

14th Annual Conference of the
National HIV Nurses Association (NHIVNA)



Mark Taylor
The Taylor Partnership, Bradford

14-15 June 2012, Manchester Conference Centre

**HIV – its relevance in UK
asylum and immigration law**

Mark Taylor
Executive Director of The Taylor Partnership
on behalf of NHIVNA, Manchester 15th June

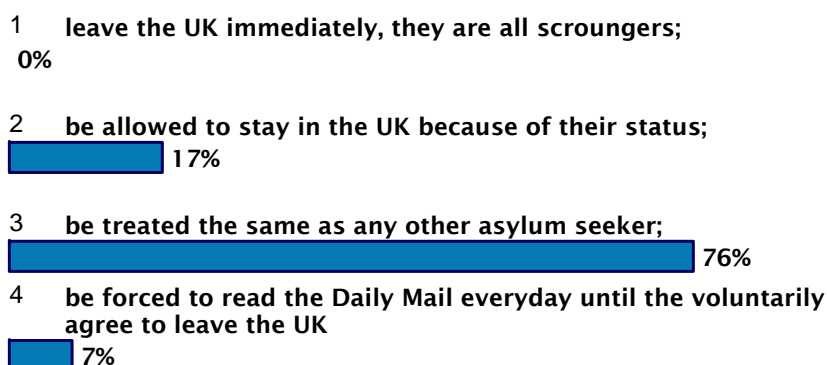


TTP The Taylor Partnership

HIV positive asylum seekers should.....

- A: leave the UK immediately, they are all scroungers;
- B: be allowed to stay in the UK because of their status;
- C: be treated the same as any other asylum seeker;
- D: be forced to read the *Daily Mail* everyday until the voluntarily agree to leave the UK

HIV positive asylum speakers should...



The classic argument

1. HIV / Aids is potentially life threatening;
2. The majority of countries of origin of asylum seekers have little or no access to anti-retroviral therapy;
3. Article 3: *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*
4. Does the non-availability of anti-retroviral therapy and curtailment of life expectancy meet that threshold?

The decision of the Courts I

- ▶ Lead cases:
 1. *D v UK (1997)* – where D
 - ▶ came from St Kitts;
 - ▶ HIV was at an advanced stage;
 - ▶ At the time of the hearing, it was said that his life was coming to a close;
 - ▶ If he were to be returned to St Kitts, he was not even guaranteed a bed in one of the 2 hospitals that cared for AIDS patients.
 - ▶ Appeal upheld.

The decision of the Courts II

- ▶ 2. *N v UK (2005)*
- ▶ A Ugandan woman whose life expectancy was expected to reduce to 2 years if removed.
- ▶ The ECHR upheld the decision of the House of Lords and Court of Appeal in the UK.
- ▶ *“...where the complaint in essence is of want of resources in the applicant’s home country ...is only justified where the humanitarian appeal of the case is so powerful that it could not in reason by the authorities of a civilised State” – LJ Laws*

The decision of the Courts III

- ▶ *“I intend only to emphasise that an Article 3 case of this kind must be based on facts which are not only exceptional, but extreme.” – LJ Laws.*
- ▶ *“The fact that an applicant’s life expectancy will be reduced, even substantially reduced, because the facilities in the receiving country do not match those in the expelling country is not sufficient to engage Article 3.” – LJ Dyson.*
- ▶ Appeal dismissed.

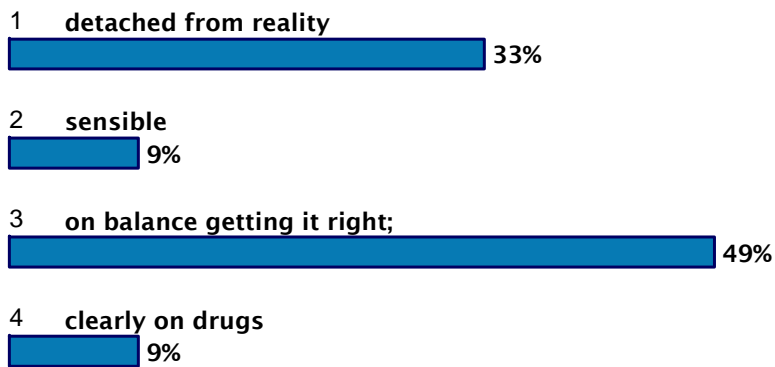
The up-shot

1. Being HIV positive is not in itself a ground for asylum or grounds for compassionate leave to remain;
2. Unless CD 4 count is extremely low, viral load high and prognosis poor – the impact of HIV is negligible;
3. HIV/Aids is seen as akin to any other chronic illness;
4. This gives an added dimension of concern for the HIV positive migrant;
5. The need to manage expectations;
6. Other aspects of an asylum seeker application need to be explored

The Courts are

- A: detached from reality
- B: sensible
- C: on balance getting it right;
- D: clearly on drugs

The Courts are...



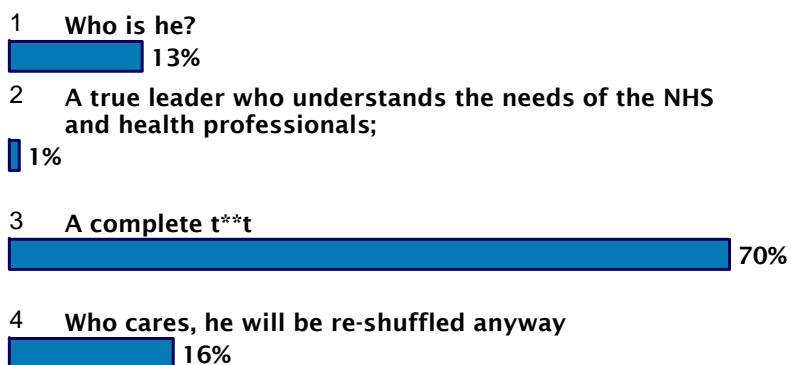
Other possibilities

1. Is HIV an indication of other issues – such as rape, or are there mental health / PTSD issues – signs of trauma?
2. Are children or unborn children involved?
3. If so, Section 55 paragraph 1a of the UK Borders Act 2009 places a duty of the active promotion of the well-being of the child on the UKBA.
4. Is the asylum seeker gay?

Andrew Landsley

- A: Who is he?
- B: A true leader who understands the needs of the NHS and health professionals;
- C: A complete t**t
- D: Who cares, he will be re-shuffled anyway

Andrew Landsley



How can you help?

1. A letter of confirmation of HIV status is worthless.
2. If there are any complexities or a poor prognosis, these should be set out in as much detail as possible.
3. Comments in respect of other country resources (unless you have evidence to support it) are not helpful. This is not your role.
4. Assist in managing the expectations of the asylum seeker / migrant.

Strategically

1. Whilst the UKBA and the Courts see HIV purely as a chronic illness, little consideration is given to the stigma – either here or in the home country;
2. The uncertainty of the asylum and immigration system imposes an additional burden on the well-being of the asylum seeker and on health resources;
3. A health, social support and legal partnership is both cost effective and assists patients/asylum seekers.

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