

# Criminalisation: what's new

## How has the sentencing of people convicted of reckless transmission of HIV changed over the last 10 years?

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### Background

17 people have been convicted and imprisoned for sexually transmitting HIV in England and Wales since 2003. The sentencing of people for the first trials was very severe in comparison to others convicted for reckless GBH and there appeared little understanding of the nature of HIV infection and treatment.<sup>1</sup> The nine years since 2003 have also seen the development and later revision of Crown Prosecution Service Guidance on these prosecutions. In a number of cases custodial sentences have been accompanied by behavioural orders and recommendations for deportation. In addition to HIV, there have been convictions for transmission of hepatitis B, gonorrhoea and herpes.

### Methods

The transcripts of trials of 17 trials (14 convictions and 3 acquittals) and 3 Appeal Court judgments were reviewed and the sentences compared. The Crown Prosecution Service (CPS) guidance was reviewed.

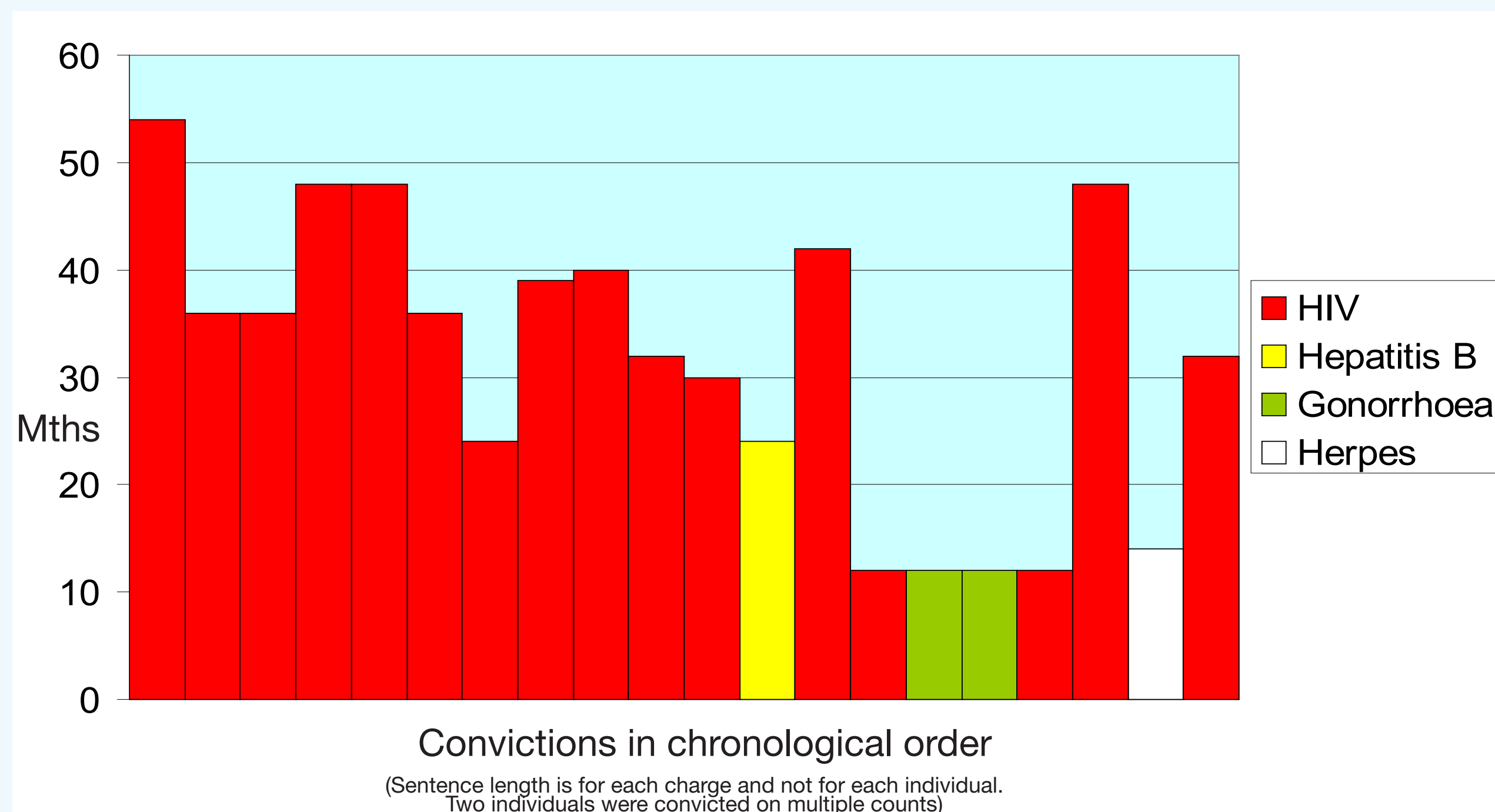
### Results

Sentencing has become slightly less severe in terms of prison time but only by months and not years. Prosecutions remain rare but have continued after the CPS guidance was produced. The most recent sentences have included legally binding 'Behaviour Orders' on the convicted person's future sexual behaviour after release. Initially these were Sexual Offences Prevention Orders (SOPOs) but the most recent case (July 2011) used an anti-social Behaviour Order (ASBO) instead.

### Conclusion

Sentences remain substantial for those convicted of these offences though with a slight decline in severity and the number of cases getting to court remains low. Prosecutions have expanded beyond HIV to other STIs. The CPS continues to review its policy in relation to new scientific evidence (e.g RITA tests and 'treatment as prevention') and has produced new guidance on behaviour orders. The move from SOPOs to ASBOs is welcome because the offence is one of assault and not a sexual offence as defined in law.

