

RECKLESS TRANSMISSION OF HIV AND OTHER SEXUALLY TRANSMITTED INFECTIONS

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Introduction

- Summarise issues around 'reckless' transmission
 - Evolving case law
 - Response from HIV organisations
 - Health professionals duties
- Interactive case studies
- Key take home messages

Background

- ⊙ Prosecutions since 2001 (Scotland) and 2003 (E&W)
- ⊙ Offences against the persons act 1861
- ⊙ Reckless conduct (Scotland)
- ⊙ Zealous police investigations*
 - Early cases based on flimsy evidence
 - Accompanied by unhelpful media reporting
- ⊙ Raised questions about professional responsibilities (and liability)

*Policing transmission. THT Jan 2009

Response to Prosecutions

- ⊙ THT and NAT campaigning
- ⊙ Evidence to SHIAG
 - Expressed concern
 - Called for guidance*
- ⊙ CPS guidance 2008
- ⊙ Work with ACPO – guidance due soon
- ⊙ BHIVA/BASHH briefing paper/guidance 2006 and update 2010

*SHIAG Annual report 2004/05

The Law

- In E&W individuals are only likely to be successfully prosecuted if they*:
 - Knew they were HIV positive
 - Had UPSI with someone negative who subsequently tests positive
 - Did not disclose their status before SI
 - Can be proven to be the only source of transmission

*Does not apply in Scotland

The Law

- The use of condoms with disclosure in the event of condom breakage is likely to represent a reasonable defence against recklessness
 - Not tested in court
- Scientific evidence alone will not prove that the defendant is the source of transmission
 - E.g. Kingston case

Questions Raised

- Is this an appropriate use of the law?
- What public health message does this send out?
- What effect could these prosecutions have on HIV testing rates, individual care and ultimately transmission rates?
- Should there be a new specific law to cover these cases?

Clinicians Responsibilities

- The duty of confidentiality
 - Case law
 - GMC guidance
 - STI regulations 2000 (VD Act)
- The duty to properly advise
 - Case law – US, Australia
 - GMC guidance

GMC 2009. Confidentiality and Confidentiality: Disclosing information about serious communicable diseases

When Can You Disclose Information to a Third Party?

- ⊙ With patient consent
- ⊙ Specific legal requirement
 - Notifiable diseases
 - Section 251 NHS Act 2006 approval
- ⊙ Court order requests information
- ⊙ Public interest to disclose
 - To protect individuals or society from the risk of serious harm or death
 - Harm of non-disclosure vs. harm of disclosure

Disclosure of HIV Status

- ⊙ In public interest?
 - May have an adverse effect
- ⊙ What level of risk requires action?
 - Depends on degree of potential harm
- ⊙ Disclosure needs to have a good chance of preventing harm
- ⊙ Disclosure must not create more harm than it will prevent

Past Risk vs. Future Risk

- ⊙ Partner previously exposed and needs testing
 - Other ways of getting people tested without disclosure
 - If past risk recent may have more time
- ⊙ Ongoing exposure risk to partner
 - Discuss condoms and safer sex
 - Discuss reasons for non-disclosure
 - Work towards disclosure if appropriate

Complex Cases of Non-Disclosure

- ⊙ Close contact who is also a patient of the healthcare worker
- ⊙ Close contact who is not a patient of the healthcare worker
- ⊙ No identified close contact
 - i.e. casual unidentified contacts, possibly multiple

Close Contact is Also a Patient

- Recognised duty of care (legally and ethically) to both parties
- Negligent if do not disclose
- Need to work towards disclosure with the known positive patient
- Time frame important

Close Contact is Not a Patient

- No legal duty to disclose
- But if deemed in public interest then disclosure would be lawful and in line with GMC guidance
- Must weigh harms of disclosure vs. non disclosure
- Justify decision
- Need to be able to identify partner with reasonable certainty

Casual Unidentified Partner(s)

- No legal or ethical duty to disclose
- Would not provide a means of preventing ongoing transmission as no identifiable person to disclose to
- Ongoing counselling of patient to facilitate behaviour change

Disclosure of Information to Police

- Patients decision to make a complaint
- In event of police request for information, only disclose if:
 - Verified patient consent
 - Court order
 - Third party Information removed

Case 1

- A 23-yr-old bisexual man has had HIV disease for 4 years, his current CD4 count is 450 and viral load is 8,300 copies. He has a girlfriend of 3 months and they want to have a sexual relationship. He hasn't told her he is HIV positive, but they go to the GUM clinic for a check up following which he tells her that all his results are negative. He then comes to a routine appointment in the HIV clinic and tells you about his new relationship and that his girlfriend is HIV negative.

Case 1: Question for Audience

- Should you:
 - A. Tell him he can have sex provided he uses condoms?
 - B. Tell him to abstain from sex altogether?
 - C. Inform him to tell his girlfriend that he is HIV positive?
 - D. Contact his girlfriend to inform her of his status?
 - E. Inform the police of the situation?

Discussion

- ◉ Who is ultimately responsible for protecting the partner?
 - The patient.

