



Herpes Viruses Association

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Briefing for readers of our website:

“Man is jailed for transmitting genital herpes to his girlfriend” - What does this mean for me?

The short answer:

Not a lot. In this case, we feel that the man was wrongly advised to plead guilty to a charge Intentional Grievous Bodily Harm for transmitting genital herpes.

If he had chosen to fight this case, his lawyer would have been able to show the Court that:

- it is (almost) impossible to prove that a particular person infected another;
- herpes simplex is extremely common, so that by age 25 about 70% have it and this rises in older age groups;
- in most cases (4 out of 5) the people who are infected do not know it – so this is not a serious disease;
- there is no need for it to be emotionally serious, the ‘victim’ found a new serious relationship and had a baby within 18 months of leaving the defendant. Thus proving that she had not suffered emotional damage.

An attempt to prosecute in 2003 failed because the defendant's lawyer presented all these facts to the court at preliminary hearings and the judge dismissed the case.

It is obviously best to have had 'the talk' about herpes simplex with partners so that they know the situation. However, if you have not mentioned it, but have used condoms you cannot be accused of being reckless. If the worst were to happen: do not plead guilty - and get your lawyer to contact the HVA for the facts. If prosecutors follow the CPS Guidelines (see below), we do not expect there will be another genital herpes case.

The long answer:

On August 8th, David Golding was sentenced to fourteen months imprisonment after pleading guilty to Inflicting Grievous Bodily Harm for infecting his then girlfriend with genital herpes. This development is disturbing for several reasons, not least for this man who was charged with an offence for doing something that was hitherto not believed to be a crime at all. Whether or not he was badly advised to plead guilty and whether he was actually responsible

for his girlfriend's infection is unclear. Transmission of herpes simplex can be almost impossible to prove and since he pleaded guilty the evidence was never tested by a court.

Crown prosecution guidelines on "Intentional or Reckless Sexual Transmission of Infection", state under section 7. *"The courts have recognised that person-to-person transmission of a sexual infection that will have serious, perhaps life-threatening, consequences for the infected person's health can amount to grievous bodily harm under the Offences against the Person Act 1861"*.

Genital herpes is seldom serious and circumstances when it may be life threatening are statistically negligible. Whilst it is important that the few people who are badly affected get good medical treatment, they are a small minority of the people who have it: only one person in five with the virus is diagnosed, the other four do not notice.

If it can be called serious at all, it is because it is a stigmatised condition. The stigma is the result of the marketing campaign for the antiviral drug aciclovir in the early 1980s. This focused on the USA but many newspaper articles appeared in the UK as well. By accepting the importance of the stigma, the court has unwittingly endorsed it and may have increased it. This issue would be contested very strongly in the unlikely eventuality that another case is brought.

In the Judgment on the 2004 case *R. v Dica (Mohammed)* 2004, Lord Justice Judge and Mr Justice Forbes stated:

"In 1998, in response to the activities of the Law Commission, the Home Office issued a consultation paper entitled Reforming the Offences Against the Person Act 1861. In this paper, the Home Office indicated that the Government had not accepted the recommendation that there should be offences to enable the intentional or reckless transmission of disease to be prosecuted. It pointed out that the issue had ramifications going beyond the criminal law into wider considerations of social and public health policy.

It then proposed that the criminal law should apply only to those whom it can be proved beyond reasonable doubt had deliberately transmitted a disease, intending to cause serious injury. It added 'this aims to strike a sensible balance between allowing very serious intentional acts to be punished while not rendering individuals liable for prosecution of unintentional or reckless acts or for the transmission of minor disease'

If the criminal law was to become involved at all, this should be confined to cases where the offender deliberately inflicted others with a serious disease."

The Crown Prosecution Service (CPS) guidelines state that prosecution lawyers are expected to contact the London office before taking up a case of this sort. This procedure was established because the CPS was advised at a public consultation with representatives from many charities working in sexual health, of the problem for society if infection transmission were to be criminalised. In the case of David Golding, a local office of the CPS did not contact head office and the first the CPS knew of the case was when we phoned them.

There are powerful public health arguments for encouraging the take up of testing and treatment of sexually active adults in order to reduce the level of disease in society. This benefits individuals and the public purse by limiting ongoing transmission. If the threat of prison hangs over diagnosed people there will be a temptation not to get diagnosed at all so that no 'blame' can be attached to those who pass on infection. This is not in the public interest and this is why the Home Office reached the conclusion it did following its consultation and this is why the CPS guidelines said what they said.

No one welcomes a diagnosis of genital herpes, but it is untrue to assert that this infection is likely to have, “serious, perhaps life threatening consequences”. The viruses that cause genital herpes and facial cold sores – herpes simplex (HSV-1 and HSV-2) are ubiquitous. Studies of prevalence routinely show infection rates of well over 50% in adult populations. One recent study of women in the 35-44 age group found that 85% have HSV-1 and 22% have HSV-2.

It is hard to find a sexual health expert who believes that genital herpes has serious consequences. The British Association for Sexual Health and HIV (BASHH) has an expert group for herpes simplex, the Herpes Simplex Virus Advisory Panel. Peter Greenhouse, GU consultant at Bristol, who chairs the BASHH media group, said, *"It's been a long held principle - since before the Wolfenden Report - that the law should not seek to interfere or intervene in matters of personal morality or private sexual relationships. Sexual recklessness, as distinct from clear and provable malicious intent, should not be criminalised because passion, by its very nature, is reckless and unpremeditated. The physical consequences of genital herpes are rarely serious as they are easily treatable, but the stigma isn't. It's never easy to broach the subject of genital herpes - best to mention cold sores down below. It's not exactly a great chat-up line, but it is a good test of character, both of honesty of the carrier and for the maturity of the prospective partner's reaction: If they mind, they don't matter, and if they matter, they won't mind. This prosecution has ramped up the psychological pressure by endorsing and exacerbating the stigma of herpes, making the problem worse for millions of people."*

The main problem surrounding the condition is the unnecessary stigma which would be reduced if more people were made aware of the real scale of infection – it is akin to chickenpox and like chickenpox, most ‘normal’ people have it. It is often asymptomatic and can appear months or years after the original date of infection, so it can be almost impossible to prove which partner had it first.

Most of us have herpes simplex of one type or the other. Both types can cause genital herpes. All sexually active people in the UK are in a position to catch genital herpes or to pass it on, usually without knowing.