



## Social & legal issues

# Report shows police mishandling of investigations into alleged criminal HIV transmission

Edwin J. Bernard | 28 January 2009 | Estimated reading time 6 minutes

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A new report by the Terrence Higgins Trust (THT) launched yesterday at the House of Commons has revealed a systematic mishandling of complaints for alleged criminal HIV transmission in England & Wales. The report, *Policing Transmission* was welcomed by the Association of Chief Police Officers (ACPO), which acknowledged that “too many times we have got it wrong”.

There have been “scores, if not hundreds” of arrests since the first conviction for reckless HIV transmission in England and Wales, that of Mohammed Dica in October 2003, noted THT's Sir Nick Partridge speaking at the launch of the report in the House of Commons, hosted by Lord Norman Fowler, Vice Chair of the All Party Parliamentary Group on AIDS.

Sir Nick said that whilst most police investigations had been dropped due to a lack of evidence, during the course of these ‘failed’ investigations - which had lasted up to a year - “lives had been turned upside-down and some came close to being destroyed”.

## Glossary

[disclosure](#)

[anonymised data](#)

[phylogenetic analysis](#)

During the period 2005-6, there was an average of one arrest every two weeks. Concerned at this number of arrests and aware of the cost, in terms of “public resources and private misery”, THT approached ACPO and the Metropolitan Police Service (MPS) in order to examine the role of the police in criminal HIV transmission investigations.

This resulted in detailed, but anonymised, police notes from six cases that occurred between 2004 and 2007 (some prosecuted, some not) being made available to a community advisory

panel that included representatives from HIV civil society organisations, including the National AIDS Trust, George House Trust and the African HIV Policy Network. The panel reviewed the notes in collaboration with ACPO and the MPS and this report publishes their findings and recommendations.

The report found that although there were some examples of good practice, much more was found to be lacking, including:

- A poor police understanding of HIV, leading to inappropriate management of cases.
- A lack of clarity amongst police officers about the current law, and what is, and what is not, an offence. (THT is aware of many investigations following allegations of unprotected sex without disclosure where there was no transmission, which is not an offence in England & Wales.)
- Unnecessarily long and drawn-out investigations, ranging between four and twelve months for cases that did not result in prosecution, and between six and 34 months for those that did.
- Difficulties in reconciling the realities of HIV transmission with the requirements of the charge. The report points out that “police are having to manage cases brought under a law never designed for such scientific complexity” and notes that the police “repeatedly misinterpreted the strength of their scientific evidence”.

The report makes a total of 19 recommendations, including:

- A dedicated police officer should be trained and made available in each force. This officer would specialise in criminal HIV transmission complaints and investigations.
- Easy to understand guides to HIV transmission, disclosure, and the law should be written and made available to every police officer.
- A series of standard questions should be developed to establish at an early stage whether a viable case exists.
- Wider investigations beyond the original complaint should only take place once it is established that the original complainant is HIV-positive themselves.

At yesterday’s launch THT’s Sir Nick eloquently put a human face on the report by highlighting three cases known to THT which reveal how difficult, complex and sensitive allegations of reckless HIV transmission are for all parties involved, including the police.

- ‘David’ was accused of recklessly infecting two men and, following his arrest, was held in custody for several months and refused bail because the police erroneously believed he

was “a danger to the public”. After phylogenetic analysis had been performed on all three men, it became clear that ‘David’ could not have been the source of either man’s infection, the case was dropped and ‘David’ was finally released from custody.

- ▶ ‘Cesar’ discovered he was HIV-positive when police arrived on his doorstep to arrest him for reckless HIV transmission. (Since one of the prerequisites of this ‘crime’ is to be aware of one’s HIV diagnosis, there were, of course, no grounds for the complaint or his arrest.)
- ▶ ‘Elizabeth’ accused her married lover of recklessly giving her HIV and complained to the police. However, charges were dropped after months of investigations, which included detailed sexual histories and the release of sensitive medical records, since the evidence suggested that ‘Elizabeth’ had, in fact, infected her lover.

Sir Nick said that the report suggests that all complaints and investigations were done in good faith, but that in almost every case, the lead officer had neither enough knowledge of HIV issues, nor anywhere to turn for guidance.

He added that although the police appear to have an understanding of HIV that is “at least ten years out of date”, this is not unique to the criminal justice system and is more a reflection of the general public’s lack of knowledge and attitudes about HIV.

Mike Cunningham, Deputy Chief Constable of Lancashire, spoke on behalf of the Association of Chief Police Officers (ACPO) which welcomed the report. He said that he appreciated the fact that ACPO had had the opportunity to be part of the review process, and not just to be the subject of it.

“Too many times we have got it wrong,” he admitted. “We want to put things right and not just deny [that things have gone wrong].” Referring to the case studies presented by Sir Nick, he added that the police must be aware of the difficulties involved and “humanise” each individual affected by an investigation.

Kit Malthouse, London’s Deputy Major for Policing, and deputy chairman of the Metropolitan Police Authority also welcomed the report which he hoped would lead to the production of an “easy guide” to HIV for London’s police. He added that with yesterday’s appointment of Sir Paul Stephenson as the replacement for Sir Ian Blair as Metropolitan Police Commissioner, policing in the capital would become “more open”, and that the MPS was committed to providing “the best possible service to everyone”.

The project will now go forward to a second stage that will see the National AIDS Trust lead on producing good practice guidance for the police in criminal HIV transmission investigations, supported by THT, ACPO, the MPS and a community advisory panel.

*Policing Transmission* is available [here](#).

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