

# BHIVA Position Statement on HIV, the law and the work of the clinical team 2022

Public consultation comments

Compilation of all comments received via the BHIVA website. The writing group thanks everyone who responded to the consultation. All comments were considered by the group and amendments have been made where appropriate.

28 February 2022

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1.	Duncan Churchill	University Hospitals Sussex NHS Foundation Trust	<p>In the UK, nearly all people have a baseline resistance test (and sometimes other resistance tests) which are done for their clinical benefit; specific consent for this is rarely sought as consent is implied. This generates a genetic sequence of a significant part of the person's viral genome, which might potentially be used later AGAINST the patient to establish the actus reus. This raises the question - does specific consent ideally need to be sought for resistance tests, taking this into account?</p> <p>The UK Drug Resistance Database was once asked for series of (random) viral sequences by a virologist acting for the prosecution in a case, so that the prosecution could construct a phylogenetic tree and demonstrate (presumably) that sequences from the defendant matched sequences from the complainant. We refused to share any sequences, as we had not obtained the data for this purpose. It would be helpful to know that we would not be compelled to do so in the future by a court order (this did not happen in the case in question).</p>	<p>Thank you. In terms of specific consent, probably not - it would be an unusual position to seek consent for a medical test with medical utility, on the basis it could have legal utility going forward. However, all tests should have consent as per general medical practice.</p>
2.	Ben Cromarty	Personal	<p>In the section on page 5: Sharing information about legal issues with a person living with HIV the document says:</p> <p>We recommend that sharing knowledge of a diagnosis of HIV is the best way to enable shared decision making. Sharing knowledge of HIV status</p>	<p>Thank you. You submitted similar comments as part of the UK-CAB review for which we are very grateful.</p>

			<p>with partners will serve to protect people living with HIV from criminal liability for reckless transmission, if sharing the knowledge results in consent to the risk of HIV acquisition.</p> <p>Whilst true, it (again) puts the onus on the person with HIV. Should it be clearer that this applies more to those whose viral loads are NOT undetectable...rather than everyone (which it seems to at present?).</p> <p>Although it is meant well, this section could be more carefully worded. Rather than a recommendation, perhaps suggest potential advantages and disadvantages of deciding to share personal medical details, highlighting when it might be more appropriate to do so (such as when the viral load is NOT undetectable), and when it may not be necessary (such as when the viral load is undetectable).</p>	<p>We have added that individual assessments should be made, and that undetectability means that HIV cannot be transmitted.</p> <p>There have been some changes to remind users to make individualised assessments based on actual risks</p>
3.	Tim Gonulalan	Public	<p>The one I'm unsure of is intentional transmission where consent is not a defence. Sadly there are many 'bug chasers' out there, so if there is direct consent to actively knowingly acquire HIV, (of course from someone who is not on treatment), is there a risk that the defendant could be 'trapped' into a criminal offence? (On the presumption that the prosecution is actively trying to get someone into trouble, and puts that above their own health).</p>	<p>Thank you for this question, which has an academic quality. There are no cases known to the authors where this has been contested.</p>
4.	Tristan Barber	Royal Free Hospital	<p>Excellent update, very well done to all authors.</p>	<p>Thank you.</p>
5.	Nadia Ahmed	Mortimer Market Centre	<p>This is truly excellent. Thank you for putting this together. It's well structured, clear and has covered all the areas I can think of in this dialogue.</p> <p>Some super minor things that I won't be offended if ignored!                      1) "Individuals who experience barriers to accessing ART or to treatment adherence." The individuals who experience barriers to access ART - there might be those who experience barriers through not their doing e.g. have had cases in prisons and detention centres. So I wonder whether this needs to be clarified i.e. it's their own/perceived barrier?                      2) "We suggest that sharing knowledge of a diagnosis of HIV is the best way to enable shared decision-making. Sharing knowledge of HIV status with partners will serve to protect people living with HIV from criminal liability for reckless transmission, if sharing the knowledge results in consent to the risk of HIV acquisition." Element of contradiction given what was previously said but also what is done in practice, but also</p>	<p>Thank you for these key points.</p> <ol style="list-style-type: none"> <li>1) Agreed and a phrase added.</li> <li>2) Also noted by another individual, and further clarified.</li> <li>3) Follows on from 2.</li> <li>4) Concerns about the work becoming too legalistic, however the resources do contain definitions.</li> </ol>

