



Why NAT opposes prosecutions for reckless HIV transmission

Both in the UK and across the world there has over recent years been immense controversy over the use of the criminal law to prosecute people with HIV who transmit their infection to others. NAT, along with most other UK HIV organisations, has consistently opposed such prosecutions (except in very limited circumstances). We set out here briefly and simply the main reasons for our opposition to criminal prosecutions for reckless HIV transmission, and the limited circumstances where we believe prosecutions could be an appropriate response.

This note does not explain in detail English or Scottish law on prosecutions for HIV transmission. For detailed consideration of English law go to the other documents on the NAT prosecutions webpage.

NAT does not oppose prosecution for intentional HIV transmission. By that is meant the HIV positive person wanted to infect his/her sexual partner to do them harm. This is clearly a criminally malicious act – but occurs extremely rarely (and would usually be very difficult to prove).

There are also circumstances where HIV might be transmitted which are in any case against the law and should be prosecuted – for example rape, other inappropriate forms of pressure, coercion or abuse, sex with someone particularly vulnerable or with a minor. There are already in most countries laws which punish such behaviours and HIV transmission in such a context will often in courts be considered an aggravating factor in sentencing.

In the UK all prosecutions to date have been for reckless transmission. In reckless transmission cases there is no desire to infect the sexual partner with HIV. But the HIV positive person knows there is a risk of transmission and nevertheless consciously takes that risk, infecting his/her sexual partner as a result.

NAT does oppose prosecutions for reckless transmission. Our arguments against prosecution for reckless HIV transmission fall into three main categories:

1. Prosecutions for reckless HIV transmission unjustly target diagnosed HIV positive people for punishment, and fail to reflect the broader shared responsibilities for sexual health and HIV infection.

2. Prosecutions for reckless HIV transmission do not result in reductions in HIV transmission or any benefit to public health – in fact they harm and undermine effective public health activity.
3. Prosecutions for reckless HIV transmission in practice result in miscarriages of justice, victimisation and discrimination.

Whilst prosecutions continue, we are working to achieve the best possible outcome at each stage of the prosecution process, from initial investigation through to sentencing.

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