

Guidance on Confidentiality in Student Health and Welfare

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1. Introduction

This document is intended for all those involved in student health and welfare, whether in colleges or departments, for whom confidentiality might be an issue, and is designed to promote greater consistency in the way individual cases are handled. "Health" covers both physical and mental health.

2. Legal context

2.1 By virtue of the Human Rights Act 1998, which came into force on 2 October 2000, the rights enshrined in the European Convention on Human Rights have been incorporated into English law. Article 8 of the Convention provides a right to respect for private and family life. The Article reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There should be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."

2.2 Although the qualifications on the right to privacy set out above reflect previously accepted assumptions in relation to limits on confidentiality, the explicit inclusion of this right in the UK legislation is likely to enhance general awareness of the importance to be attached to individual privacy.

2.3 Individuals may reasonably expect information given in confidence to be treated in a confidential manner and a failure to respect confidentiality may give rise to a claim in certain circumstances. (Special considerations apply to those aged under 16.)

2.4 The Data Protection Act of 1998, which has substantially revised and updated earlier legislation relating to data protection, imposes new obligations on those holding personal data both as to the purposes for which data may be held and to the persons to whom it may be disclosed, and those obligations are particularly stringent in the case of sensitive personal data (as defined in the Act). Further information is available on the [University's website](#).

2.6 The Special Educational Needs and Disability Act (SENDA) extended the provisions of the Disability Discrimination Act to education with effect from September 2002. Institutions are required to treat people with disabilities no less favourably than others, and, where necessary, to make reasonable adjustments to policies, practices, and procedures in order to achieve this. This could have implications for confidentiality. Educational institutions will need to ensure that students are aware that information about their disability may need to be provided to others so as to meet their particular needs. If, however, a student insists on confidentiality, it may be necessary to inform him or her that it will not be possible to make certain provisions.

3. General Principles

Respect for confidentiality

3.1 A general respect for privacy means that matters relating to the health and welfare of individuals must be treated as confidential.

3.2 Those advising students should make it clear at the outset of a discussion whether the content is to be confidential and the extent of the confidentiality to be afforded to any disclosures. In particular they should inform the student of:

- the concern on the part of the institution to respect privacy, wherever possible;
- the circumstances, if any, under which information might be shared with a third party, taking account of the duty of care which may be owed to the individual and/or others; and
- the individuals or body who might be informed in such circumstances.

Seeking consent

3.3 Those involved in advising students should, where possible, seek the consent of the individual for the onward disclosure of relevant information to those with a clear need to know. Where such consent is not forthcoming, the person entrusted with the information should make it clear that in exceptional circumstances, it may be necessary to disclose the information to others, whilst also making it clear that such disclosure would be on a need-to-know basis only, preserving strict confidentiality in relation to any other third party.

Duty of Care

3.4 Notwithstanding specific legislation and the expectation of an individual who provides information in confidence, the University and its colleges must bear in mind that in certain circumstances they may owe a duty of care to individuals that cannot be discharged unless the institution takes action on information provided in confidence. It is not possible to provide an exact delineation of the extent of such a duty of care. However, where information concerns potential harm to an individual or to others, the institution must weigh the duty of confidentiality against that potential harm. For example, if an individual provided information in confidence about a serious sexual assault, the institution would be at risk if it failed to take steps to ensure that the alleged perpetrator was not a continuing risk to that or other individuals.

Seeking advice

3.5 Those to whom information has been given in confidence, or who have acquired information which they regard as confidential, may not always be sure whether they should disclose this information or not. In these circumstances it may be sensible to seek advice from an appropriate person e.g. a college officer or the college doctor, on whether the matter is sufficiently important to breach confidentiality, and, if so, to whom they should report their concerns. This should be done without divulging the name of the student concerned. A concern for confidentiality need not, and should not, prevent communication that is necessary to help students in difficulty.

Promises of confidentiality

3.6 It is not always appropriate or sensible to give absolute assurances of confidentiality to those who may wish to talk about personal problems. It may be necessary to say that information may be shared with others who need to know it, if this is in the best interests of the individual and the community, and that this will be carried out with the utmost discretion. Persons with both pastoral and disciplinary responsibilities may need to say in particular that matters of a disciplinary nature may need to be discussed with others.

Discussion with college doctors, college nurses and the Student Counselling Service

3.7 It is often helpful for tutors or others to talk to college doctors, college nurses or members of the University's Student Counselling Service about undergraduate or graduate students' difficulties; the individual's consent to do so should be sought.

