

## CONFIDENTIALITY IN A WELFARE CONTEXT

This document is intended primarily to provide guidance for Tutors and Tutorial Office Staff on good practice arrangements for confidentiality and record keeping relating to student health and welfare matters. It is also a useful guide for students to the College's approach to matters of confidentiality in matters of student welfare.

**The following fundamental baseline principle applies: College Tutors and Tutorial Office staff cannot promise to maintain *absolute* confidentiality because, if students or other individuals are in danger, further help may need to be sought. Nonetheless, confidentiality will normally be maintained within the College welfare team on a strictly need-to-know basis.**

### 1. Background

It is important to provide clarity concerning how a student's confidential information might be treated depending upon who receives that information, and in what circumstances further disclosure might be appropriate, a) within the College, b) beyond the College but within the Collegiate University and c) beyond the University. The College has developed this policy within the context of a commitment to the general principle of privacy and respect for confidentiality. It will retain data in accordance with the General Data Protection Regulations 2018. The following document should be read in conjunction with the College's Data Protection Policy.

Given the potential complexity and sensitivity of individual student health and welfare matters, it should be noted that there is often no definitive 'right' answer in these cases. Judgment, discretion, justification and sometimes specialist advice may be required before an answer is arrived at, depending upon the circumstances. However, there are some guiding principles and considerations to which, in line with the Senior Tutors' Committee's agreed position, Selwyn College subscribes. Any member of College who has concerns over issues of confidentiality, for themselves or in relation to others, should not hesitate to seek advice from a Tutor, the Senior Tutor, the Bursar, or a member of the College welfare team.

As a general principle in the overwhelming majority of cases it is considered best practice to seek the student's consent to share information about them with another party before doing so, even where a breach of confidentiality without consent would be justified. A record of any disclosures and consent should be kept.

### Key concepts

#### *College Welfare Team*

In order to ensure that complex student issues can be resolved, monitored or taken further appropriately, the concept of a College welfare team can be useful. Tutors and Tutorial Office staff need and receive appropriate support and guidance from various sources. It is helpful to state clearly at the outset that information shared by students in pastoral discussions with Tutors and Tutorial Office staff is normally confidential to a clearly defined

College welfare team, on a strictly need-to-know basis, rather than to any one individual. This helps students understand the support they can expect from the College.

The College welfare team includes the Senior Tutor, Tutors, key members of Tutorial Office staff, individual Directors of Studies (DoS), the College Nurse, the Head Porter and the Chaplain. The College Nurse and Chaplain are also bound by additional professional obligations to confidentiality. These may make the application of confidentiality in their professional capacity tighter rather than more relaxed. (See 5.1-5.3 below).

### *The nature of confidentiality*

Broadly speaking, student welfare information disclosed to College staff is treated as confidential to the College welfare team rather than absolutely confidential. For example, depending upon the circumstances, a Tutor might need to share student information with colleagues within the welfare team. However, even within the welfare team this would only be on a need-to-know basis. Information disclosed on a confidential basis will not be shared except where the need to do so is clear.

Disclosure to any party or parties external to the College welfare team (e.g. the wider College and Collegiate University, including Faculties and Departments) would normally only be made where either a) the student has explicitly consented, b) there is clear risk of imminent and serious harm to that student or to others in which a duty of care outweighs the duty of confidentiality or c) there is a legal obligation to do so.

### *Duty of care, and imminent and serious risk of harm*

Notwithstanding specific legislation and the expectation of an individual who provides information in confidence, Tutors and Tutorial Office staff must bear in mind that in certain circumstances the duty of care they owe to a student or others will be breached unless the College takes action on information provided by them in confidence.

A duty of care would normally override any obligations regarding confidentiality where there is an *imminent and serious risk of harm* to the individual or to others. The College's general duty of care means that it must consider the welfare of *all* members of the College, the University and the wider community who may be adversely affected by individual behaviour and that this may sometimes limit confidentiality afforded in certain cases.

Whether an imminent and serious risk of harm is present will depend upon the facts in a particular case. Staff should consider whether the risk of harm is actual or probable (not just 'possible'), and when that harm would have a *substantial and significant* detrimental effect on the individual's or (or another's) physical, psychological or emotional wellbeing. If unsure, staff should explore the scenario hypothetically with a senior and experienced colleague.

