

Blood Donation by gay and bisexual men

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Equality Network, 30 Bernard Street, Edinburgh, EH6 6PR

[www.equality-network.org](http://www.equality-network.org) [scott@equality-network.org](mailto:scott@equality-network.org)

The Equality Network is a national Scottish charity working for equality and human rights for lesbian, gay, bisexual, transgender and intersex (LGBTI) people. We welcome the opportunity to feed into the consideration of petition PE1643, http://www.parliament.scot/GettingInvolved/Petitions/blooddonationpolicy

The Scottish National Blood Transfusion Service collects donations for blood transfusions and research. Not everyone is eligible to give blood. One of the categories of people who cannot currently give blood is men who have had oral or anal sex with another man, with or without a condom or other protection, in the last 12 months. This is regardless of other circumstances, so includes for example a man who has only had sex with his partner or husband using a condom, as well as a man who has a number of sexual partners and did not use any protection.

The Advisory Committee on the Safety of Blood, Tissues and Organs (SaBTO) have in the past few weeks recommended that the 12 month deferment period is reduced to 3 months.[[1]](#footnote-1) While this will reduce the number of gay and bisexual men facing discrimination in blood donation, only a system of individual risk assessment will end it.

**Why are gay and bisexual men deferred for 12 months?**

Potential donors are vetted to minimise the possibility of diseases being transmitted to recipients through transfusions. They are asked to fill in a questionnaire which seeks to identify whether they are at high risk of infection with, for example, HIV, Hepatitis B & C, and CJD. The prevalence of HIV amongst gay and bisexual men was the initial reason a lifetime deferment was imposed in 1983, at a time very little was known about the disease. Current prevalence remains a concern.

According to Public Health England[[2]](#footnote-2):

* Sex between men accounts for 47.1% of all HIV transmissions in the UK.
* More than half of people newly diagnosed with HIV in 2015 were men who have sex with men (MSM), despite this group only making up an estimated 2-3% of the male population
* 3,320 MSM were diagnosed with HIV in 2015, reflecting both an increase in levels of HIV testing as well as ongoing new transmissions

Current nucleic acid testing (NAT), which is carried out on all donations, can detect HIV in the blood after nine days of infection – this is known as the window period. The blood service is also worried about hepatitis B and syphilis, which are also screened for, but for which the window period is around sixteen days.

Men who have had sex with men in the previous 12 months are asked not to give blood because, as a group, they are known to be at an increased risk of acquiring HIV and a number of other sexually-transmitted infections (STIs), many of which are carried in the blood. Blood donation services accept that it is specific behaviours, rather than being gay or bisexual, which places men at increased risk of infection. However, in 2004 the English National Blood Service (NBS) explained: “The fact is that the session conditions under which the NBS collects blood do not enable staff to gain full and detailed insights into the lifestyle of such men, as this requires a lot of time. The NBS, therefore, has to regard all gay men, whether monogamous or not, as constituting a single group of the population. It is this single group that is most at risk of transmitting infections such as HIV and hepatitis B in any blood that they donate and this continues the justification for the current rule.”[[3]](#footnote-3)

**The Equality Network believes** that it should be possible to ask donors more detailed questions about their sexual activity, rather than just whether they have had sex with another man in the past year, thereby gaining more accurate information on risk, and making the blood supply safer.

The current rules were put in place in 2011 after the Advisory Committee on the Safety of Blood, Tissues and Organs (SaBTO) undertook a review of donation rules.[[4]](#footnote-4) SaBTO recommended a reduction of the lifetime deferment to a one year deferment for men who have sex with men (MSM), and this recommendation was accepted.

The Joint United Kingdom Blood Transfusion Services Professional Advisory Committee (JPAC) has the remit to ‘prepare detailed service guidelines for the United Kingdom Blood Transfusion Services’. JPAC is made up of is made up of over 100 people appointed because of their knowledge and expertise. They produce guidelines which are applicable to all four Blood Transfusion Services in the UK. Implementation of these guidelines is a matter for individual Blood Transfusion Services.

**Three Month Deferment – Problem solved?**

While the recommendation of SaBTO to reduce the deferment period from 12 to 3 months will reduce the number of gay and bisexual men discriminated against in blood donation, it will not remove that discrimination.

Many gay and bisexual men who are perfectly safe to donate blood will remain unable to do so within the rules.

It is not that giving blood is a right, it is not, it is that efforts to improve the safety of the blood supply will fail if confidence is not maintained in rules of deferment. It is our strong belief that only a deferment based upon individual risk can inspire that confidence, eliminate discrimination and increase blood safety.

**Confidence in donation rules - compliance**

In 2007, SaBTO believed compliance by gay and bisexual men with the lifetime ban to be at around 97%, a figure that was disputed at the time.

