



FACT FILE 5

PRISONERS' RIGHTS AND HIV: HIV-RELATED HEALTHCARE IN UK PRISONS

Prisoners' Right to Maintain and Promote their Health

Under the principle of equivalence recognised in key international documents, prisoners are entitled, without discrimination, to standards of healthcare equivalent to that available in the community, including preventive measures (*for more info about the principle of equivalence, please read Fact File 4*). Prisoners are also entitled to conditions of imprisonment which will not affect their health.

Principle 9 of the Basic Principles for the Treatment of Prisoners states:

"Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation."

The Dublin Declaration (*more info about the Dublin Declaration is available in Fact File 1*) summarises States' responsibilities regarding prisoners' right to maintain and promote their health in the context of HIV as follows:

- **Provide free access to HIV/AIDS treatment and care that is equivalent to that available to people outside prison.** This should include antiretroviral treatment, proper diet, health promotion options, and pain management medications.
- **Provide prisoners with the same access** to non-approved, investigational, and non-conventional and alternative therapies that people outside prison have.
- **Provide quality gynecological and obstetrical care for HIV-positive pregnant women in prison**, including antiretroviral therapy on a continuous basis, and prophylaxis for the infant during and post-delivery to ensure that vertical transmission of the infection is interrupted.
- **Provide sufficient levels of qualified medical personnel in prisons.**
- **Include treatment of STIs as a key component of a comprehensive HIV care.**
- **Improve conditions of confinement** (overcrowding, poor prison conditions, poor sanitation, poor lighting and ventilation) that can negatively affect people with weakened immune systems.

The right of prisoners to access adequate standards of HIV-related care is supported by UNAIDS which stated that "[w]ith regard to effective HIV/AIDS prevention and care programmes, prisoners have a right to be provided the basic standard of medical care available in the community". (Statement on HIV/AIDS in Prisons to the United Nations Commission on Human Rights at its Fifty-second session, April 1996)

Prisoners' HIV-Related Healthcare in UK Prisons

General Conditions of Imprisonment

As examined in Fact File 3, overcrowding is endemic in UK prisons with more than half the prisons in England and Wales officially classed as overcrowded and 11 exceeding the maximum safe capacity. Similarly, in Scotland, all of the country's 16 prisons are facing overcrowding as the number of prisoners has increased 65% over intended capacity.

Overcrowding affects all aspects of prison life, including standards of hygiene and cleanliness and prisoners' health resulting in some cases in self-harm and suicides.

Access to Treatment and Care

In 2001, the British Medical Association published *Prison medicine: a crisis waiting to break*, a report which unequivocally highlights the failure of the government and prison authorities to meet the healthcare needs of prisoners. The report mentions the case of doctors who are prevented from prescribing the most appropriate medicines for their patients. The report also notes that because hospital treatment of prisoners is provided in NHS hospitals rather than in prison healthcare units, doctors must apply to transfer sick patients to hospital for essential specialist treatment but prison authorities are often reluctant to pay the cost of accompanying prison officers even though the lack of specialised care will have serious health implications for the prisoner.

Problems to access adequate and appropriate healthcare in prisons have also been highlighted in a recent study which stressed healthcare staff's lack of awareness of the number of prisoners with HIV as well as the sub-standards of care afforded to prisoners in particular:

- A "paracetamol policy" which consists of providing paracetamol for most of health-related requests by prisoners;
- Lack of healthcare facilities;
- Lack of staff;
- Delay in accessing HIV treatment; and
- Problems in adhering to HIV treatment because of prison regime and/or lack of trained staff

There is no UK wide prison policy on HIV in prisons. As a result, HIV treatment and care vary greatly between prison establishments. Because official figures underestimate the number of prisoners with HIV, prison authorities still assume that HIV is not a priority and as a result, no comprehensive HIV strategy/policy is in place.

Women Prisoners

There are guidelines for doctors on the treatment of HIV-positive pregnant women prisoners but the general conditions of imprisonment have an impact on the well-being of pregnant women prisoners.

Antenatal care is often compromised by the necessity of negotiating access to midwives and doctors with gatekeepers such as prison officers and nurses, but also by the situation of overcrowding in numerous prison establishments and the lack of training and shortage of staff.