- If consent is not forthcoming, it may still be helpful to seek general advice from the doctor, nurse or counsellor without identifying the student concerned.
- In exceptional circumstances college doctors, college nurses and counsellors may wish to speak to the senior members of a college about a student. If the student is unwilling, confidentiality will be respected unless there are reasons not to within the relevant professional guidelines (see section 4 below).
- The Student Counselling Service's Liaison Scheme, whereby colleges may elect to have a named counsellor with whom they can liaise, is specifically designed so that college members can seek the advice of someone who is familiar with the college context.

Contact with families

3.8 It is generally inappropriate to speak to a student's family against the student's wishes. Contact may occasionally be justified in the students' best interests e.g. when a student is at risk of self-harm or suffering from a serious physical illness. The decision to do so should be made at the highest level and the student should normally be informed.

Students on professional courses

3.9 Special considerations apply to students on courses leading to qualifications for professions governed by codes of conduct and health intended to protect the public e.g. medicine, social work and teaching. Any concerns about the health or behaviour of a student on one of these courses may be discussed with the department concerned, in the first instance without divulging the name of the student. Advice may also be sought from the college doctor or the Head or Deputy Head of the Student Counselling Service.

4. Professional guidelines

Doctors and their professional colleagues

4.1 There are explicit and strict guidelines on medical confidentiality which are codified by the General Medical Council. Doctors have the discretion to share information with other

members of the healthcare team, for example, college nurses. There are limited exceptions to confidentiality – statutory and in the public interest. The General Medical Council states:

"Disclosures may be necessary in the public interest where a failure to disclose information may expose the patient, or others, to risk of death or serious harm. In such circumstances you should disclose information promptly to an appropriate person or authority."

Student Counselling Service

4.2 The Student Counselling Service is an organisational member of the British Association for Counselling and Psychotherapy and abides by its Ethical Framework for Good Practice. Confidentiality remains with the staff of the Service and information will not normally be conveyed outside the Service without permission. If a student were considered to be a danger to him/herself or to others then the student's consent would still be sought before information was conveyed to others. If this consent were not given then a counsellor would consult with a senior member of the team before a decision to break confidentiality was taken. This would have particular relevance if the student were considered to be no longer able to take responsibility for his/her actions. Any breach of confidentiality would be minimised by restricting the information conveyed both to that which is pertinent to the immediate situation and to those persons who can provide the help required by the client.

Chaplains

4.3 College and denominational chaplains, as ministers of religion, operate with strict ethical codes as regards information disclosed to them in confidence, whether in formal situations of sacramental confession or in less formal pastoral work. Like counsellors and doctors, they may very occasionally be required to divulge information given in confidence if the person concerned is seen to be a danger to him/herself or to others. Ministers may themselves have a confidential supervisor, confessor, or spiritual director, with whom they discuss their pastoral work. Because chaplains are members of the same communities in which they exercise pastoral care, students often encounter them in a variety of social settings. Confusion can result as to the exact status of a conversation and the information imparted in these circumstances. A chaplain should make clear the understanding of confidentiality within which he or she works.

Others subject to specific confidentiality requirements

4.4 Other statements about confidentiality are made in relation to the work of those involved in harassment, disability and other professional areas, for example financial hardship. All of these have recognised both the importance of privacy and the need to specify exceptions. For example, the Guidance for Advisers in Cases of Harassment gives assurances about written records and about respect for confidentiality, circumstances in which complainants will be urged to make formal complaints and the exceptional circumstances in which information will be passed on to others.

5. University and College policies

5.1 For legal and more general reasons it is important that the University and colleges set out statements about privacy and confidentiality. Whilst it is entirely appropriate that there is

variation in the details of application, there are strong legal and practical reasons for the documents to be based on the same explicit principles. College statements should be made available to both students and staff. It may also be helpful for colleges to inform parents or guardians of the principles that will be followed with regard to confidentiality.

5.2 Written policies provide reassurance for individuals in discussing personal and private matters but also enable all those involved to be aware of the limits of confidentiality and how they will be handled. They should cover the following:

- the general principle of privacy and respect for confidentiality;
- compliance with the Data Protection Act 1998;
- that a general duty of care means that institutions must consider the welfare of all members who may be affected by individual behaviour;
- the nature of professional guidelines for college doctors and for others involved in professional health care;
- statement that whilst assurances about absolute confidentiality cannot be given in respect to personal discussions between student and senior members, information will only be disclosed in exceptional circumstances and on a need to know basis;
- since almost all undergraduate and graduate students are aged above 16 and therefore entitled to confidentiality, families will not normally be contacted without consent;
- an explanation that it is often helpful for personal matters to be discussed between members of colleges or the University and also with those providing professional care;
- reassurance that a) discussion of students' distress or personal problems should not in general be seen as resulting in adverse academic, employment or other consequences and b) discussions of students' academic progress will generally be confined to exchange of information on issues relating to educational performance and discipline;
- the availability of personal advice and an explanation of who may be informed about important matters;
- students have the same general obligation as staff to respect the privacy of others in their everyday behaviour and also in what they say to the student, local and national press and in the use of electronic communication;
- explanation of procedures for giving advice and helping with financial hardship. Whilst consultation between senior members may be necessary, this will be carried out with discretion.