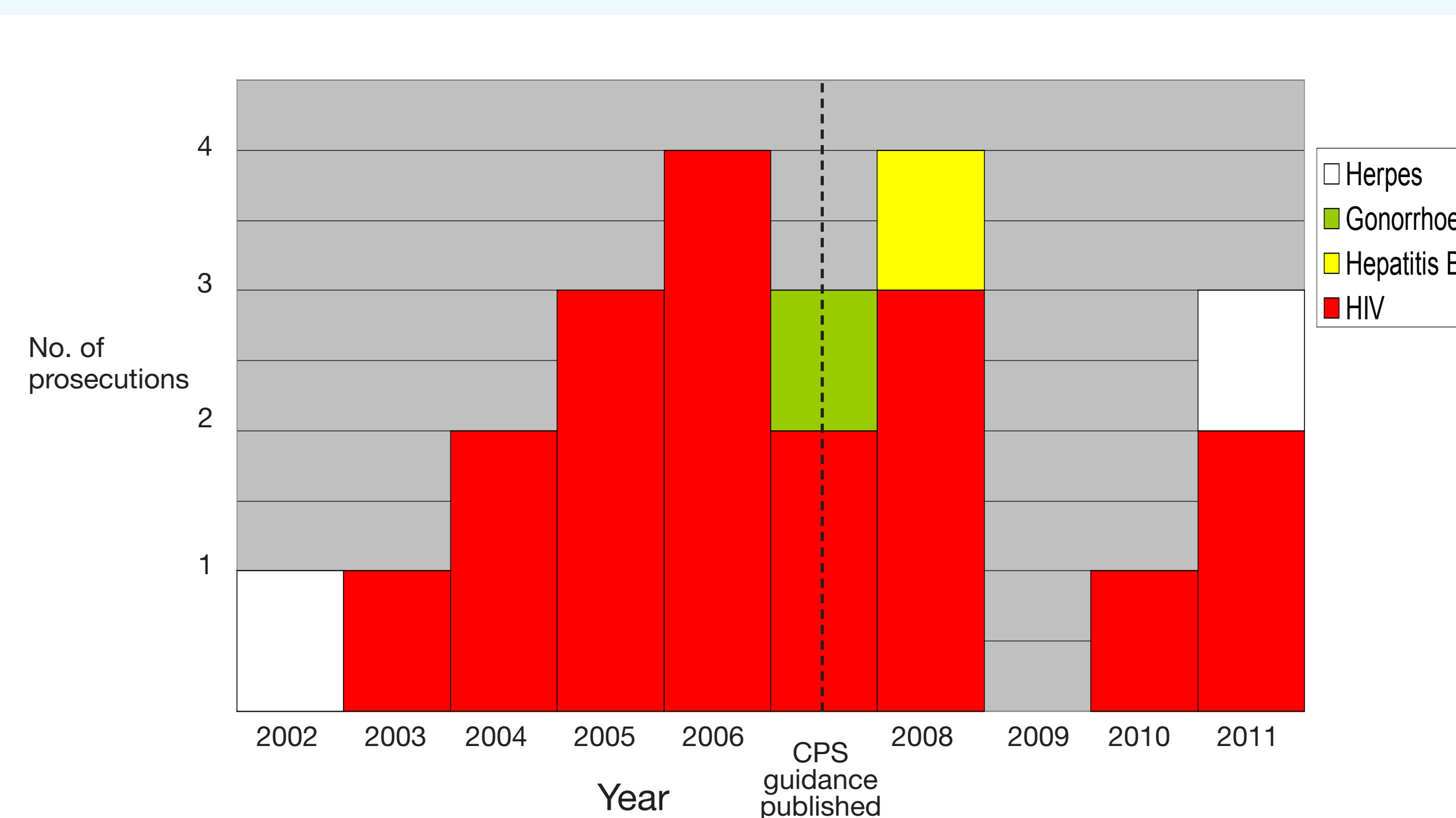
### Sentence lengths for different STIs



Although the transmission of a number of STIs have now led to prosecutions the overwhelming majority are for HIV. Sentences are generally lower for other STIs. The individual convicted on three charges of HIV transmission was given consecutive sentences making 10 years in total. The individual convicted on two counts of gonorrhoea transmission<sup>2</sup> was given concurrent sentences.

Sentences under section 20 of the Offences Against the Person Act (1861) for other forms of assault do not generally result in immediate custodial sentences.<sup>3</sup>

### Number of prosecutions



It is difficult to tell what impact the CPS guidance has had on the number of prosecutions as they remain rare. The difficulty of demonstrating whether one individual was indeed the source of another person's infection has not made prosecutions significantly less likely though.

### Behaviour Orders

The current CPS guidance recommends that any behaviour order imposed should be "sufficient and proportionate for an ASBO to prohibit the defendant from having sex with anyone unaware of their sexual health status unless reasonable safeguards are taken to avoid transmission".<sup>4</sup>

An ASBO is to prevent harassment to people of different households meaning it should not be used when the conviction relates to a person in a co-habiting relationship.

#### Footnotes

- 1 James R. What do court transcripts reveal about judges' understanding of the medical impact of HIV. *HIV Medicine* 10 (Suppl. 1): 17.
- 2 The man was convicted of non-sexual transmission of gonorrhoea "after having touched himself and then failing to apply the proper hygiene standards, has then gone on to touch the children in an ordinary way". (*R v Marangwanda* [2009] EWCA Crim 60, 2009 WL 6057)
- 3 Crown Court Sentencing Survey, Sentencing Council, Oct 2011. Available at: [sentencingcouncil.judiciary.gov.uk](http://sentencingcouncil.judiciary.gov.uk)
- 4 CPS Guidance (available at [http://www.cps.gov.uk/legal/h\\_to\\_k/intentional\\_or\\_reckless\\_sexual\\_transmission\\_of\\_infection\\_guidance/](http://www.cps.gov.uk/legal/h_to_k/intentional_or_reckless_sexual_transmission_of_infection_guidance/)). Accessed 29-03-12.

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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, expertise and practical resources. We champion the rights of people living with HIV and campaign for change.

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