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KEEPING CONFIDENCE

HIV and the criminal law from service provider perspectives

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Why look at the perspectives of service providers?

- Leading up to the study in 2012 there had been a number of significant interventions concerned with criminalisation and HIV, e.g.
  - UNAIDS Policy Brief and Consultations
  - Global Commission on HIV and the Law
  - IPPF Verdict on A Virus
  - SERO Project (US),HIV Justice Network (Int'l) Oslo Declaration (Int'l)
- Many of these were concerned with the human rights, discrimination, stigma aspects of criminalisation and explain that there is relatively little research on the IMPACT of criminalisation on HIV prevention, treatment and support
- This research project sought to explore what that impact might be

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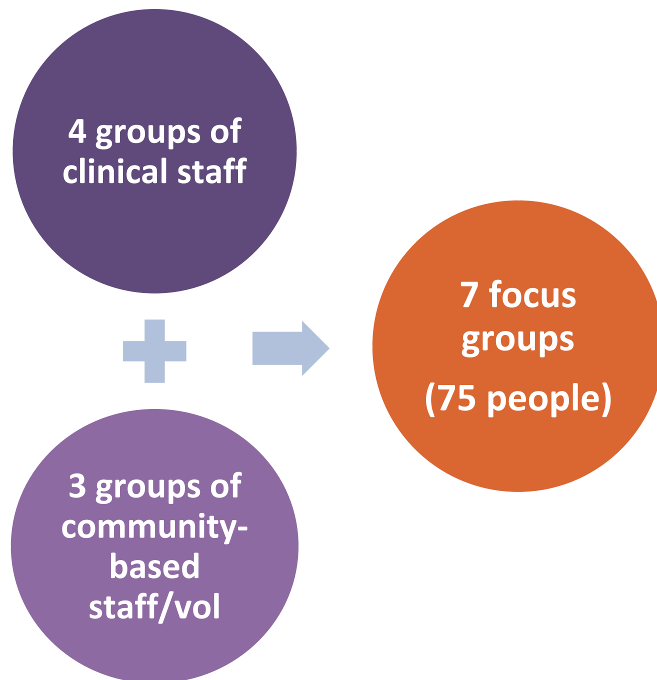
Research scope and limits



Asked about :

- Understandings of the law
- Impact (if any) on practice and procedure
- Responsibility and public health considerations
- Access to relevant information and resources

Values and Identity

- Key Question:
  - **How do service providers understand their role in light of criminalisation?**
- During research, a further question was formulated:
  - **How might personal and professional values of service providers affect the support given to people with HIV?**
- Four key areas of impact:
  - Professional orientation
  - Advice to service users
  - Treatment decision-making
  - Perceptions of, and attitudes towards, responsibility

Values and Identity (1): Professional Orientation

- Neutrality compromised / complicated:

  Technically if they want our help we should be supporting them. But I think supporting them is very different though to actually facilitating it. (clinical service provider)

  I think it also affects the trust relationship between workers and service users, and clinicians and service users at times, sometimes in quite a negative way. You see quite a few people who have been damaged by the process. And it's a long bridge building process to re-establish the trust in procedures. (community service provider)

  I guess... [if]....you are aware of who they are potentially putting at risk. Where there is a certain responsibility for you to breach confidentiality. [agreement from others] (clinical service provider)

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Values and identity (2): Advice to Service Users

- **Disclosure** – important for prevention and HIV normalisation, but also (now) because it can provide a defence
- Yet, disclosure is complicated by social context

Where the woman may not have the power to be able to truly consent to having sexual relationships. Plus, added on to that, she definitely doesn't have the power to be able to disclose. But she also, because of immigration and things like that, may not have the power to leave at that moment. So, I mean that is where recklessness becomes really...I mean, is it reckless behaviour if it is potentially lifesaving for her? (community service provider)

Values and Identity (3): Treatment Decisions

- Treatment as prevention (of onward transmission AND potential criminal liability):

  Treatment as prevention is a complicating factor. It is almost as good as a condom. So if someone was being risky within a discordant relationship it lowers my threshold for prescribing them treatment as a means of protecting their partner. (clinical service provider)

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Values and Identity (4): Perceptions of responsibility

- Blurring of legal meaning of fault with subjective evaluations of blameworthiness:

Reckless means doing it intentionally, repeatedly and ignoring any advice not to do it, and still putting the other person at risk. (clinical service provider)

It depends what you call reckless. Whether you say non-disclosure is reckless, whether you say not using a condom is reckless, or whether you say not taking antiretrovirals is reckless. (clinical service provider)

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Values and Identity (4): Perceptions of responsibility

- Confusion about "wilful blindness" and membership of higher prevalence populations:

  Through case law it's been developing to the point that it has gotten to someone should've known that they were HIV positive […] but that's never been directly tested – that they should've known – which could potentially cause a lot of problems for African communities and men who have sex with men.

  Why?

  Because potentially then this 'should have known that' could become a legal test in itself of being from the community that is at high risk of contracting HIV, and therefore anyone from that community who has not tested the last three months should've expected that they'd be seroconverting any time soon. It's kind of homophobic and racist (community service provider)

Values and Identity (4): Perceptions of responsibility

- Tension created between responsibilities of service users and professional responsibilities as regards onward transmission:

  If they are knowledgeable and consenting in some ways, to be honest, it is none of my business. (clinical service provider)

  It was a very uncomfortable position to be in, because I still didn't say, 'Are you going to take him to court?' or whatever. I would have happily listened and given them information if they wanted to, or if they had suggested it, but you know, you kind of have two hats on: you have got your clinical hat on, and your public health hat on. You do not want to be colluding with people like this guy... they are a minority, but they are potentially involved in transmission. (clinical service provider)

Communication and information

The law is so, kind of, not clear that it is very hard to clarify anything and we do have documentation we give out occasionally from the criminal … CPS [crown prosecution status]. I would find it to be very hard to be very clear, honestly. It is very vague I think, how we talk. (clinical service provider)

[***http://www.bhiva.org/documents/Guidelines/Transmission/Reckless-HIV-transmission-FINAL-January-2013.pdf***](http://www.bhiva.org/documents/Guidelines/Transmission/Reckless-HIV-transmission-FINAL-January-2013.pdf)

Documenting information

It [recent criminal prosecution] has affected my practice. I will check that I have been through everything. I'll write, 'I have discussed condom use and what that means'. I'll write that we have discussed risk reduction. (clinical service provider)

You cannot fax someone a disclosure, but we can write down that we met with the client on this day and on that day she told her partner about her HIV status. [...]If the relationship fails and other person wants to prosecute, we can say he was aware. (community service provider)

Recommendations

1. Web resource
2. Training provision (CPD)
3. Key contacts
4. Local adaptation of guidance
5. Organisational best-practice exchange
6. Review of confidentiality policy and practice

REPORT BRIEFINGS:
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