One step in the direction of improved services for women in prisons is the establishment of Women's Health Clinics which provide care and advice on sexual health and can facilitate visits from sexual health and HIV organisations. Positively Women (PW) has a *Drugs and Prison Project* run by women who have personal experience of addiction, living with HIV and being in prison. At present the project works mainly with HIV-positive women prisoners of HMP Holloway. In 2004, Holloway prison commenced a programme of day-release to allow those nearing the end of their sentence to attend group support sessions at Positively Women.

Post-Release HIV-Related Healthcare

The WHO Guidelines on HIV infection and AIDS in prisons state:

“Prison medical services should collaborate with community health services to ensure medical and, psychological follow-up of HIV-infected prisoners after their release if they so consent. Prisoners should be encouraged to use these services.” (para 40)

Article 10 of the Dublin Declaration also emphasises the need for comprehensive post-release HIV-related healthcare. Governments have a responsibility to:

- **Create systems of referral** between prisons and community healthcare, social services, substitution treatment, and harm reduction services.

Some prison establishments are taking some steps to ensure prisoners have access to post-release healthcare for example by referring prisoners to local GUM specialist within their area. Yet, numerous prisons only provide a very limited post-release health services such as a nurse available to draft a letter to be given to the prisoner’s GP.

The issue of post-release healthcare reflects the broader problem of inadequacy of post-release services, including the lack of support for housing and employment. Short-term prisoners receive little or no preparation for release and no post-release support. Those serving long sentences are supervised on release but probation services tend to prioritise public protection rather than the welfare of the ex-prisoners.

The lack of adequate services has a detrimental impact on the health and future prospects of released prisoners. Drug-related deaths suicides after release highlight the need for better care and post-release support and services that require prison authorities and community organisations to work better together.

Lack of adequate post-release healthcare is a real concern. For example, HIV-positive prisoners may not be able to access HIV medical care and services. Other issues such as lack of housing may also impact on their health.

Case Law

McGlinchey v UK [2003] 37 EHRR 41

The prisoner was asthmatic and addicted to heroin. M died while in prison having suffered heroin-withdrawal symptoms, vomiting fits and significant weight loss. M's children alleged that M had suffered inhuman and degrading treatment contrary to Art. 3 ECHR, in particular because, they alleged, M had been locked in her cell to punishment for her difficult behaviour; her medication was administered irregularly and that M was left lying in her own vomit. The Court confirmed that the State has a duty to ensure that detainees were held in conditions compatible with respect for human dignity. This included proper health provision and the necessary medical attention to secure their well-being. It held that the prison had not provided the requisite health care, and had breached Art 3. The Court considered that there had been deficiencies in M's treatment: there was no accurate means of quantifying M's weight loss, she had not been adequately monitored over the weekend and the prison had not taken more effective steps to treat M's symptoms (e.g. hospitalisation).

Keenan v.UK [2001] 33 EHRR

The applicant alleged that her son had died from suicide in prison due to a failure to protect his life by the prison authorities and that he had suffered inhuman and degrading treatment due to the conditions of detention imposed on him. The Court held there had been a violation of Art. 3 by reason of neglect. There had been a lack of monitoring of the prisoner's condition and of sufficient psychiatric assessment, and he had been inappropriately detained in segregation in a punishment block.

Napier v. Scottish Ministers [2004] Scot CS100, 26 April 2004

From 20 May to 27 June 2001, a period of around 40 days, Mr Napier was on remand at HMP Barlinnie. He alleged that the conditions of his detention breached Art. 3 ECHR or Art. 8 ECHR (respect for private life) because (i) his cell, which he shared, had inadequate space, lighting and ventilation, (ii) there was no internal sanitation and so "slopping out" was required, and (iii) there was inadequate exercise and recreation outside the cell. He also complained about the conditions of detention in a "dog box" when being transported outside the prison. He had medical evidence that the conditions had caused an outbreak of eczema, and alleged that he had suffered a mental disorder: he sought damages. The Court ruled that N had been exposed to conditions of detention which were such as to diminish his human dignity and to arouse in him feelings of anxiety, anguish, inferiority and humiliation. As such, he was subjected to degrading treatment which infringed Art. 3 of the Convention.

Selected References

British Medical Association, *Prison medicine: a crisis waiting to break*, 2001 (available at www.bma.org.uk/ap.nsf/Content/Prisonmedicine)

Prison Reform Trust and National AIDS Trust, *HIV and Hepatitis in UK Prisons: addressing prisoners' healthcare needs*, 2005.

J. Carlisle, *The housing needs of ex-prisoners*, Centre for Housing Policy at York University, 1996.