Who should be informed?

5.3 It is appropriate for the central University and for colleges to set out the ways in which confidential information may be shared. Colleges should specify who may be informed about health, welfare and disciplinary problems, whether minor or major. Although it is important to identify those members of college who may be informed about such problems it should also be made clear that not all of them will necessarily have a need to know in all cases. Who is informed in each case will depend on the particular circumstances and individual judgment will be required. The general principles should, for practical and legal reasons, be uniform throughout the University; the precise application must reflect the nature of the college or other body.

5.4 It is important that this should take account of the involvement of all members of college staff, the lines of responsibility, and the ways in which students should seek advice and

support in relation to their peers. There should be publicised procedures available twenty-four hours a day (c.f. Assessor's advice on the management of student tragedies).

Offering students a choice of help

5.5 Some students are reluctant to consult their tutors or other obvious persons within their college or department/faculty. This may be because they think the reaction will be unsympathetic or because they are concerned that there will be repercussions for their academic careers. It is important that they know that they can also speak in the first instance to other senior members. Once contact has been established it is usually possible to provide the reassurance that will enable continuing discussion with the person or senior member who is best able to help.

Working with others

5.6 A formal or informal college welfare committee is often the best way to work out and monitor procedures and to discuss general issues. Graduate students who spend less time in college may feel more isolated and it may be necessary for their department/faculty to remind them of the help available, both within the department/faculty and, more generally, within their college and the University's Student Counselling Service and OUSU.

6. Specific problems

Major behavioural and emotional problems

6.1 Major mental illness may well impair capacity to take decisions about confidentiality, seeking help and any other course of action. The senior member responsible for college welfare should act in the public interest. It is important to seek the advice and help of the college doctor. Counselling and psychiatric treatment can help people with mental health problems to gain a clearer understanding of their own and other people's boundaries.

6.2 If a student is causing considerable college concern but is initially unwilling to consult the college doctor or to allow a senior member to consult the college doctor, a senior member with pastoral experience may well be able to achieve a satisfactory solution. Alternatively a senior member may wish to contact the Student Counselling Service to discuss possible sources of help. There may be circumstances in which the college will feel that the concern about individual welfare or of disruption of college life is so great that they must insist upon a medical report as a condition of continuing residence.

Discipline and ill health

6.3 The University has formal procedures for dealing with serious problems arising from ill health which come to light in the course of a disciplinary investigation or other wise. Colleges may also have similar formal procedures.

Discharge from hospital

6.4 Hospital staff can be expected to contact general practitioners about students discharged from the emergency department or inpatient wards with significant medical problems.

Doctors, together with college nurses, will be able to undertake continuing responsibility and will be fully aware of the consequences for colleges. Student patients will often be willing for hospital or college doctors to speak to college senior members as appropriate and it is helpful if those responsible for student welfare have discussed issues and procedures with their college doctor and nurse.

Risk of self-harm

6.5 If it appears that a student is at risk of self-harm worries should be reported to a senior member of the college with pastoral responsibilities. It is often sensible to discuss these concerns directly with the student. The college doctor or Student Counselling Service should be consulted. The doctor or counsellor may have confidential information and be unable to comment about a particular case. Even so, it can be useful to discuss general issues rather than individuals. Self-harming activity can vary in its level of immediate danger. That is why discussion with a professional is important to assess what action is needed. Where there are clear indications that the student is in imminent and serious danger a doctor should be consulted as quickly as possible and if necessary the emergency services contacted.

6.6 When students have been admitted to the John Radcliffe Hospital following self-harm they will routinely receive a psychiatric assessment and the college doctor will be informed (apart from a small proportion of non-admitted emergency department attendees). College doctors and nurses will consider further care, including the implications for the college and other students. If, additionally, a student is referred to the Student Counselling Service after assessment at the John Radcliffe Hospital the service receives the same discharge information as the college doctor.

Serious crime

6.7 Victims of serious crime, including sexual crime may fear reporting the matter to the police. Victims can be assured that complaints can be made to the police discreetly and no further action will be taken without full discussion with the complainant.

7. Dealing with the media

It is important that all members of staff of the University should be careful about speaking to the media. Colleges and the University have policies about who should respond to enquiries. The University Press Office is always able to give advice.