

## LEICESTERSHIRE AIDS SUPPORT SERVICES

### HIV TRANSMISSION AND THE LAW

OCTOBER 2008

If LASS believes that someone is potentially putting another person at risk of HIV through their sexual behaviour, whatever our individual or collective personal, political, moral or ethical beliefs, views or opinions might be, we will not be judgemental or take sides.

However, LASS does have a responsibility to inform, educate and help people to fully and clearly understand what is happening and the possible consequences of this, not just for the safety of others but also for the welfare, safety and benefit of the person living with HIV themselves.

1. Whilst recognising the difficulties of disclosing HIV status, LASS will inform people living with HIV:

- *That if they are having unprotected sexual intercourse with another person who is or maybe HIV negative, then they are putting that person at risk of HIV infection and also putting themselves at risk of being arrested, investigated by the Police, and then possibly facing a criminal prosecution which if found guilty is likely to mean going to prison, especially if:*
  - They know they are infected with HIV;
  - They do not tell their sexual partners that they have HIV;
  - Condoms are not used consistently;
  - They actually infect the other person with HIV;
  - The other person makes a complaint to the Police.
- That their *medical records are not completely confidential*, can be obtained through a Court Order, and may be used in any criminal prosecution.
- That if a complaint is made to the Police, they *may then face arrest, questioning and possible detention in prison* on remand prior to any trial in Court.
- That if a sexual partner directly asks if they are infected with HIV and they fail to disclose this, it may influence the likelihood of a successful criminal prosecution.
- Where to go for further help, information or if an accusation is made.
- About the risks and benefits of disclosing HIV status, and what support is available.
- That avoiding testing does not necessarily protect a person from prosecution, but it does endanger health through late diagnosis.
- Condoms, used properly for every sexual encounter, offer the best protection against HIV transmission (including other strains of the virus), other sexually transmitted infections, and possible prosecution.
- That if a condom is used and it breaks, letting their sexual partners know they might now be at risk of HIV infection gives them the chance of getting PEP (Post-Exposure Prophylaxis drugs) within 72 hours of sex to hopefully prevent possible transmission and to reduce the likelihood of a successful criminal prosecution.
- That in exceptional circumstances, or when under a legal requirement, LASS may have to breach confidentiality (in accordance with established policy) if in the best interests of the agency or when the agency or other people are considered to be significantly 'at risk'.

**2. If a Service User (or anyone else who may contact us) is facing a possible criminal prosecution or maybe involved in pursuing a criminal prosecution, whatever our personal, moral, ethical or subjective views may be, LASS will:**

- Offer confidential unbiased, non-judgemental and non-discriminatory information and support, including details of where to obtain additional appropriate support, information, help or advice.
- Do what we can to support access to fair treatment, representation and hearing in the criminal justice system.
- Assist, if appropriate and possible, the person who made the initial complaint to recognise what the implications of bringing a criminal prosecution might personally mean in practice for them, especially if the case goes to Court.
- Keep the records of conflicting parties separate and use different Staff or Volunteers to support each party who is involved.
- Not give out or share any specific personal information with anyone else without the consent of the person it relates to, unless under a Court Order requesting specific information, or when there is a legal, child protection or vulnerable adult protection duty to do so.
- Avoid getting into discussions/debates with the media about the specific details of specific cases (and also usually including people who are not directly involved).

**3. If LASS are visited or contacted by the Police or any other authority or representative in connection with an enquiry or possible criminal prosecution of HIV transmission:**

- They should be directed to the Chief Executive Officer.
- No specific personal information will be given by anyone without the consent of the person it relates to, unless under a Court Order requesting specific information, or a legal, child protection or vulnerable adult protection duty to do so.

**4. Multi-disciplinary and multi-agency working**

Whilst LASS fully supports and recognises the importance and benefits in multi-disciplinary and multi-agency working and effective communication, we recognise that different workers and agencies will have their own ethos, ways of working, practical considerations and most importantly legal responsibilities and duties.

In such situations, LASS will communicate with and be supportive of other colleagues but will follow our own policy and procedures which will be made available to other agencies.

LASS will also liaise and collaborate with other agencies, particularly in the HIV field, as and when appropriate.

**5. Other action to support this policy**

- LASS staff and volunteers should keep themselves up-to-date on the latest situation regarding criminal prosecutions; reading any relevant or circulated briefings; and attending any advised training or information sessions that may be held.
- A designated person will keep themselves informed and be tasked with informing others within LASS of developments. Any issues, concerns or developments that arise should also be communicated to them.

- LASS will respond appropriately without focusing directly on a specific case.
- LASS will work with local Police, as possible and appropriate, to ensure good understanding of HIV and sexual health.
- Working with local clinicians to ensure best practice in confidentiality and contact tracing and to promote understanding of the fears, concerns and circumstances of people living with HIV.
- LASS will let THT Policy Division know if there is a local case for monitoring purposes and to get technical advice, generally advising anyone accused to also contact THT for information and guidance.
- Staff must be aware of the limits of confidentiality, especially regarding recording information and in relation to Court Orders, etc.

