virus, David Golding for herpes virus. It was alleged that Ercan Yasar had also transmitted Chlamydia but this did not result in a charge against him.

Section 20 of the Offences Against the Person Act 1861 reads, “Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty” of the offence. In its recent guidance the Crown Prosecution Service described this as “when a person inflicts grievous bodily harm upon another without intending to do so (that is, where they are 'reckless')”. The maximum penalty is 5 years imprisonment for a Section 20 Offence.

In England and Wales it is not possible to be charged under S.20 for exposure where there has been no transmission of an STI. When a partner knows the person has HIV or the relevant STI and consents to the sexual activity no crime is committed. It is possible to be charged with attempting to intentionally transmit a serious sexual infection under the Criminal Attempts Act 1981. There have so far been no cases.

### **Sexual Offences Prevention Orders (SOPO)**

In 2 cases a Sexual Offences Prevention Order (SOPO) was made. SOPOs are governed by the Sexual Offences Act 2003 and can be applied to anyone convicted of a limited number of offences, mainly those sexual in nature, but also murder, manslaughter and serious assault such as Grievous Bodily Harm. They can be made where the court is “satisfied that the defendant’s behaviour... makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant” and last for a fixed time although may be renewed.

The prohibitions in the order must only be “those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.”

The two SOPOs imposed by the courts both differed slightly with the first case prohibited the defendant from engaging in “*any lawful sexual relationship with any consenting person without first disclosing your HIV-positive status to that person*”. It also included a number of other conditions relating to contact with older women. The second SOPO prohibited the defendant “*from having sexual intercourse without using protection and prohibited from having sexual intercourse without informing your partner that you have HIV*”. Both were for five years duration.

It would be for a court to decide what type of sex was necessary constituted a “sexual relationship” if either of these two returned to court after a potential breach of the SOPO.

In the Mabanda case there was an ASBO (Anti-Social Behaviour Order) imposed on him rather than a SOPO which requires him to disclose his HIV status before “oral, anal or vaginal sexual intercourse”. The reason for an ASBO as opposed to a SOPO was technical and related to the fact that the charge was for a physical assault and not a sexual crime. These are the only people in the England and Wales legally required to disclose their HIV status before having sex.

## Scotland

### Table of Cases of people charged with the common law offence of 'Culpable and Reckless Conduct' for sexual transmission of serious infections (HIV and viral hepatitis) in Scotland



Name	Age	Court	Date of trial	Complainants	Plea	Court Verdict	Sentence	Comments
Stephen Kelly <sup>1</sup>	33	Glasgow	Feb 2001	1 woman	Guilty	Guilty	5 years	First case in the UK
Male	34	Paisley	May 2005	1 woman	Not Guilty	Not Guilty due to insanity	Sectioned	Taken to a secure hospital
Giovanni Mola	38	Glasgow	Nov 2006	1 woman	Not Guilty	Guilty	9 years	Also convicted of sexually transmitting Hepatitis C
Mark Devereaux	41	Dumbarton	Feb 2010	4 women	Guilty	Guilty	10 years	First exposure case. Transmission occurred in only one case.

The law in Scotland concerning this is a common law offence and so no specific definition is given of 'Culpable and Reckless Conduct', which may also be called 'Causing Real Injury', but the draft Scottish Legal Code describes it as "A person who intentionally or recklessly causes injury to another person, without that person's consent, is guilty of the offence of causing unlawful injury."  
 (Reference at [http://www.scotlawcom.gov.uk/downloads/cp\\_criminal\\_code.pdf](http://www.scotlawcom.gov.uk/downloads/cp_criminal_code.pdf))

Exposure to an STI without transmission is also a crime. The importance of consent has not been decided in Scottish law. All cases were for infection with HIV although Giovanni Mola was also convicted for transmitting Hepatitis C as well.

Those people whom the judge directed should not be named for legal reasons have been described as 'anonymous woman' or 'anonymous man'. The people acquitted of the charge have not been named and have been listed simply as 'female' or 'male'.

There have been no cases in Northern Ireland so far. The law is the same as in England and Wales except that a sentence may be up to 7 years. Data collated by Robert James, October 2011.

<sup>1</sup> There was also a mid-trial judgement regarding the admissibility of the results of blood tests Mr Kelly had had while he was in prison that allowed their inclusion in the trial.