

This response was submitted to the consultation held by the Nuffield Council on Bioethics on *Public Health: ethical issues* between May and September 2006. The views expressed are solely those of the respondent(s) and not those of the Council.

Terrence Higgins Trust



COMMENTS FROM TERRENCE HIGGINS TRUST

1. INTRODUCTION

- 1.1. Terrence Higgins Trust (THT) is the UK's leading HIV and sexual health charity. It offers a wide range of services to, and campaigns on behalf of, people living with, affected by and at risk of HIV or sexual ill health.
- 1.2. This response focuses on those areas of the consultation document with direct relevance to THT's work, where our experience and expertise may be valuable.

2. REGULATION AND LEGAL PENALTIES

- 2.1 The consultation document gives the example of recent prosecutions for reckless transmission of HIV as an illustration of the use of legal penalties in the public health arena. Terrence Higgins Trust (THT) is deeply concerned by the use of the criminal law in this way.
- 2.2 THT believes that in the vast majority of cases, people with HIV do not intentionally transmit the virus onward. THT does not believe that the criminal justice system is an appropriate framework in which to address either the complexities of unintended HIV transmission, or the distress of dealing with a new diagnosis of HIV.
- 2.3 Where there is clear evidence that HIV, or any other serious blood-borne virus, has been used as a deliberate and intentional cause of harm, THT believes that this (intentional) transmission should be a prosecutable offence.
- 2.4 There is a real need to improve understanding of the genuine impact of the prosecution of reckless transmission of HIV on public health, individual health, onward transmission and trust in sexual health services. In countries where the prosecution of transmission of HIV has a longer history, such as the USA and Canada, there is no evidence that onward transmission has been reduced by the use of the criminal law.
- 2.5 THT is concerned that prosecutions for reckless transmission will harm public health in the long term. Possible impacts of further prosecutions could be an increase in HIV related stigma, and a loss of trust in medical confidentiality. Both of these impacts, if realised, could drive the HIV epidemic underground, and discourage people with HIV from seeking help and support around issues like disclosure of HIV status and safer sex, leading potentially to further transmissions of HIV and other sexually transmitted infections.
- 2.6 In public health terms, THT believes that the need to encourage people to find out whether they have HIV, and the need to support people with HIV in maintaining safer sex in often difficult circumstances, overrides the public interest in prosecution of individual acts of unsafe sex leading to transmission of HIV.
- 2.7 There are many and complex reasons why people, whether they have HIV or not, may find it difficult to maintain safer sex at all times; relationships are complicated, and accidents can happen. It is vital that support is provided to people with HIV around managing disclosure in sexual situations, and that criminal proceedings do not

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2.8 Given the concerns outlined above, THT does not believe that the criminal law is, in general, an appropriate tool to control or promote public health.

2.9 THT would also be concerned about the use of public health law in individual cases, as the scope of powers attached to such legislation may not be sufficiently accountable. For example, it would not be acceptable to subject people to measures such as confinement if they did not have the opportunity to state their case or appeal. It has been argued that: "Public health has a long tradition of resorting to coercive practices, with little evidence to suggest public health benefit."¹

3. CONTROL OF INFECTIOUS DISEASES: METHODS OF CONTROL

3.1 The consultation asks: "Under what circumstances, if any, would mandatory testing for highly infectious and life-threatening diseases such as tuberculosis or HIV/AIDS be justified?"

3.2 In line with the UNAIDS/WHO policy position², Terrence Higgins Trust supports the mandatory screening of donated blood products for HIV and other blood-borne viruses. It is also necessary to undertake mandatory screening for infections before any clinical procedure that involves transfer of body fluids, such as artificial insemination or organ donation.

3.3 However, Terrence Higgins Trust does not support mandatory testing of individuals for HIV on public health grounds. There is no evidence to suggest that coercive measures would be beneficial to public health³. It is also necessary to draw a distinction between a condition such as tuberculosis, which is transmitted through casual contact with infectious people and which is curable, and HIV, which is spread much less easily and is incurable.

3.4 In order for mandatory testing to be advantageous to long-term public health, and for it to be ethically viable, the benefits to both the public and the individual involved would have to outweigh potential harm. Whilst HIV is an incurable condition, which still attracts a high degree of stigma and discrimination, it would be of more harm than benefit to introduce mandatory testing. Coercive measures may in fact discourage people from seeking care and treatment, meaning that they may remain more infectious for longer.

3.5 THT believes that continuing work to reduce the stigma associated with HIV, and to encourage individuals to come forward for voluntary counselling and testing will be more likely to impact positively on public health.

3.6 The UK Government has previously discussed introducing compulsory HIV testing for immigrants as a discrete population group, although THT understands that at present there are no plans to introduce such a measure. THT would not support compulsory HIV testing of immigrants to the UK.

3.7 UNAIDS recognises that there is no evidence to show that testing for HIV at national borders limits the progress of an epidemic in-country. Forcing people to test is not cost effective, and creates a climate of fear that is likely to drive the HIV epidemic

¹ ippr (2003) Coker, R: *Migration, public health and compulsory screening for TB and HIV*

² UNAIDS (2004) *UNAIDS/WHO Policy Statement on HIV Testing*

³ ippr (2003) *ibid.*

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Terrence Higgins Trust
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