



Taking responsibility: reactions to criminal prosecutions. Catherine Dodds from Sigma Research and NAM's Edwin J. Bernard explored the connections between gay men's beliefs about 'responsibility' and the criminalisation of HIV transmission at the 11th annual CHAPS conference.

Issue: The 2006 Gay Men's Sex Survey asked about the criminalisation of reckless sexual transmission of HIV. What were the results?

Catherine: We found more than half of men said it was a good idea to imprison people who knew they had HIV and passed it to sexual partners who didn't know they had it. When we asked why, men mostly turned to a discussion which hinged on responsibility in one form or another.

Almost two thirds of people who talked of responsibility focused on the exclusive and primary responsibility that people with diagnosed HIV have to their partners. It was common for men's answers to revolve around the responsibility of people with HIV to always disclose their status to partners before sex, no matter what kind of sex, and no matter what kind of relationship.

Those who were against prosecutions were likely to comment on the shared nature of responsibility between sexual partners, or on the responsibility of negative and untested partners, to protect themselves.

Issue: Did the answers vary according to men's own HIV status?

Catherine: Yes, the vast majority of those who supported prosecutions had either never tested, or had HIV negative test results in the past.

And men with different HIV testing histories talked about responsibility in very different ways. Men with an HIV diagnosis tended to talk about negative and untested men's responsibilities, or about equal responsibilities. Those who'd never tested were most likely to focus on the exclusive responsibilities of the positive partner. Men whose last test was negative had much more varied responses.

Issue: What else do we know about gay men who support prosecutions?

Catherine: We asked a separate question about men's expectations of disclosure from a partner who knew he had HIV. Comparing answers we found the men who supported criminal prosecutions were very likely to expect a man with HIV to say he was HIV positive before sex.

Edwin: I think this is important – and worrying – new data. It suggests many gay men think criminal prosecutions will mean that men with HIV should always disclose, and that this will protect them from HIV.

Catherine: I'm not claiming the emergence of criminal prosecutions is directly increasing men's expectations of disclosure – we can't infer that kind of causation from this data. But the data does demonstrate a connection between discourses of blame and responsibility in relation to criminal prosecutions and views on who's responsible for doing what when it comes to men's own management of sexual risk.

Edwin: The law seems to say individuals who know they're HIV positive are 100% responsible for keeping their infection to themselves. But sexual health education is based on the concept that sex may result in unwanted consequences, and that each individual is responsible for protecting themselves from these possibilities. Public health messages say everyone has an equal responsibility to look after their own sexual health.

Catherine: Years of research tells us a large proportion of men with HIV do not disclose to their sexual partners, including those they have unprotected anal intercourse with. So there's a real clash going on here between the assumptions we're trying to change among men most at risk of acquiring HIV and how these same men use popular narratives about criminal prosecutions to support their black and white view about the way the world should be. To this extent it is likely criminal prosecutions are undermining HIV prevention efforts to encourage men to explore their own assumptions about the HIV status of their sexual partners. Everything that keeps men convinced that men with HIV can and do disclose their HIV status undermines some of the core prevention aims of *Making it Count*.²

Comment from the audience: In Sweden people living with HIV are obliged to tell a partner before sex, and to always use a condom for oral, anal or vaginal sex. And for people with HIV, it leads to the fear of being reported to the police, fear of disclosure and fear of having any sex at all. That leads to a poorer sex life, poorer mental health and to isolation.

Edwin: I think Sweden has some of the most draconian HIV laws in the world, and also the highest proportion of diagnosed HIV positive people in prison as a result. I think it would be really useful to find out if there's any evidence these laws have led to a reduction in HIV transmission or incidence.

Issue: What do we know about why HIV positive gay men don't always disclose their HIV status?

Edwin: There are all kinds of reasons. There might be an expectation there'll be no risk of HIV transmission, due to the kind of sex they're having, due to misperceptions about the partner's HIV status, or interpreting having an undetectable viral load as meaning they're completely uninfected. There's also a real fear of rejection or worse. Sigma Research found almost half of HIV negative gay men would not want sex with an HIV positive man. So it's not surprising that many HIV positive men decide to keep quiet about their HIV status.

There was a recent case where two gay men had consensual sex. Afterwards, one disclosed his HIV positive status, and the other beat him up, leaving him disabled for life. The attacker's lawyer said it was deception concerning HIV that provoked the attack.

At the other end of the spectrum, although it's an uncomfortable truth for an HIV positive advocate like myself, there are some gay men with HIV who just don't care whether they expose their partners to HIV.

Comment from the audience: A lot of gay men with HIV are co-infected with hepatitis C. While they feel pressurised to disclose their HIV status with partners, they don't do the same with hep C.

Catherine: Theoretically under the current law there could be prosecutions for any serious sexually transmitted disease. But the fervour is around HIV. Nonetheless, one man was prosecuted in Scotland for transmitting hepatitis C and HIV.

Issue: Are there still grey areas in the law?

Edwin: The law thinks it's clear,³ but four years on we're still trying to figure out what it actually means in practical terms. Some people think the law says HIV positive individuals have to disclose their status before any sex that risks transmission. But what is risky sex? Unprotected oral sex? Sex with condoms? Is it risky sex only with a detectable viral load or if you have an STI, as Swiss HIV experts recently suggested?

Issue: What did the Swiss HIV experts actually say?

Edwin: They produced a document basically saying somebody on effective anti-retroviral therapy, with an undetectable viral load for at least six months, who remained under care, and didn't have another sexually transmitted infection was incapable of sexually transmitting HIV.⁴

Prosecutions in Switzerland were one impetus for this statement. In England and Wales our law doesn't criminalise *exposing someone* to HIV, just HIV transmission, but in Switzerland the law does criminalise exposure. They were finding it very hard to say as part of a defence that a person on effective therapy was very unlikely to *expose someone* to HIV. The Swiss experts felt that by producing this statement it could be used in future court cases. It will be interesting to see if there is a wider impact on criminalisation outside of Switzerland.

My sense is the authors of the Swiss statement were somewhat naive in thinking it was possible to say these things without it being misinterpreted as a license to have bareback sex. But I think it is useful that HIV clinicians have gone on record for the first time about the effect of HIV treatment on HIV transmission. It is something we have known for a long time, but have been afraid to talk about, because of the potential for adverse public health implications.

Interview by Roger Pebody

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¹ Findings will be published soon in the journal *AIDS Care*.

² Hickson F, Nutland W, Weatherburn P et al. *Making it Count: A collaborative planning framework to reduce the incidence of HIV infection during sex between men*. London: Sigma Research; 2003. Available from www.sigmaresearch.org.uk

³ The Crown Prosecution Service have recently published their prosecution policy. Available at www.cps.gov.uk/publications/prosecution/sti.html

⁴ For more information, see *HIV Treatment Update* 175 (April 2008).