			<p>stigma. I understand this, and its complicated and not sure what the right answer is, and don't think there is as it's about being aware of all the angles. E.g. in clinic, we tell someone you are undetectable, you don't need to tell your partner as yet etc (explain u=u and caveats) but then you should tell them because of above.</p> <p>3) "HCPs can feel concerned that they are aware of someone's HIV status when a sexual partner is uninformed." I get this, but I think I'd be more worried about the patient concern they might be prosecuted given 2?</p> <p>4) I did wander at the start whether a definition section might be helpful e.g. reckless, unintentional, but not crucial.</p>	
6.	Debbie Laycock	Terrence Higgins Trust	<p>Terrence Higgins Trust would like to thank BHIVA for this clear position statement and for continuing to take a stand against the impact of the criminalisation of HIV transmission.</p> <p>Terrence Higgins Trust agrees that the use of criminal law in relation to HIV transmission is detrimental to the public health aims of reducing the number of new HIV infections and in reducing stigma. This is of course in addition to the personal impact that the threat of criminalisation of HIV transmission has on people living with HIV. We believe that criminalising HIV transmission has the potential to directly impact the UK Government's ability to reach its goal of ending new HIV transmissions by 2030.</p> <p>We support the position statements update to reflect the most up to date evidence on the impact of HIV treatment on transmission of HIV (U=U).</p> <p>We concur with the identified categories of individuals who may be at greater risk of criminal transmission; agree with the information that HIV clinicians should share with these individuals; and support the statements process around sharing any information with the police.</p>	Thank you.
7.	Colin Armstead	George House Trust	<p>George House Trust wholeheartedly supports the BHIVA Position Statement on HIV and the work of the clinical team.</p> <p>We believe that the criminalisation of HIV transmission fuels stigma and does not in any way contribute to wider public health aims of ending all new transmissions of HIV.</p>	Thank you. We have made some changes to confine the use of disclosure to an absolute minimum, and instead use the preferred term 'sharing'.

			<p>We believe that the criminalisation of HIV does nothing to encourage people to test for HIV.</p> <p>With regards to the language used in the statement we would make a respectful plea to BHIVA to consider the use of the word 'disclose' or 'disclosure' in relation to people sharing or talking about HIV status. 'Disclose' and 'disclosure' imply that negative, secretive or unpleasant information is being shared - this does not support the aim of normalising conversations about HIV.</p>	
8.	Children's HIV Association (CHIVA) Steering Group	CHIVA	<p><u>1. People at particular risk should include:</u></p> <ul style="list-style-type: none"> <li>• Adolescents and young adults (10-24 years old) living with HIV who engage in sexual activities/relationships</li> </ul> <p><u>2. Please include the following on Adolescents and Young Adults:</u></p> <p>Adolescence and early adulthood is a critical period of development with significant physical and emotional changes, growing personal autonomy and responsibility for their own health. It is a time for exploring peer relationships, gender identity, sexuality and economic responsibility, while being at higher risk of experiencing power imbalance in their relationships. Adolescents and young adults living with HIV may engage in sexual activities and relationships below the age of 16, triggering potential safeguarding issues with the need for parental involvement. Peer pressure and the need to belong can increase fear of stigma and discrimination if HIV is disclosed. In addition, cognitive development, and delay, might make it difficult to access reliable information about HIV and fully appreciate the current national legal framework. Possible economic and social vulnerability creates issues with access to PrEP and condom use. Such challenges can make this group less able to access services and make an informed decision, resulting in increased risk-taking.</p> <p>Treatment adherence among adolescents is also generally lower and treatment failure rates are comparatively higher than in other age groups<sup>1</sup>.</p> <p>[1] UNAIDS. Ending AIDS: progress towards the 90-90-90 targets. 2017. Available at:</p>	<p>Thank you for this important input. We have instead highlighted the additional needs of young people and signposted readers to CHIVA. We hope that is helpful.</p>

			<p><a href="https://www.unaids.org/sites/default/files/media_asset/Global_AIDS_update_2017_en.pdf">https://www.unaids.org/sites/default/files/media_asset/Global_AIDS_update_2017_en.pdf</a></p> <p>Additional mitigating measures may include:</p> <ul style="list-style-type: none"> <li>- Provision of age-appropriate information on HIV and SRH</li> <li>- Improve awareness of the current national legal framework and HIV</li> <li>- Favour approaches that aim to boost resilience, self-efficacy, support informed decision-making process, and nurture mental health and wellbeing that can empower adolescents and young adults to live happy, healthy and productive lives</li> <li>- Support easy access to sexual and reproductive health (SRH) services and information, including during the COVID-19 and future pandemics</li> </ul> <p><u>3. Please include the following in the section on expert resources:</u> Health professionals working with adolescents and young adults should signpost CHIVA as a reliable source of information and consider referral to CHIVA team for direct support.</p> <p>4. Fear of abandonment and stigma is very important with adolescents and young adults</p>	
9.	Bronagh McBrien	Public Health Agency	<p>Many thanks for updating the position statement on this complex and very challenging issue.</p> <p>It is not expressly stated, but I wonder if this position statement is in relation to prosecutions as a result of sexual transmission only, or if it also includes the possibility of intentional or reckless transmission as a result of shared needle usage.</p> <p>My feeling is that as injecting recreational drugs is a criminal activity in itself, and therefore prosecution on this basis is unlikely.</p> <p>Are the writing group aware of any prosecutions as a result of intentional transmission or reckless transmission associated with injecting drug use?</p> <p>There is also mention of successful prosecutions of intentional or</p>	<p>Thank you. The resource does indeed only relate to sexual transmission and this has now been made clear.</p>

			reckless HIV transmission in Northern Ireland. Would it be possible to reference these prosecutions please?	
10.	Michael Hunter	Belfast Health and Social Care Trust	<p>Re: page 2 "successful prosecutions in Northern Ireland" none of the Public health (health protection) staff or Belfast based GUM / HIV team, including now retired clinicians, are aware of these. I haven't had time to survey other HIV clinic services outside of Belfast.</p> <p>We would be interested to learn the details of the case (to understand the law in NI around reckless transmission).</p>	Thank you. This is an error; many thanks for your help in identifying it. There have been no cases, and this error has been removed.