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EXPERT COMMENT: Argument over funding HIV PrEP drug reveals prejudice about the reality of some gay sex

Alexander Maine, PhD candidate and a lecturer in Law at Northumbria University discusses preventative HIV drug PrEP and its availability.

The recent dismissal of an appeal lodged by NHS England means that funding for the preventative HIV drug PrEP does fall under the remit of the NHS rather than local authorities, who are generally responsible for preventative health.

Pre-exposure prophylaxis is given to those at a “high risk” of contracting HIV, or used to stop HIV from becoming established in the event of potential transmission, and should be used as an increased protection against the spread of sexually transmitted infections. And although the case and discussion around it has been concerned with who would bear the cost of funding the potentially life-saving drug, it is also of symbolic importance – it serves to recognise the validity of sexual practice that may be deemed to be “high risk”.

The law has typically ignored same-sex sexuality in previous cases and pieces of legislation, most notably in the removal of references to sexual intercourse in the Marriage (Same-Sex Couples) Act 2013. This demonstrates the continued reluctance to redefine the legal definition of sexual intercourse as anything that deviates from penile-vaginal sex, and means that same-sex couples are still treated unequally by the law. Same-sex couples are unable to rely on adultery in divorce proceedings and unable to consummate their marriage, demonstrating the ways in which marriage is “equal” only by name.

The reluctance of the law – and society more generally – to engage with gay sex leads to the what some have called the desexualised “homonormative” sexual identity – a gay identity that is said to assimilate in order to gain equal status and privileges within a society in which heterosexuality is assumed, unquestioned, and dominant.

Hiding sex

The renouncing, or hiding, of sex in the law therefore has created a domesticated, and political-neutral image of a gay person – one that conforms, that is “good”, not too offensive, and not too risky or public about their sexuality. Using this idea helps to construct the image of a married, monogamous, responsible gay couple, who are far removed from those people who may need to rely on PrEP.

But this ignores the facts of sexual practice and sexuality and serves not only to further alienate and exclude those who do not fit within the model of what a gay person should be like, but also contributes to the spread of infection. In 2014 there were 3,360 new diagnoses of HIV recorded in the UK, the largest number ever recorded. These will not stop without further prevention or responsibility assumed from the health service.

In reaction to this, the term “homoradical” has been coined. This is someone

who takes risks in their sexual life, and for whom PrEP is a useful tool. The homoradical has been identified in research as one who rejects the idea of marriage and takes part in sexual activity that deviates from traditional relationship models, including the non-monogamous, the "slutty", the risky and those who engage in public sex. It is this group who may be more at risk of contracting HIV.

Recognising the need to provide further protection to those at a higher risk of contracting HIV is of crucial importance in the task of preventing the further spread of the disease. Transgender women, men who have sex with men, and BME people are most at risk, but it is important to remember that no one is immune from HIV.

The initial decision in the High Court that the NHS could fund PrEP sparked a vicious and intensely homophobic backlash, illustrating that there is still a significant amount of work still to be done in improving acceptance and tolerance. The continued refusal of the NHS to provide the treatment and the homophobia that followed will surely contribute to the spread of HIV in circumstances that could have been prevented.

Arguments that PrEP leads to riskier sexual practices may be true in some circumstances, but research published in the New England Medical Journal showed that patients on PrEP are less likely to contract other sexually transmitted infections.

Although there is an argument that everyone has a personal responsibility with their own sexual relations and conduct, the reality is that the virus has continued to spread in the past 30 years and the onus on personal responsibility serves to reinforce the stigma and exclusion that surrounds those living with the disease.

NHS England still maintains that although it has the authority, it is not obliged to provide PrEP. An NHS spokesman said that the NHS are now considering the provision, noting the implications which may arise from its price. Again, then, it appears that LGBT+ and minority people's health is still something to be fought against by the NHS, rather than protected.

In addition to this, the NHS and media have pitted HIV treatment and other

treatments for illnesses such as cancer against each other. This is dangerous and will not help anyone at risk of developing HIV, nor those who already live with the disease. The chief executive of the National AIDs Trust has called the delay in the provision of PrEP unethical, and expensive, while the chair of the BMA Public Health Committee has come out in support of the provision of the life-saving drug.

At the moment, PrEP is available to the privileged few, those who can afford the treatment – coming in at a cost of around £45 per month for a generic version, but up to ten times higher if branded (Truvada). The NHS now has the power to remove this privileged status and afford further protection from HIV to those who need it most.

In doing so, the law and the NHS can recognise that the rhetoric of responsibility and aversion to risk, which is particularly prejudiced against LGBT+ people, is exchanged for a developed system of protection and prevention that will do most towards ending HIV. This becomes a step forward in recognising and accepting sexual identities and practices that do not fit within dominant ideas of identity, and validating the importance of protecting those at higher risk. It is about recognising different sexual identities and practices, but also a question of when and how they will be protected.

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