Discussion

- ◉ To whom do we have a duty of care?
 - The patient
 - Possibly his partner if she also attended the same clinic for her GUM screen

Discussion

- What are our central responsibilities?
 - To advise the patient
 - To support the patient
 - To maintain confidentiality as per GMC guidance
 - Clear documentation

Discussion

- What is the appropriate advice to this man?
 - Discuss transmission and how to protect partner
 - Discuss PEPSE in the event of a condom accident
 - Advise disclosure if planning not to use condoms now or in the future
 - Explain the current legal situation
 - Ensure understanding
 - Revisit discussion

Discussion

- What if he does not follow it?
 - Explore reasons
 - Further clarification of understanding
 - Work towards disclosure if partner has been at risk
 - If partner also your patient may disclose to her after a specified time frame
 - If partner not your patient the same may apply if you know her identity and have a reliable means of contacting her

Case 2

- A female casual sex worker continues to work not using condoms knowing that she is HIV positive. She is one of your patients and you have been advising her every time you have seen her that she should use condoms.
- A 22-yr-old man then presents with a seroconversion illness. He states that his only risk has been regular commercial sex with this woman (who he names).

Case 2: Question for Audience

- ⊙ When she attends her next appointment do you:
 - A. Tell her that one of her clients has seroconverted?
 - B. Tell her that she must use condoms?
 - C. Inform the police?
 - D. Inform the local Health Protection Unit?
 - E. Inform the seroconverter at his next appointment that this casual sex worker is positive?

Discussion

- ⊙ Who is responsible for this transmission?
 - Both parties?
 - He may have offered her extra payment for UPSI
 - Surely everyone is responsible for protecting themselves
 - Most people using CSWs assume they are at higher risk of having STIs

Discussion

- To whom do you have a duty of care?
 - Both parties as they are both under your care
 - So duty of confidentiality to both

Discussion

- Is it acceptable to disclose information about the other party to either of these patients?
 - Consider public interest and balance of harms
 - No legitimate reason to disclose to him as it wouldn't prevent harm
 - Could be a legitimate reason to tell her as this might have an effect on her future behaviour
 - Don't have to mention which partner it is

Discussion

- Should the police or HPU be informed?
 - For what purpose
 - Consider public interest and balance of harms
 - It would not prevent harm in this case
 - This man is already infected
 - Not illegal to put someone at risk
 - No identified parties to protect
 - Up to the patient to bring charges against another
 - This man is very clear who infected him

Discussion

- What is an appropriate course of action?
 - General advice as per previous case to man
 - If he states he wishes to bring a case against this woman refer to online resources and for specialist advice e.g. THT direct
 - Further discussion with CSW re transmission, protecting partners and legal situation
 - ? Mention that she has been named as a source of new infection

Case 3

- ⊗ A woman is diagnosed HIV positive during pregnancy. She follows all appropriate advice to prevent MTCT and delivers a healthy baby who is HIV negative at 18 months. Her partner is present at the birth and a regular postnatal visitor to the hospital. She does not wish to disclose to him and tells you that they have abstained from sex throughout the pregnancy and will use condoms thereafter. However, she remains under your care and becomes pregnant again a year later by the same partner. She continues to refuse to disclose.

Case 3: Question for Audience

- ⊗ Should you:
 - A. Contact her partner and tell him?
 - B. Contact her partner and suggest he sues her?
 - C. Discuss her reasons for non-disclosure?
 - D. Tell the police?
 - E. Tell her that in future she must tell her partner about PEPSE in the event of a condom accident?

Discussion

- ◉ To whom is your duty of care?
 - To her
 - So she is your first priority

Discussion

- ◉ What responsibility do you have for the partner?
 - There is some responsibility to prevent harm to others
 - The risk of harm must be weighed against the risk of harm from disclosure

Discussion

- Why is she refusing to disclose?
 - It is important to understand this
 - Is there a history of domestic violence?
 - Are there immigration and finance issues that depend upon him?
 - Has she tried to use condoms but he refuses to?
 - Has he refused to speak about HIV?

Discussion

- What support can you offer?
 - Discussion with HA or psychologist
 - Revisit discussion on transmission, safer sex and legal situation
 - Offer to contact partner or inform him with her
 - Suggest she comes along to the clinic with him for them both to test and then collect the results together (he may be positive already)

Discussion

- ⊙ Can you justify disclosing to him without her consent?
 - He has been at past risk and has ongoing risk so could prevent harm by either him being able to access timely treatment or preventing infection
 - Depends on balance of harms e.g. is there domestic violence
 - Must give patient time first and inform patient when you are going to take action
 - Must be sure of partners identity

Key Points

- ⊙ Use of the law is unlikely to prevent HIV transmission
- ⊙ Key responsibilities to maintain confidentiality and advise/support patients
- ⊙ Consider the public interest in maintaining confidentiality

Key Points

- To whom do we owe a duty of care?
- Decision to disclose on a case-by-case basis
- Balance of harms and benefits
- Must stand a reasonable chance of preventing harm
- Must be no other practical way to prevent harm

Key Points

- Disclose to the person at risk
- No duty to disclose to police or HPU
- Give the patient time and support to disclose
- Warn the patient you are going to disclose
- It is not your role to suggest a patient brings charges

Finally

- Don't forget further sources of information, advice and support
- Consultation now open on updated BHIVA guidance: HIV transmission, the law and the work of the clinical team.

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