## 6. Updating arrangements

As law and the situation regarding the criminal prosecution of HIV transmission is fast moving and certainly liable to change, this policy and procedures will continually be kept under review and be revised as and when necessary due to changes, suggestions, experience, reviews or comments.

<b>LASS Document Control</b>		
<b>Approved by:</b>		
<b>Signature:</b>		
<b>Board Responsibility:</b>		

<b>Review Date:</b>	November 2011
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## Information for people living with HIV and others

### People living with HIV

- Understanding the current law and its potential circumstances.
- *That if they are having unprotected sexual intercourse with another person who is or maybe HIV negative, then they are putting that person at risk of HIV infection and also putting themselves at risk of being arrested, investigated by the Police, and then possibly facing a criminal prosecution which if found guilty is likely to mean going to prison, especially if:*
  - They know they are infected with HIV;
  - They do not tell their sexual partners that they have HIV;
  - Condoms are not used consistently;
  - They actually infect the other person with HIV;
  - The other person makes a complaint to the Police.
- That their medical records are not completely confidential, can be obtained through a Court Order, and may be used in any criminal prosecution.
- That if a complaint is made to the Police, they may then face arrest, questioning and possible detention in prison on remand prior to any trial in Court.
- That if a sexual partner directly asks if they are infected with HIV and they fail to disclose this, it may influence the likelihood of a successful criminal prosecution.
- Where to go for further help, information or if an accusation is made.
- About the risks and benefits of disclosing HIV status, and what support is available.
- That avoiding testing does not necessarily protect a person from prosecution, but it does endanger health through late diagnosis.
- Condoms, used properly for every sexual encounter, offer the best protection against HIV transmission (including other strains of the virus), other sexually transmitted infections, and possible prosecution.
- That if a condom is used and it breaks, letting their sexual partners know they might now be at risk of HIV infection gives them the chance of getting PEP (Post-Exposure Prophylaxis drugs) within 72 hours of sex to hopefully prevent possible transmission and to reduce the likelihood of a successful criminal prosecution.
- Contacting THT for information and guidance, especially in relation to obtaining legal representation.
- That in exceptional circumstances, or when under a legal requirement, LASS may have to breach confidentiality (in accordance with established policy) if it is considered to be in the best interests of the agency or when the agency or other people are considered to be significantly 'at risk'.

## Sexually active people

- Around 30% of people (currently more than 20,000 people) infected with HIV in the UK are unaware of it. Therefore, they are unable to inform anyone else.
- The current legal situation and its consequences, together with continuing stigma, prejudice, negative attitudes, sensationalist media coverage, etc, can make it much harder for someone with HIV to disclose that they are infected.
- Just because some prosecutions have happened and a 'law' seems to exist, this does not mean that everyone will 'obey the law' or have the resources to do so, so not to make assumptions, get complacent or feel protected and over safe, ignoring the wider benefits of safer sex.
- Avoiding testing does not necessarily protect a person from prosecution, but it does endanger health through late diagnosis.
- Condoms, used properly for every sexual encounter, offer the best protection against HIV transmission, other sexually transmitted infections, pregnancy, and possible prosecution.
- Disclosure or condom use cannot always be expected, such as due to reasons of undiagnosed infection; stigma; assumptions of shared HIV status; differing views on where responsibility lays; dishonesty; and a lack of concern from some people with HIV towards others.

## Useful Contacts and Information

**THT:** [www.tht.org.uk/prosecutions](http://www.tht.org.uk/prosecutions) or through 'THT Direct' by telephoning: 0845 12 21 200.

**NATIONAL AIDS TRUST:** [www.nat.org.uk](http://www.nat.org.uk)

**SIGMA RESEARCH:** A briefing report (Oct 05) providing an overview to: "Grievous Harm: Use of the Offences Against the Person Act 1861 for Sexual Transmission of HIV" that is available at LASS and should be available at: [www.sigmaresearch.org.uk/reports.html](http://www.sigmaresearch.org.uk/reports.html)

**AIDSMAP:** Various articles and news, including 'HIV transmission and the criminal law by James Chalmers' and other relevant news items and various articles and news can be found at: [www.aidsmap.com](http://www.aidsmap.com)

**BRITISH HIV ASSOCIATION (BHIVA):** Briefing on 'HIV Transmission & Law for Clinical Teams' at: [www.bhiva.org](http://www.bhiva.org)

**'CRIMINAL HIV TRANSMISSION':** Publication (NAM, April 2007). [www.aidsmap.com](http://www.aidsmap.com)

**UNAIDS:** 'Criminal Law, Public Health and HIV Transmission' – A policy options paper by UNAIDS (June 2002), available at: [www.unaids.org](http://www.unaids.org) (and then put "criminal" in their search box) or it can be specifically found at the following link:

[http://data.unaids.org/Publications/IRC-pub02/jc733-criminallaw\\_en.pdf?preview=true](http://data.unaids.org/Publications/IRC-pub02/jc733-criminallaw_en.pdf?preview=true)

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