## **2. Confidentiality within Selwyn College**

### *2.1 Disclosure within the College welfare team*

Members of the College welfare team who are not bound by specific professional obligations

regarding confidentiality are advised to operate under the following principles:

- Assurances of *absolute* confidentiality should not be given in respect of personal discussions between students and staff.
- A student's circumstances, when concern to protect the best interests of that student or others warrants it, should be discussed by the Tutor or other welfare team member with the Senior Tutor, perhaps keeping the identity of the student anonymous in the first instance.
- The Senior Tutor, on a strictly need-to-know basis and using the utmost discretion, may also decide to disclose information to a member of the wider College welfare team either for specific advice or for information, but should limit disclosure only to those who need to know to help the student, and should provide no more information than is absolutely necessary in the circumstances.
- Reassurance should be given to students that matters relating to their health or welfare disclosed to College welfare staff will only and exceptionally be shared beyond the College welfare team where either a) the student has explicitly consented; b) there is clear risk of imminent and serious harm to that student or to others; or c) there is a legal obligation to do so. Decisions to share information beyond the College welfare team when the student has not explicitly consented should normally only be taken by the Senior Tutor and according to the principles set out within this document.
- *Generic* advice about a situation may be sought from outside of the College welfare team, but the student's identity should not be revealed.
- Reassurance should be given to students that discussion by Tutors or Tutorial Office staff about a student within the College but beyond the College welfare team, would normally be confined to an exchange of information on academic or disciplinary matters relating to educational performance and/or conduct.
- Disclosure of information in the interests of reflective best practice and continuous professional development between Tutors or within the College welfare team should be anonymised as far as is reasonably practicable.

Where a member of a College holds two roles and only one of these roles falls within the remit of the College welfare team, care should be taken to ensure that a conflict of interest does not arise and that the individual makes particular efforts to ensure that they act in accordance with whichever 'hat' (pastoral, academic or otherwise) they are wearing in supporting any specific student. The Senior Tutor also has a role in ensuring, wherever possible, that no member of staff is unduly conflicted as a result of having two concurrent but clearly distinct roles within the College.

## 2.2 *Disclosure to the University Counselling Service (UCS)*

It is often helpful for Tutors to be able to talk to Counsellors or Mental Health Advisors at the UCS, or Counsellors retained by the College, about students who are seeking advice and support, or experiencing difficulties. The individual's consent for this to happen should normally be sought in advance of any approach to the UCS. If consent is not forthcoming, this should normally be respected, although this would not preclude Tutors from seeking non-specific advice without identifying the student concerned.

However, if there is clear risk of imminent and serious harm to that student or to others, the

details both of the situation and of the student's identity may need to be disclosed to the UCS.

### 2.3 *Disclosure to the Disability Resource Centre (DRC) and those involved in disability support*

The Equality Act 2010 requires HEIs to treat disabled students no less favourably than others, and to make reasonable adjustments to policies, practices, and procedures in order to achieve this.

In the event of a student disclosing a disability to, and only to, the College, the student's Tutor or the Senior Tutor shall write to that student to acknowledge the disclosure and to request that the student contacts the DRC to ensure that they enter the established process for the determination of support requirements. It should be made clear to a student, in writing, that, whilst it is their prerogative not to disclose their disability to the DRC, if they do not do so, the College and the Collegiate University would be limited in their ability to provide appropriate support to the student and to meet obligations under the Equality Act 2010. If a student refuses disclosure to the DRC, this must be recorded, in case of later questions about the level of support that they received.

When a disabled student discloses a disability to the DRC, they are asked to sign a confidentiality agreement. This asks the student to confirm whether their disclosure is full or restricted.

Full disclosure allows the DRC to use its discretion to share information about the student in order to set up necessary support, including contacting staff within the University and Colleges and requesting further information about the student's additional support requirements from medical professional(s) or other specialists with whom the student has engaged.

Restricted disclosure would limit the DRC's ability to share information about the student with only those parties to which the student gives express consent (including the student's College, Department/Faculty, Funding Body or any other party). Restricted disclosures may limit the level and type of support the DRC and Collegiate University can provide for that student, and students are made aware of this in the DRC's confidentiality policy and agreement.

### 2.4 *Disclosure to the Faculty/Department*

There are occasions when it would be helpful to share information about a student's personal circumstances with an appropriate member of their Department or Faculty in order to resolve an issue or to maximize the support available to that student. Disclosures of this kind should always be discussed with the student, with the benefits of doing so being clearly emphasised. The student's consent to share information should be obtained in advance. This is not usually problematic where the student understands that this is necessary to serve their best interests.

However, should consent not be forthcoming for a scenario not specifically outlined within

this guidance, it should be made clear to the student, in writing, that whilst it is their prerogative not to consent to wider disclosure, doing so may limit the Collegiate University's ability to arrange appropriate support and/or fully to resolve the student's issue. Contemporaneous notes should be kept of any discussions of this nature.

