

## The duty of confidentiality where it is known or suspected that a patient has unlawfully attempted to end their pregnancy

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Cases have been reported in the media of women who have received medical care and have subsequently been subject to investigation by the police (and in some cases prosecution) for unlawfully attempting to terminate their pregnancy. In some of these cases it has been suggested that the police may have been contacted by the healthcare team.

Some doctors may be unsure about whether there is an obligation to notify the police when they suspect, or have evidence, that an individual has tried to end their pregnancy outside the terms of UK abortion legislation (see *Is abortion a crime?* below). Alternatively, they may be uncertain about whether a disclosure of confidential patient information to the police without consent would be justifiable in these circumstances, or in response to a specific request for information.

This guidance provides clarification on these issues to ensure that doctors understand the law, and professional guidance (from the [General Medical Council](#) and the relevant health departments<sup>1</sup>) around disclosures of confidential information to the police.

In some cases, there may be safeguarding concerns that need to be considered and addressed; this is crucially important but is not the subject of this guidance. Where there are safeguarding concerns, the relevant guidance should be followed, including guidance on whether, and to whom, information should be disclosed.<sup>2</sup>

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<sup>1</sup> Department of Health and Social Care. [Confidentiality: NHS Code of Practice – supplementary guidance: public interest disclosures](#); NHS Scotland. [Protecting Patients Confidentiality Code of Practice](#); Digital Health and Care Wales. [Confidentiality: Code of Practice for Health and Social Care in Wales](#); Department of Health, Northern Ireland. [Code of Practice on Protecting the Confidentiality of Service User Information](#)

<sup>2</sup> See for example: <https://www.bma.org.uk/advice-and-support/ethics/safeguarding/adult-safeguarding-toolkit> and <https://www.bma.org.uk/advice-and-support/ethics/children-and-young-people/children-and-young-people-ethics-toolkit>



### Is abortion a crime?

Abortion is lawful in England, Scotland, and Wales provided the criteria in Section 1 of the Abortion Act 1967 (as amended) are met. In all other circumstances, administering, procuring or attempting to procure an abortion is a crime, both for the pregnant woman and any other person administering, procuring or attempting to procure an abortion.<sup>3</sup>

The Abortion (Northern Ireland) (No. 2) Regulations 2020 decriminalised actions by individuals to end their pregnancy. Therefore, it is not a crime for a pregnant woman to procure, or attempt to procure, an abortion in Northern Ireland.

### Is there an obligation to report unlawful attempts to terminate a pregnancy to the police?

In England, Scotland and Wales, there is no legal or professional obligation or duty on doctors to report suspected or actual crimes associated with abortion to the police.

In Northern Ireland, it is not a crime for a pregnant woman to procure an abortion and therefore there is no obligation or duty to report to the police.

### Is disclosure to the police justified 'in the public interest'?

All disclosures of confidential information without consent must have a lawful and ethical basis which meets the standards in the [GMC's guidance on confidentiality](#) and confidentiality guidance from the health departments.

In accordance with GMC guidance and guidance from the health departments, disclosures of confidential information are only justifiable in the [public interest](#) if the benefits of that disclosure outweigh both the patient's and the public interest in keeping the information confidential.

Guidance from the GMC and health departments on the range of factors that need to be considered and weighed to decide whether a disclosure of confidential information is justified in the public interest applies to crimes associated with abortion in the same way as to other crimes or suspected crimes.

#### *The public interest test and 'serious crime'*

GMC guidance states that disclosure of confidential patient information may be justified if it is necessary for the prevention, detection or prosecution of 'serious crime'.

There is no agreed legal definition as to what constitutes a serious crime. However, GMC and DHSC guidance provides some examples, such as murder and rape. These are crimes which cause serious physical or psychological harm to individuals. Setting a high threshold for 'seriousness' reflects the importance attached to maintaining the confidentiality of patient information.

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<sup>3</sup> The RCOG believes and has stated in a [letter to the Director of Public Prosecutions](#) that it is never in the public interest to investigate someone who is suspected of ending their own pregnancy.

The severity of the current penalty for unlawfully procuring an abortion (in legislation from 1861 and 1929<sup>4</sup>), could lead some individuals to conclude that unlawful abortion is a serious crime which could justify a disclosure in the public interest. **However, even where a crime is considered to be ‘serious’, this fact would not in isolation justify a disclosure on public interest grounds.**

When considering any public interest disclosure, doctors **must** conduct a balancing exercise involving careful consideration of **all relevant factors** in reaching a decision about whether the public interest test for disclosure is met.

### **What factors should be considered when deciding whether information can be disclosed in the public interest?**

[GMC guidance](#) states that when considering whether the public interest in disclosing information outweighs the patient’s and the public interest in keeping the information confidential, doctors must consider (although the list is not exhaustive):

- the potential harm or distress to the patient arising from the disclosure
- the potential harm to trust in doctors generally
- the potential harm to others if the information is not disclosed
- the potential benefits to an individual or society arising from the disclosure of information
- the nature of the information to be disclosed, and any views expressed by the patient
- whether the harms can be avoided or benefits gained without breaching the patient’s privacy or, if not, what is the minimum intrusion.

Having considered these factors, the GMC states:

*If you consider that failure to disclose the information would leave individuals or society exposed to a risk so serious that it outweighs the patient’s and the public interest in maintaining confidentiality, you should disclose relevant information promptly to an appropriate person or authority. (para 68)*

Only when doctors, and those supporting them in their decision-making, determine that this standard is met, should they consider disclosing confidential patient information. This applies where they know or suspect that a patient has undergone a voluntary abortion outside the terms of the Abortion Act 1967 in Great Britain. Doctors are expected to act in line with the professional standards and guidance as set out by the GMC and should be able to justify their decisions and actions.

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<sup>4</sup> Offences Against the Person Act 1861 (England and Wales) and Infant Life (Preservation) Act 1929 (England and Wales). The BMA, and a number of other medical bodies, have called for this outdated legislation to be repealed as a matter of urgency and for [abortion to be decriminalised](#) and to be treated as a medical rather than a criminal matter.

More guidance on the factors which might influence decisions about making public interest disclosures can be found in the BMA's [Confidentiality Toolkit](#) (section 7).

### Seeking guidance from a Caldicott Guardian

The role of the [Caldicott Guardian](#) within an organisation is to provide guidance and expertise on complex matters involving confidentiality and disclosures of information. When faced with decisions about applying the public interest test, a Caldicott Guardian can offer an ethical view in finding the balance between protecting confidentiality, avoiding harm and the public good. It is strongly recommended that doctors seek the advice of their Caldicott Guardian whenever there is uncertainty about the legal and/or ethical basis for making a disclosure. Advice can also be sought from medical defence organisations.

### Documenting decisions

Public interest decisions must be based on a doctor's professional judgment and each case must be judged on its own merits. Doctors are strongly advised to document in the medical record a decision to disclose, or not to disclose, and the rationale for this decision.

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This guidance has been reviewed by, and is supported by, the National Data Guardian for health and social care. The GMC considers that the general principles and standards in this document are consistent with its own professional standards, including those set out in *Confidentiality: good practice in handling patient information* (2017, updated in 2018).

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