

4 August 2015

Rt Hon Dr Sarah Wollaston MP
Chair of Health Select Committee
House of Commons
London
SW1A 0AA

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Chair
Professor Terence Stephenson
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Dear Sarah

The Government's Prevent Duty

Thank you for your letter about the responsibilities of doctors and other healthcare professionals to support the Government's Prevent Programme.

We fully support all reasonable proactive steps to minimise the risk of UK citizens becoming involved in acts of terrorism and we recognise that doctors, like other professionals who work with people who may be vulnerable, may have opportunities to identify and act on warning signs. But it is not within our remit or expertise to advise doctors on how the new 'Prevent duty' set out in the Counter-Terrorism and Security Act 2015 should operate in practice, or what would constitute a 'concern that someone is being drawn into terrorism'.

The Department of Health has issued guidance for healthcare professionals that sets out the types of behaviour that might indicate that a person might be at risk of being drawn into terrorist-related activity. That guidance can be found in *Building Partnerships, Staying Safe: The health sector contribution to HM Government's Prevent strategy: guidance for healthcare organisations*. The Government has also issued statutory guidance for bodies to which the new duty applies, and which are responsible for training their staff.

Our understanding is, however, that the new Prevent duty does not alter the circumstances in which doctors are obliged to report concerns about patients, and does not impose any new duties on individual doctors (whether in their private or professional lives). As such, we would advise doctors to continue to follow our guidance *Confidentiality* if they have concerns that a patient may be involved in, or at risk of being drawn into, terrorist-related activity.

In that guidance we make clear that doctors must consider both the principle of confidentiality and any risk to individuals or society. In the guidance we emphasise the importance of confidentiality. Patients may avoid seeking medical help, or may under-report symptoms, if they are concerned that their information will be disclosed by doctors without their consent or the opportunity to have some control over the timing or amount of information disclosed. As such, it is in everyone's interest that doctors should not disclose information without a careful weighing of all of the interests involved.

However, at the same time we recognise that confidentiality is not absolute. There can also be a public interest in disclosing information, most obviously to protect individuals or society from risks of serious harm. We therefore advise doctors that their duty of confidentiality may nonetheless permit disclosure in cases where:

- disclosure is required by law (for example under section 38b of the Terrorism Act 2000 all citizens are required to tell the police if they become aware of information that they believe would be relevant to preventing a terrorist act, or securing the arrest or prosecution of someone involved in terrorism)
- the patient consents
- the disclosure is justified in the public interest (for example, where a failure to disclose may expose others to the risk of death or serious harm, or disclosure would be likely to assist in the prevention, detection or prosecution of serious crime)
- the disclosure is in the best interests of a patient who lacks the capacity to make the decision about the disclosure of their information. Our guidance is clear that doctors must disclose information to an appropriate authority if they believe that an adult who lacks capacity may be at risk of abuse or neglect, if the disclosure is considered to be in the patient's best interests or necessary to protect others from a risk of serious harm.

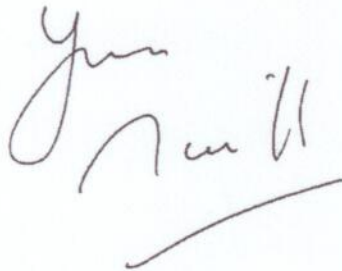
These can be complex judgements to make, and (in addition to following our guidance) we advise doctors to seek the advice of experienced colleagues, a Caldicott Guardian or equivalent, or their professional body.

We know that some doctors have expressed concern that the guidance accompanying the new Prevent duty appears to envisage information about competent patients being disclosed without consent in cases where disclosure is not required by law, and is unlikely to be justified in the public interest, in order to prevent future possible risks to public safety and to safeguard vulnerable adults. We are also aware of concerns that the Prevent guidance is being interpreted to apply to a wider range of adults than would be covered by the safeguarding duties set out in UK legislation and guidance.

Clearly not all adults who may be drawn into criminal activity, or who may subscribe to a particular ideology, are adults at risk of abuse or neglect to whom safeguarding duties apply. Our understanding of safeguarding legislation and procedures across the UK is that they apply to adults who are unable to protect themselves from harm (which might include exploitation for terrorist-related purposes) for reasons set out in legislation and guidance.

In such cases, we would expect doctors to follow adult safeguarding procedures that are in line with the principles established in legislation and guidance across the UK, including our guidance. One of those principles is that safeguarding procedures must be 'person-centred' and must take account of the views and wishes of the adult concerned. As such, disclosures should usually be made with the person's consent. If consent is not sought or is refused, information should not be disclosed about a competent adult unless it is expressly required by law or can be justified in the public interest. In other words, the usual framework for considering a disclosure set out earlier in this letter would apply.

I hope that is helpful. We are reviewing our confidentiality guidance and will take the opportunity to link the revised version both to the Prevent Duty and adult safeguarding procedures.

A handwritten signature in black ink, appearing to read 'Niall Dickson', with a long horizontal flourish underneath.

Niall Dickson