Conversely, Departmental and Faculty staff may wish to share welfare information disclosed to them by a student with that student's College (as the institution with responsibility for student pastoral support). Consent from the student to do so should be sought by the Department/Faculty in advance.

For minor issues where the student's consent is not forthcoming, confidentiality would normally be respected, with the Department/Faculty making clear the limitations of this approach. However, in more complex or risky circumstances where the Department/Faculty deem the College's input essential, they are advised to share information with the College and to inform the student they have done so, together with the reasons why they believed this to be necessary.

### 2.5 *Students on professional courses*

Special considerations apply to students on courses leading to qualifications for professions governed by codes of conduct intended to protect the public, for example, medicine or teaching. These requirements, in some circumstances, override the need for student confidentiality. If there are concerns about the health or behaviour of a student on one of these courses, they should be referred quickly to the appropriate body for consideration (for example, the relevant Progress and Fitness to Practise panel) and the student should be alerted to any referral when it is made.

Medical and Veterinary Science students are required to disclose information about any disability or mental ill-health that might affect their capacity to practice, and a failure to do so may later compromise that student's professional registration.

## 3. **Disclosure beyond Collegiate Cambridge**

### 3.1 *Disclosure to a law enforcement agency as part of an investigation*

As well as the police, other government agencies may request data for law enforcement purposes, such as the Department for Work and Pensions, local authorities, HM Customs and Revenue, and the Border and Immigration Agency.

If the police or another agency asks the College for information about a student to be disclosed to them in the course of an investigation, it is recommended that this request be escalated to the Senior Tutor to respond. The Senior Tutor may need to liaise with the Bursar in the latter's role as College Data Protection Officer.

In most cases, there is no automatic obligation to provide information without first obtaining the student's consent. There are, however, specific exemptions where a College may be entitled to disclose sensitive personal information about a student without their consent in circumstances where seeking consent would either a) risk national security or b) undermine

the purposes of the disclosure (for example prejudicing the prevention or detection of serious crime, the apprehension or prosecution of offenders, or the assessment or collection of any tax or duty). If contacted in these circumstances, the College should expect any such request explicitly to state whether any of these exemptions applies.

Before releasing information to any agency, and depending upon the circumstances, the Senior Tutor may wish to seek independent legal advice.

If a disclosure is to be made, the Senior Tutor should be satisfied that the grounds for the request are valid and that the request is from a genuine and properly authorised agency. Refusal to comply with a request for disclosure where an exemption applies may later lead to a court order, which would legally compel the College to comply.

In emergency situations, where there is reason to believe there is a clear risk of imminent and serious harm to an individual or individuals, the police or emergency services may urgently require personal data about a student or students to be disclosed, and may not have time to put a request for it in writing. In these circumstances disclosure is acceptable without consent but it is wise to check that the request is legitimate. Depending upon the nature of the situation, it may or may not be appropriate to tell the student afterwards that sensitive personal information has been disclosed (as detailed above, there are specific exemptions where Colleges would be entitled to disclose sensitive personal information about a student without their consent). It is advisable for the Senior Tutor to seek guidance on this matter from the authorised party requesting the information, who will confirm whether an exemption applies or not.

If a student discloses that they have been the victim of a crime to a College Tutor or other Officer but does not wish to report the matter to the police, the College should normally respect the student's wishes. The student should be advised that the College takes the view that complaints alleging behaviour of a serious criminal nature should normally be referred directly to the police. In exceptional circumstances, where the facts as they emerge give rise to concerns that there is a clear risk of imminent and serious harm to the individual or members of the wider community, the Senior Tutor may decide to report the matter to the police. Unless there are exceptional reasons related to the case, the Senior Tutor reporting the crime should inform the student who has been the victim of the alleged crime of the intention to do so, with reasons, before doing so.

### 3.2 *Contact with families etc.*

Students aged 18 or over are legally independent adults and should be treated as such. No information should be shared about them with their family, legal guardian or next of kin by College welfare staff without express consent from the student. This includes confirming whether the student is a member of the University or the College.

Tutors and Tutorial Office staff may occasionally be contacted by a student's family/guardian/next of kin to alert the College of a pastoral issue affecting a student. In the vast majority of cases, the family member is likely to be motivated by a genuine desire to support the student and it is usually in the student's best interests to listen to any information provided, but not to disclose any information to the caller about the student in

response. In addition, it is also good practice to establish whether the student is aware that the family is contacting the Tutor or Tutorial Office.

