



Equalities, Human Rights and Civil Justice Committee

Follow up – Committee Meeting 12th March 2024

Joint Supplementary Response – Terrence Higgins Trust and Waverley Care

Supplementary Question – What awareness raising around HIV is being done amongst a heterosexual audience, in light of Public Health Scotland's (2023) most recent data on new diagnoses?

Waverley Care and Terrence Higgins Trust work across Scotland to raise awareness of HIV, blood borne viruses and sexual health. This includes targeted programmes of work, as well as education and awareness for the general public in spaces such as universities, hospitals and public settings like train stations. We utilise additional awareness raising through community settings, and through creative approaches, such as information and advertisements on dating apps, and our use of social media to communicate key messages like U=U. On World AIDS Day (1st December) each year resource is particularly put towards public information stands, testing and working with existing partners across councils and the NHS. We also continue to work to support RSHP delivery in schools where we have relationships and capacity to do so.

Ensuring that misinformation and stigma around HIV is tackled across Scotland will continue to be a key focus of our work, but it is one which requires proper resourcing. It is vital that this includes training for staff working across statutory services where there are opportunities to communicate up-to-date and accurate measuring, and to avoid perpetuating stigma which can stunt the uptake of tests.

Additional point – Disclosure of HIV Status and Criminalisation

In Scotland, laws related to the legal disclosure of HIV status and the potential criminalisation of non-disclosure to sexual partners have not been updated to reflect advancements in medical care, in particular U=U. Currently, in Scotland you can be [prosecuted](#) for 'putting someone at risk' without their prior knowledge or consent, even if transmission did not take place. This is a key concern for people living with HIV who raise concerns on whether they are at risk of criminality if they do not disclose their status to sexual partners – even if they are medically deemed as having an 'undetectable' viral load, meaning they cannot pass the virus on to others.

While it was not discussed in the committee session, this risk of criminality relates closely to many of the discussions held around misinformation around HIV transmission, and the stigma which people living with HIV encounter. Thus, we were keen to raise this. We would welcome clarification from the Scottish Government/Lord Advocate on whether it has any plans to update the rules related to culpable and reckless conduct in crimes relevant to the intentional or reckless transmission of, or exposure to, sexually transmitted infections as to reflect advancements in modern medicine that mean a person living with HIV and with an undetectable viral load cannot pass the virus on to others (U=U).



Comparison with England and Wales:

In 2023, the Crown Prosecution Service (CPS) updated their [guidance](#) on disclosure and prosecution. This new guidance recognises U=U, meaning that a person with HIV can rely on their undetectable status as a legal defence, as was the case with condom use. As a result, from now on, cases should no longer be taken to court in England and Wales when a person has an undetectable viral load and is aware that Undetectable = Untransmittable (U=U). This is where we need clarity in Scotland. The new guidance states:

“Where someone who is HIV positive is receiving treatment, one of the effects is a reduction of the amount of the virus (‘the viral load’) in their system, resulting for the vast majority of people in an ‘undetectable viral load’. In such cases the current medical consensus is that there is no risk of HIV transmission, even where no condoms are used. It is open to A to rely on their undetectable viral load as an appropriate safeguard against the transmission of HIV to others. Even in advance of the level of virus reaching an undetectable level, as HIV treatment reduces the viral load, so infectiousness decreases significantly. As above, if this issue is raised by A, or if the prosecutor anticipates that it may be raised, further lines of enquiry may need to be pursued, including obtaining A’s medical records and/or expert medical evidence on the degree of infectiousness of A at the time of the alleged offence”.

As a result of medical developments and the finding that U=U, the concern of reckless transmission is minimised for the majority of people living with HIV in the UK who maintain an undetectable viral load. However not all people living with HIV have an undetectable viral load and furthermore some may never have. ART is not universally easily available due to a number of barriers. Therefore a minority of individuals remain at risk of investigation and prosecution for reckless transmission of HIV.

In addition, in England and Wales, the penalty is a maximum prison sentence of five years for each person someone is found guilty of infecting. There is no minimum sentence. Non-UK residents can be recommended for deportation upon completion of their sentence. In Scotland, sentencing has been at the higher end of the scale for ‘reckless conduct’, ranging from five years in one case to 10 years for a person who infected one individual and had ‘exposed’ three others.

Position of other organisations: UNAIDS urges states to use the law only in cases of intentional transmission; as noted above. BHIVA (British HIV Association) position is that application of the criminal law to cases other than intentional transmission may be counterproductive to public health aims.