

Ministear airson Slàinte Phoblach is Slàinte
Bhoireannach
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Scottish Government
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Karen Adam MSP
Convener of the Equalities, Human Rights and
Civil Justice Committee

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13 May 2024

Dear Karen,

First Minister at Conveners Group – 27 March 2024 – question regarding rules on culpable and reckless conduct in relation to HIV transmission

Thank you for your request to the former First Minister to examine issues around culpable and reckless conduct in relation to transmission of, or exposure to, sexually transmitted infections. I am replying to you as the issues raised are within my remit as Minister for Public Health and Women's Health.

I am grateful to you and members of the Equalities, Human Rights and Civil Justice Committee for highlighting the huge advances that have been made in the prevention and treatment of HIV, and also for raising the important issue of tackling stigma.

In relation to your question about the rules around culpable and reckless conduct, it is important to note that the Scottish Government does not set rules on the prosecution of such offences. However, I have reviewed the issue more widely, and hope the following information is helpful.

As the former First Minister indicated during the Conveners Group meeting on 27 March, decisions about the prosecution of crime are an operational matter for the Crown Office and Procurator Fiscal Service (COPFS), which is independent of the Scottish Government, to take within the legal framework set by Parliament. This is to preserve the operational

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independence of the Scottish criminal justice system and to keep it free from political interference.

Ultimately, it is for the Procurator Fiscal to determine, following an independent legal analysis of the case, whether there is a sufficiency of evidence to support the allegation of the commission of a criminal offence and what action, if any, should be taken in the public interest and the Scottish Government cannot intervene in such decisions.

The COPFS' [Prosecution policy on the sexual transmission of infection](#) sets out their prosecutorial policy in cases involving an allegation of intentional or reckless sexual transmission of, or exposure to, infection which has serious, potentially life threatening consequences for the person infected. It is worth noting that COPFS' current policy recognises the medical advances in treatment of HIV, and that if a person is taking antiviral medication and has an undetectable viral load, the likelihood of HIV being passed on is very low. COPFS policy further recognises that in such circumstances it is unlikely that the requisite degree of recklessness will be established and that, whilst every case is considered on its individual facts and circumstances, there is a very strong presumption against prosecution in these circumstances.

When publishing the prosecution policy, COPFS committed to review it regularly to ensure that any further legal or medical developments are properly reflected. I have been advised that at the present time COPFS remains satisfied with the policy as currently framed and are content that it addresses concerns that the Committee may have had about the application of developed medical knowledge of transmission risks.

On this basis, and in the absence of any evidence of problems with the current legal framework, the Scottish Government has no current plans to review the offence in question.

I hope that this information is helpful.

Yours sincerely

Jenni Minto MSP

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