Contacting family members to discuss a student without explicit consent may very exceptionally be justified as being in the student's best interests, when, in the view of a medical professional, a student is a) at risk of serious self-harm or is suffering from serious ill health, and b) is lacking the capacity to make informed independent decisions. Decisions of this nature should normally be taken by the Senior Tutor acting on the advice of a medical professional. In exceptional circumstances it may also be appropriate for such discussion to be initiated without explicit consent following procedures under the College's Fitness to Study policy and in the light of relevant professional advice. It is recommended that such a decision should be formally recorded. The reasons for disclosing information without consent should be recorded, together with the circumstances involved.

### 3.3 *Disclosure in a crisis*

Where there exists an *imminent and serious risk of harm* to an individual student or to others, the emergency services should be contacted without hesitation. Where the issue relates to mental health crisis and there is time to consider action, confidential advice can be sought from a UCS Mental Health Advisor (during office hours) or the NHS Mental Health First Response Team (call 111 and select option 2).

## 4. **Specific circumstances**

### 4.1 *A student death*

In the extremely rare circumstance of the death of a current student the College shall follow the specific advice relating to communication as laid down by the Senior Tutors' Committee. The College's Emergency Response Procedure (section EP/15) should also be consulted at at: <http://www.sel.cam.ac.uk/wp-content/uploads/file/FOI/Emergency%20Response%20Plan,%20website%20public%20access%20issue.pdf>

### 4.2 *Harassment and sexual misconduct*

The College has approved additional stipulations concerning the use of students' personal information under the formal procedure for handling complaints about harassment and sexual misconduct. The formal procedure and policy (section iv) on the use of personal information in this context can be found at: <http://www.sel.cam.ac.uk/wp-content/uploads/file/Policies/student%20harassment%20and%20sexual%20misconduct%20policy.pdf> Students should be advised to think very carefully about what information they disclose to others at all stages of seeking resolution of a matter under these procedures. Advice regarding the University procedure can be sought from the Office of Student Conduct, Complaints and Appeals at [OSCCA@admin.cam.ac.uk](mailto:OSCCA@admin.cam.ac.uk) or on 01223 765440 without disclosing the identity of the student.

### 4.3 *Communicable Disease Outbreaks*

Whilst confidentiality in the provision of medical care is recognised as being in everyone's

interests, there can also be an interest in disclosing personal sensitive information in order to protect individuals or society from the risk of imminent and serious harm, such as from communicable diseases. In these circumstances, the disclosure of an individual's personal sensitive information would enable the tracing of contacts of an individual with a confirmed communicable disease to ensure that a) anyone who had come in to contact could obtain treatment expeditiously and b) to prevent the wider spread of the disease.

Wherever possible, consent to share personal sensitive information about a student who has contracted a confirmed communicable disease should be sought from the student beforehand. However, it may also be disclosed on a strictly need-to-know basis, where a student is not able to consent or where consent has been withheld, if the benefits of the disclosure are deemed to significantly outweigh the student's interest in keeping the information confidential.

A list of notifiable communicable diseases can be found at:

<https://www.gov.uk/guidance/notifiable-diseases-and-causative-organisms-how-to-report>

N.B. There are particular restrictions that apply in the release of information to the media in these cases and guidance regarding this should be sought from the Office of External Affairs and Communications.

#### 4.4 *Prevent Statutory Duty*

The Collegiate University has a legal responsibility in relation to the Counter Terrorism and Security Act 2015 and the Prevent Statutory Duty. If a significant concern arises that a student may be particularly susceptible to radicalisation, in rare circumstances, a decision may be taken, following our legal obligations, to share this information and the details of the student in order to ensure that the individual concerned is supported appropriately. Wherever possible, the consent of the student concerned should be obtained in advance of any referral for support.

Whilst it is not expected, it is conceivable that a student could be identified as being already engaged in illegal terrorist-related activity. Any such individuals should be referred directly to the police.

#### 4.5 *Gender reassignment*

Colleges may be approached by students who wish to transition to a gender other than that assigned at birth. How information regarding a transition to a different gender will be managed, and who will reasonably need to have access to it within the College, central University and Faculty or Department should be discussed face to face between the student and their Tutor. The student *must* give written consent before the information can be shared and it is important to note that disclosure of information about gender transition or reassignment without consent may constitute a criminal offence. The student should not be asked to consent to share the information with third parties generally; any consent should identify the persons to whom information may be disclosed with as much specificity as possible. This should include recording consent or withholding of disclosure to family members.



