



# Herpes Viruses Association

Registered charity 291657

41 North Road London N7 9DP

**CONTACT:** HVA office: 020 7607 9661

Marian Nicholson: 07914 704437

Nigel Scott: 07794 218556

**mail:** [info@herpes.org.uk](mailto:info@herpes.org.uk)

**twitter:** @HerpesUK

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## **Herpes case: “We are appalled at the court’s failure to overturn the guilty verdict. Herpes virus transmission should not be in the legal arena at all.”**

Today in a hearing at the Court of Appeal, David Golding’s 2011 conviction for infecting his girlfriend with genital herpes was upheld.

Herpes Viruses Association (HVA) charity director Marian Nicholson said: “This charity represents around forty million people in the UK who carry herpes simplex infections.<sup>1,2</sup> Over half the cases of genital herpes are caused by the common facial cold sore type (HSV-1) usually by oral sex.<sup>3</sup> The implications of the judgment are that any of them could be sent to prison if they transmit this infection to a partner.”

She said: “I am pleased that David Golding has not been sent back to prison - but this ruling is inappropriate. It is not in anyone’s interest to send people to prison for passing on such a common and usually unnoticed condition.”

She continued, “We should take responsibility for our own sexual health and not assume that a partner is infection-free. Many infections are caught from people who don’t know they have them so blaming someone else is pointless.”

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### **Notes for editors:**

#### **Medical facts about genital herpes:**

- 7 out of 10 adults have been infected with one or both herpes simplex viruses<sup>4,5</sup>
- About 80% of those infected do not know that they have been infected<sup>6</sup>
- First symptoms may happen months or years after infection<sup>6</sup>
- It can be almost impossible to prove which partner was first infected<sup>6</sup>
- It is common and symptoms are seldom severe – only those with obvious symptoms are likely to be diagnosed<sup>6</sup>
- The ‘herpes stigma’ is largely the result of an antiviral drug marketing campaign from the 1980s which incorrectly called herpes ‘incurable’.

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## Background to the Appeal Court hearing:

- David Golding was sentenced to 14 months imprisonment in August 2011 after being advised to plead guilty to infecting an ex-partner with genital herpes.
- The decision to prosecute was taken by a local Crown Prosecution Service (CPS) office operating against National Guidelines that require top level approval for this type of case.
- Medical experts have unreservedly condemned the prosecution, stating that genital herpes is not serious and should not be considered as such in law. (See letter printed in The Times, 25-8-2011: [www.hva.org.uk/Times.pdf](http://www.hva.org.uk/Times.pdf) )

## Mistakes in the David Golding case:

1. **The prosecution should not have proceeded without approval from CPS head office.** CPS prosecutors operate under guidelines that require them to refer potential STI cases to Head Office to obtain approval before proceeding. This was not done.
2. **David Golding changed his plea to guilty shortly before appearing in court** when he first faced charges in 2011. His original solicitor was cross-examined at the recent appeal hearing and asked to explain the advice he gave to Mr Golding at the time.
3. **The first medical report that was written was misleading.** It exaggerated the medical significance of herpes and failed to provide context and information about prevalence, which was later provided by Dr Mutton and Professor Kinghorn in written submissions to the court. At a court hearing on 17<sup>th</sup> December, Professor Kinghorn expanded on this.

## Crown Prosecution Service (CPS) Guidelines

The HVA believes that herpes simplex infections do not amount to grievous bodily harm.

The CPS Guidelines on “Intentional or Reckless Sexual Transmission of Infection” include the following statement:

*“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.”*

Cold sores – on any part of the body – are not in this category.

**The HVA ([www.hva.org.uk](http://www.hva.org.uk))** exists to promote better mental and physical health with regard to the family of herpes viruses. Its aims are:

- To provide information to the public, to medical professionals and to the media.
- To encourage the development of new treatments for herpes simplex.
- To tackle stigma and the unnecessary trauma associated with the condition.

**Genital herpes – most of what people think they know about it is wrong.**

## For more information contact:

HVA office: 020 7607 9661 – from 10 am till 8 pm

Mobile: Marian Nicholson: 07914 704437

Nigel Scott: 07794 218556

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1. [http://www.hpa.org.uk/webc/HPAwebFile/HPAweb\\_C/1281953087873](http://www.hpa.org.uk/webc/HPAwebFile/HPAweb_C/1281953087873) downloaded 11-12-13
  2. Woolley PD, Chandiok S. Survey of The Management of Genital Herpes in General Practice. *Int. J. STD AIDS*. 1996;7(3):206-211
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  5. Vyse AJ, Gay NJ, Slomka MJ, Gopal R, Gibbs T, Morgan-Capner P, Brown DW. The burden of infection with HSV-1 and HSV-2 in England and Wales: implications for the changing epidemiology of genital herpes *Sex Transm Inf* 2000;**76**:183-187
  6. **BASHH 2007**: National Guidelines for the Management of Genital Herpes <http://www.bashh.org/documents/115/115.pdf> downloaded 14-3-2014