Four years on, SaBTO’s own estimates in advance of the 2011 rule change stated “The modelling suggests that the length of the deferral period is less important than compliance with the rule, with 100% compliance with either a 12 month or a 5 year deferral reducing the risk by 30%.[[5]](#footnote-5)

Compliance by gay and bisexual men is thus a crucial factor in the protection of the blood supply. It is therefore important that gay and bisexual men have confidence in the blood donation rules and that compliance is maximised.

This has been reinforced by the publication of a recent Public Health England study into compliance, the largest ever, which showed “lower rates of compliance among responders who did not understand the eligibility criteria or did not agree with the rationale for the selection criteria”.

It is not clear what impact the move from a 12 month to a 3 month compliance period will have on compliance rates.

**What does the law say?**

The UK’s Blood Services are legally required to exclude anyone whose sexual behaviour puts them at high risk of acquiring severe infectious diseases that can be transmitted by blood. These regulations resulted from two EU Directives – 2002/98/EC and 2004/33/EC – which were transposed into UK law through the Blood Safety and Quality Regulations 2005.

The regulations set standards for quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components. Aspects of the regulations apply to 'blood establishments' (the UK’s Blood Services) and Hospital Blood Banks.

In 2011, John Dalli, then European Commissioner for Health and Consumer Policy, explained that EU law warranted the deferral of those “at high risk of acquiring severe infectious diseases” due to their “sexual behaviour”, underlining that “sexual behaviour” is not identical with “sexual orientation”.

The European Commission noted that, when implementing EU law, member states must not discriminate on the basis of sexual orientation. This means that a blanket ban on all gay and bisexual men donating blood would be illegal under EU law.[[6]](#footnote-6)

This was tested recently when a gay man from France, where a lifetime deferment was in place, took a case at the European Court of Justice (ECJ): Geoffrey Léger v Ministre des Affaires Sociales[[7]](#footnote-7). In its decision, the court said there may be a justification in banning gay men from donating blood, but only under strict conditions. The court found that France’s law was “liable to discriminate against gay men on the basis of sexual orientation” and said “less onerous methods” other than a blanket ban should be considered, such as using questionnaires and an individual interview with a doctor to “identify high-risk sexual behaviour more accurately”.

**The Equality Network believes** that SNBTS should implement a blood donation policy which assesses an individual’s suitability to donate based on whether they have participated in high risk activity. We consider the current selection criteria to be:

**Discriminatory** on the basis of sexual orientation. Whilst we agree that there must be stringent donor selection criteria aimed at protecting both donors and recipients of blood transfusions, we believe that these should not be based on sexual orientation, but on participation in high-risk behaviour. If deferment is on the basis of the gender of the person you have had sex with, and not on the actual risk associated with that sex, it is a form of sexual orientation discrimination.

**Less effective** in distinguishing high-risk donors, of whatever sexual orientation or gender. The current system prevents many low-risk gay and bisexual men from donating blood, but at the same time allows higher-risk heterosexual people to donate. A more accurate assessment of individual risk would allow low-risk gay and bisexual men to give blood, and at the same time would better screen out people at higher risk.

**Counter-productive.** Confidence in the blood donation policy is extremely important. If people feel they are being discriminated against without good basis, they might ignore or misinterpret donation rules. Moving to a more accurate individual risk assessment will allow people to accurately assess their own risk before offering to donate, which will help to protect the blood supply.

**Inconsistent** with safer sex campaigns. The current policy assumes that all sexually active gay and bisexual men are high-risk individuals, and therefore that all sexual activity between men is inherently high risk. This includes men who are monogamous or use condoms or other forms of protection. This contradicts safer sex messages promoted by HIV organisations and the government, undermining those messages.

**Reform welcome.** The long standing argument made by the blood services are that they do not have the evidence to move to a system of individual risk assessment; indeed that they do not know what evidence they would need until they start to develop such an assessment tool. The lifetime ban on donations by MSM was imposed in 1983, was reduced to a 12-month deferral in 2011 and may shortly be reduced to 3 months. In our view, it is past time that the blood services worked to develop and assess a more accurate system of individual risk assessment, and that moves to reduce the deferment period should not stall that effort.

1. https://www.gov.uk/government/groups/advisory-committee-on-the-safety-of-blood-tissues-and-organs#sabto-donor-selection-working-group [↑](#footnote-ref-1)
2. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477702/HIV_in_the_UK_2015_report.pdf> [↑](#footnote-ref-2)
3. National Blood Service (2004) [↑](#footnote-ref-3)
4. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216109/dh_129909.pdf> [↑](#footnote-ref-4)
5. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216109/dh_129909.pdf>, page 46 [↑](#footnote-ref-5)
6. <http://www.lgbt-ep.eu/press-releases/european-commission-banning-gay-men-donating-blood-against-eu-law/> [↑](#footnote-ref-6)
7. <http://curia.europa.eu/juris/liste.jsf?num=C-528/13> [↑](#footnote-ref-7)