It is important that the person to whom the student chooses to disclose their intention to transition discusses with them how and when they want other colleagues/students in the College, Faculty/Department or central University to be informed. The student may want to do this themselves, or may want this to be done on their behalf. Whichever option is chosen, it is important that the person transitioning retains control over what and when people are told and the language used to explain it.

The number of people who need to be informed about the gender reassignment of the student should be carefully managed. Details relating to an individual's transition should be given to other staff members within the College only if this information is needed for the proper performance of their job. In such cases the sensitive nature of this information should be made clear to them. All records relating to the student's transition or transgender status should be kept confidential and treated as 'sensitive data'. Further details are available at: [http://www.seniortutors.admin.cam.ac.uk/files/gender\\_reassignment\\_staff.pdf](http://www.seniortutors.admin.cam.ac.uk/files/gender_reassignment_staff.pdf)

## **5. Relevant professional guidelines on confidentiality**

It is important to note that certain health and welfare professionals will be bound by particular confidentiality obligations imposed by their regulating body or institution and whilst it may be justifiable for the Tutorial team to share information with them in their professional capacity to support the resolution of a student issue, they are likely to be unable to reciprocate in the sharing of information owing to professional limitations.

### *5.1 GPs and Nurses*

Doctors and Nurses are regulated by the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC) respectively. Protection for a patient's right to privacy and confidentiality is enshrined within case law and professional codes of conduct. Accordingly, medical professionals must usually obtain express consent from their patients before they tell other people information about that patient. However, in exceptional circumstances, where there is a clear reason to think that the individual or others are at risk of serious and imminent harm, or if there is a risk of a serious crime, they can share information without the patient's consent. In certain circumstances, they can share personal information if this is for the public good and they also have to share information if it is required by law.

There may be times when patients cannot give consent for a Doctor or Nurse to share information because they are unconscious or very unwell and deemed to be 'lacking capacity'. In this situation, the medical professional will use their discretion in sharing information, if they deem this to be in the patient's vital interests.

### *5.2 University Counselling Service*

Overall, personal information provided by students to the UCS is confidential to the service rather than the individual Counsellor or Mental Health Advisor.

The University Counselling Service is an organisational member of the British Association for Counselling and Psychotherapy and abides by its Ethical Framework for Good Practice.

Information disclosed to **Counsellors** will not normally be conveyed to others without the student's express permission. This includes information about counselling attendance, or information disclosed to the Counsellors.

Students cannot self-refer to the **UCS Mental Health Advisors** (MHAs). At the first appointment students are asked for their consent for information to be shared on a need-to-know basis to allow information about attendance following the first referral to be shared with the referrer.

Confidentiality may be breached without consent in circumstances where there is a clear reason to think that the individual or others are at serious risk of imminent harm, or when required to do so for legal reasons. If a student were considered to be a danger to him/herself or to others then the student's consent would still usually be sought before information was conveyed to others. If this consent were not given then the Counsellor or MHA would consult with a senior member of the Counselling Service before a decision to break confidentiality was taken. The impact on the member of staff's future therapeutic relationship with the student would also be taken into consideration. Any breach of confidentiality would be minimised by restricting the information conveyed both to that which was pertinent to the immediate situation and to those persons who could provide the help required to the student.

### 5.3 *Chaplains*

The College Chaplain and assistants operate within 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 medical professionals, they may very occasionally be required to divulge information given in confidence.

### 5.4 *Students' Unions' Advice Service*

The Students' Unions' Advice Service (SUAS) offers a confidential, independent advice service to students. SUAS understands confidentiality to mean that no information regarding a student who has approached the Service shall be given (directly or indirectly) to any third party outside of the Service, without that student's prior, explicit and informed consent. This includes confirming whether a student has used or is using the Service. In very rare circumstances advice officers may feel the need to break confidentiality, either where there appears to be a serious and imminent risk to the student's own or to others' safety or where the law requires disclosure. Breaching confidentiality will only be done in extreme cases, and when the advice officer involved believes it is in the student's best interest to do so.

## 6. **Record Keeping**

All written records and files containing students' personal and sensitive data are subject to the College's Data Protection Policy. All necessary and reasonable steps to safeguard information about students should be taken and access to personal and sensitive data should be limited to College welfare team members who need it for the performance of their duties.

## **7. Media interest**

It is important that all members of College should be mindful not to disclose confidential or sensitive personal data to the media or on social media. They should act in accordance with the College's media and social media policies.

## **8. Breaches of Confidentiality**

Members of College have recourse to the College's Complaints procedure should they wish to raise a concern about the way their personal, sensitive information has been handled and to allege any breaches of confidentiality in respect of a Tutor or Tutorial Office staff, or another College welfare team member.

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