



# Guidance on Confidentiality in Student Health and Welfare

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## Executive Summary

The law has long recognised a general duty of confidence. This arises in relation to information which is not in the public domain and which is given to someone who knew (or should have known) that the information was being given to him or her in confidence. In addition to this general duty, obligations of confidentiality can arise through contract or under a number of statutory provisions including the Data Protection Act. The Human Rights Act 1998 has further added to existing obligations of confidentiality by providing a right to respect for private and family life. In all cases the duty of confidence is not absolute and may normally be overridden in circumstances where there is an overwhelming public interest or legal obligation to do so.

Information given in confidence by a student must therefore, as a general rule, be treated in a confidential manner. This would include information about a student's physical or mental health or financial circumstances. A failure to respect confidentiality might lead to legal action in certain circumstances.

Except in the special circumstances described in the full version of the College's Policy on Confidentiality in Student Health and Welfare, and summarized below, confidential information should be shared with others only with the explicit consent of the student concerned. Where consent is given, the information must be disclosed only to those with a need to know, preserving strict confidentiality in relation to other third parties. Where consent is withheld, the consequences of not being able to disclose the information should be explained clearly to the student, particularly where these are detrimental to their interest. For example, in the case of a student with a disability, it might not be possible to meet their particular needs unless information about their condition were disclosed to others.

Families do not enjoy special privileges which override the right of the student to respect for confidentiality. Except in the circumstances described below, confidential information should be disclosed to parents or other family members only with the consent of the student. (Special considerations apply to those under 16.)

Students have the same general obligation as staff to respect the privacy of others in their everyday behaviour, in what they say to the student, local and national press and in their use of electronic communication.

In certain very specific circumstances it might be necessary to break confidentiality, that is, to disclose information without consent, for example, where there appears to be a risk that the student will harm himself/herself or others, or where the student is seriously ill. The College owes a duty of care to all its members, staff and students, and in some circumstances it might not be able to discharge this duty without infringing

confidentiality. For example, if information were provided in confidence about a serious sexual assault, the College might be held liable if it failed to take steps to end the threat posed by the alleged perpetrator. However, even when it is judged necessary, for whatever reason, to break confidentiality, every effort should be made to obtain consent first, and to ensure that only those with a need to know are contacted.

Judging whether a student will harm themselves or others can be very difficult, requiring expertise beyond that which can be expected of most college staff; if in doubt, always seek the advice of the college doctor, the college nurse or a member of the University Counselling Service.

Those to whom information has been given in confidence, or who have acquired information which they regard as confidential, may be concerned about the welfare of a student but uncertain 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 senior 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. It is always possible to seek general advice without naming individuals. A concern for confidentiality need not, and should not, prevent communication that is necessary to help students in difficulty.

## **1. Introduction**

- 1.1. This document is intended for all those involved in student health and welfare within the College for whom confidentiality might be an issue, and is designed to encourage 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:
  - i. Everyone has the right to respect for his private and family life, his home and his correspondence.
  - ii. 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.
- 2.5. 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:
  - a) the concern on the part of the institution to respect privacy, wherever possible;
  - b) 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
  - c) 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. Since students are over 16 and therefore technically adults, 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. The College Chaplain, as a minister of religion, operates with strict ethical codes as regards information disclosed to him or her in confidence. Like counsellors and doctors, he or she 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. The Chaplain, like other college officers, is a member of the same community in which he or she exercises pastoral care, so students often encounter him or her in a variety of social settings. Confusion can result as to the exact status of a conversation and the information imparted in these circumstances. The Chaplain, like other college officers and staff, should make clear the understanding of confidentiality within which he or she works.

### *Others subject to specific confidentiality requirements*

- 4.4. All members of the College's welfare team, and other officers and staff who may become involved in any matter relating to health, welfare, disability support or financial hardship are also subject to the College's policy on confidentiality in student health and welfare. They too recognize both the need to maintain privacy and, very occasionally, to divulge information given in confidence if the person concerned is seen to be a danger to him/herself or to others.
- 4.5. Students are welcome to speak to their own tutors or to the Senior Tutor about any issue that may be concerning them, especially if they think that it might affect their academic work. They are also welcome to approach the Chaplain & Welfare Fellow, the College Nurse, or any other member of the College's welfare team. Members of the welfare team will treat their concerns in confidence, except in the exceptional circumstances described above. The Student Welfare Office operates independently of the Academic Office, and information is normally only passed from the former to the latter with the consent of the student involved.

## 5. Offering students a choice of help

- 5.1. Students may speak to any member of the College's welfare team, to their own tutor or, in the case of graduate students, to their college adviser, about any personal or medical circumstances that may be troubling them. They may also approach their Doctor. Sharing such information with another member of the College or with a Doctor may be very helpful, and should not in general be seen as resulting in adverse academic or other consequences. In all such cases, care is taken to respect an individual's privacy, and to respect confidentiality. The College Doctor is bound by the normal medical practice of confidentiality, but there are often circumstances in which it is desirable for the student concerned to be asked to give permission for information to be passed on in confidence to the relevant College Officer. It will not necessarily be the case that all the people available for consultation will need to be informed about such problems in all cases. Who is informed in each case will depend on the particular circumstances and individual judgment will be required. While assurance about absolute confidentiality cannot be given on respect of personal discussions between junior and senior members, information will only be disclosed in exceptional circumstances and on a need to know basis.
- 5.2. Students may also speak to any member of the College's welfare team, to their own tutor or, in the case of graduate students, to their college adviser, if they have concerns about another student, or if they wish to raise a general area of concern without naming an individual. They may also approach their Doctor. Sharing such information with another member of the College or with a Doctor may be very helpful, and should not in general be seen as resulting in adverse academic or other consequences. In all such cases, care is taken to respect an individual's privacy, and to respect confidentiality. The College Doctor is bound by the normal medical practice of confidentiality, but there are often circumstances in which it is desirable for the student concerned to be asked to give permission for information to be passed on in confidence to the relevant College Officer. It will not necessarily be the case that all the people available for consultation will need to be informed about such problems in all cases. Who is informed in each case will depend on the particular circumstances and individual judgment will be required. While assurance about absolute confidentiality cannot be given on respect of personal discussions between junior and senior members, information will only be disclosed in exceptional circumstances and on a need to know basis.
- 5.3. It is possible that students may share their problems with other students. The students consulted should be aware that they also have the same obligation as Fellows and College Officers 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. It is often helpful for students consulted in this way to talk to a member of the College's welfare team, or to a College Doctor. However, the individual's consent to do so should normally be sought, unless the student is concerned that there is significant risk of serious harm to the student who has consulted him or her or to other people. In some circumstances, students may wish to seek general advice from a college officer without divulging the name of a particular individual for whom they have concerns.
- 5.4. Students may also seek help outside the College. Those whom they might approach outside the College include the University Counselling Service, OUSU, Nightline and the

NHS.

## 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 College has formal procedures for dealing with serious problems arising from ill health which come to light in the course of a disciplinary investigation or otherwise.

### *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 the College Nurse, will be able to undertake continuing responsibility and will be fully aware of the consequences for the College. 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). The College Doctors and Nurse 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 staff and members of the College should be careful about speaking to the media. It's the College's policy that it is usually the Dean or the Master who speaks to the media on behalf of the College.

[Amended August 2014]