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Kate Heper  
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Ashdown House  
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Dear Kate,

Please find attached the National AIDS Trust response to the Discrimination Law Review.  
If you need any further assistance please do not hesitate to contact me.

Yours sincerely

**Alana Lewis**  
Policy and Campaign Assistant  
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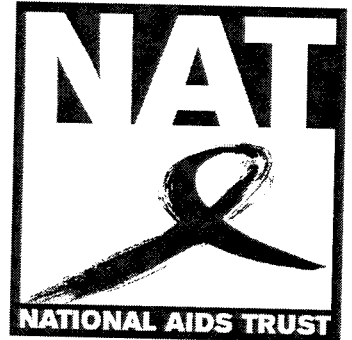
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## **DISCRIMINATION LAW REVIEW**

### **A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain**

#### **Submission from the National AIDS Trust**

##### **1. Introduction**

The National AIDS Trust welcomes the opportunity to submit views to the consultation on the Discrimination Law review: Fairness and Equality for All. Great progress has been made in recent years in developing and extending equality and discrimination legislation to address systemic discrimination and injustice in society. But it is now time to establish a consistent and principled legislative framework

The National AIDS Trust congratulates the Discrimination Law Review on its work, but believes that the proposals as they currently stand do not go far enough to establish genuine equality, on occasion dilute existing statutory provisions, and are often marred by timidity and lack of vision.

The National AIDS Trust is the UK's leading independent policy and campaigning organisation on HIV and AIDS. We develop policy and campaign to halt the spread of HIV and improve the quality of life of people affected by HIV, both in the UK and internationally. The eradication of HIV-related stigma and discrimination is one of our four strategic goals. We engage on equality, stigma and discrimination issues in a number of areas including surveys of public attitudes, employment rights, media coverage of HIV, stigma in healthcare, and the criminal justice and prisons systems. We are also active at the European level advocating for greater legal protection for people living with HIV.

In this submission we concentrate on how the Single Equality Act should meet the needs of people living with HIV in the UK. We do, however, consider equality and anti-discrimination legislation to be interconnected and its concerns seamless – that, after all, is why we need a Single Equality Act in the first place. Therefore, whilst some of the particular points made might appear less immediately relevant to people living with HIV, **the National AIDS Trust supports and endorses the submission to the Discrimination Law Review from the Equality and Diversity Forum, of which we are a member, and its wider conclusions and recommendations.**

HIV in the UK disproportionately affects two groups which experience inequality and discrimination – gay and bisexual men, and black Africans – and amongst black Africans women are disproportionately affected. Discrimination may be a major contributory factor to HIV infection, whether it is gender violence, discrimination-related poverty, or

term or 'progressive' condition. Even in the absence of any impairment, fears and prejudices around future impairment or deterioration can result in discrimination now.

In the case of HIV, this protection from the point of diagnosis is important also for other reasons. HIV discrimination relates not just to impairment, whether actual or predicted, but to social stigma linked to sex, sexuality and sometimes also other behaviours (such as injecting drug use). It also relates to fear of infection, to the fact HIV infection is incurable and to the fact that without treatment it results in death.

From a practical perspective, the protections available to people living with HIV from disability discrimination law were very welcome and far reaching. It must, however, be acknowledged that this is not an entirely comfortable 'fit'. HIV discrimination is not wholly, or indeed mainly, about disability, even a social model of disability. There is evidence that some people living with HIV are uneasy at being so defined, and unsure of the implications.<sup>6</sup> We have also seen many cases where, for example, employers or public bodies persist in considering disability solely from the perspective of impairment, with little grasp of the need to address social stigma and other issues relevant to HIV.

Whilst the number of distinct 'grounds' under discrimination law cannot be multiplied endlessly, there is a unique aspect to HIV discrimination which needs to be recognised. **In drafting the Single Equality Bill, we believe that consideration should be given to distinguishing HIV-related discrimination from other forms of disability discrimination.** If making HIV positive status a distinct ground is not considered practicable, consideration should be given to redefining the 'disability' ground to make clear its provisions extend beyond the usual definition of disability – perhaps 'disability and specified health conditions'. The specified health conditions are currently HIV, MS and cancer. This would assist all subject to anti-discrimination law to consider the specific and particular needs of people living with HIV.

#### **4. Discrimination on the basis of perception or association**

HIV positive status cannot be 'seen' and this profoundly affects how stigma and discrimination are experienced.

Discrimination by association can also take place in the context of HIV – one aspect is shared moral opprobrium and this can affect workers in HIV organisations, for example; another is stigma around fear of infection. One case of discrimination by 'association' which came to our attention was a nurse who was asked to change responsibilities at work and no longer engage in invasive procedures because her spouse was living with HIV. Workers, partners and family members can all experience discrimination by association in relation to HIV.

Similarly, a gay man or black African may be discriminated against because they are wrongly 'perceived' to be HIV positive.

Discrimination on the basis of perception or association are social realities which should be addressed in law.

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<sup>6</sup> See 'Outsider Status: stigma and discrimination experienced by gay men and African people with HIV' National AIDS Trust/Sigma Research 2004

recently in a healthcare setting of a pregnant woman living with HIV which was an intersection of sex and disability discrimination.

**The National AIDS Trust believes that discrimination legislation should acknowledge the existence of multiple discrimination and ensure a system of redress which provides justice for those who experience it.** We endorse the detailed proposals put forward in this regard by the Equality and Diversity Forum.

## 7. Harassment and hate crime

Disclosed HIV positive status can amongst some people elicit extreme fear or hostility, and this can on occasion become acts of harassment or hate crime against a person or persons living with HIV. The consultation document states the Government will only legislate if convinced 'this is a proportionate response to a real problem' [para.14.5].

The consultation document proposes that protection from harassment for disabled persons should **not** be extended to cover provision of goods, facilities and services, education or public functions.

**The National AIDS Trust recommends that protection from harassment be extended to cover disability, thus protecting people living with HIV, in all outstanding areas – provision of goods, facilities and services, education in schools, management or disposal of premises and the exercise of public functions.**

**The National AIDS Trust does not believe the distinction between 'open' and 'closed' environments is relevant to the issue of harassment, any more than it is to the acceptability of discrimination.** To give one example of such harassment in a pub – during the recent St Ives 'scare' over increased diagnoses of HIV in the area, newspapers reported some bar staff as serving customers with surgical gloves as a 'joke'. We believe someone living with HIV who came into the pub would be justified in considering that harassment, and the law should prohibit it.

### *Hate crime*

Hate crime against people living with HIV does occur, although it is hard to assess its extent since there have not to date been any formal processes to record it. Some examples are to be found in the the report on Poverty and HIV published in December 2006 by the National AIDS Trust and Crusaid, which identified such hate crime as one of the factors contributing to HIV-related poverty.

Furthermore, the fear of such crime deters many people living with HIV from disclosing their HIV positive status to others and from accessing the rights and support to which they are entitled. In other words, whilst substantive cases of such hate crime might not be frequent, the social impact of such crime or the real fear of such crime, may have a pervasive and negative effect. The refrain of the consultation paper that legislation is only necessary if a 'real problem' can be demonstrated does not address, for unseen grounds of discrimination such as HIV status, the extent to which the absence of

**National AIDS Trust**  
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