School of Human and Health Sciences

School Research Ethics and Integrity (SREIC) guidance on researchers' obligations when informed about crimes previously unknown to police or other authorities

Staff and students within our School may be conducting research through which they become aware that a participant has committed a crime that the participant has not previously disclosed. SREP are often asked whether researchers have a duty to disclose this to anyone such as the police, particularly when data is not anonymised and the identity of the participant is known to the researcher. The following guidance has been prepared in consultation with SREP members conducting research in the fields of criminology and forensic psychology and with reference to codes of research ethics produced by the British Society of Criminology and the British Psychological Society.

British Society of Criminology Statement of Ethics http://www.britsoccrim.org/ethics/

British Psychological Society Code of Ethics and Conduct
https://beta.bps.org.uk/sites/beta.bps.org.uk/files/Policy%20-%20Files/Code%20of%20Ethics%20and%20Conduct%20%282009%29.pdf

British Psychological Society Code of Human Research Ethics
http://www.bps.org.uk/system/files/Public%20files/code_of_human_research_ethics_dec_2014_inf180_web.pdf

1. In making decisions around disclosure, researchers and ethics reviewers need to balance several considerations including: participants' expectation of confidentiality, the protection of potential victims of crime from harm and the value of the planned research design for furthering knowledge. Preventing research designs which allow confidential discussion of unreported crime could be considered to be acting against the ethical principle of beneficence if this research could help to reduce crime or improve wellbeing. Therefore researchers and reviewers should consider carefully the potential benefits of the research alongside the magnitude of any risks to the wider society which arise from the researcher not notifying relevant authorities of any crime disclosed to them in confidence.

   The need to balance several considerations means that decisions about what can be discussed confidentially within a research project will vary from project to project, depending on the nature of the crimes being investigated and the potential risks involved in non-disclosure. The following should therefore be seen as guidelines for consideration in weighing up these various concerns, rather than a set of rules. SREP expects applicants to demonstrate on their form that they have weighed up the relevant considerations and that their decision is based on careful ethical reasoning.

2. A key principle in the codes of research conduct above is that, in the interests of minimising harm to participants, confidentiality should be maintained unless a participant provides information about a serious risk of harm and the researcher would reduce this risk of harm by disclosing the information. For example

> *Psychologists should restrict breaches of confidentiality to those exceptional circumstances under which there appears sufficient evidence to raise serious concern about: (a) the safety of clients; (b) the safety of other persons who may be endangered by the client's behaviour; or (c) the health, welfare or safety of children or vulnerable adults. (BPS code of Ethics and Conduct, 2009 p.11)*

Therefore, we would consider that researchers should disclose to an appropriate authority, e.g. police, anything that indicates a participant or someone else referred to by a participant clearly poses a significant risk (i) to others, or (ii) to the participant him or herself if s/he is not able to make this disclosure him/herself or wishes the researcher to make this disclosure.

Judgements of 'clear' and 'significant' risk are inevitably subjective. Researchers should be mindful of the limitations of their own skills in judging risk and external advice may be useful when designing some projects and considering some disclosures. SREP cannot outline the nature of all examples of clear significant risk to others that would be considered to outweigh the benefits of maintaining confidentiality. However, researchers' considerations should include: the clarity and detail of the information provided (it seems unwise to report a vague hunch based on little information), the severity of the likely harm (e.g. risk of repeated petty theft would not merit the same concern as a risk of repeated child abuse), and whether the crime is clearly part of an ongoing pattern of behaviour or is a historical crime that has not been repeated. Therefore, for crimes which clearly cause more significant harm (e.g. child abuse rather than petty theft) we would advise erring on the side of caution if there is any reasonable possibility that the offender may repeat this behaviour and they are not known to the police, particularly if they have access to a situation in which they could re-offend (e.g. access to children). For each research study the researchers will need to demonstrate to SREP that they have carefully weighed risks and benefits in decisions about placing limits on confidentiality.

Where an adult participant him or herself is at risk from others (e.g. domestic violence), disclosing this to authorities requires careful consideration. It is unlikely to be in the participant's interest to disclose this to an authority without his or her consent and involvement, particularly where the participant is competent to make this decision him or herself.

3. The British Society of Criminology notes that generally speaking researchers do not have a legal obligation to disclose a crime:

   > *In general in the UK people who witness crimes or hear about them before or afterwards are not legally obliged to report them to the police. Researchers are under no additional legal obligations.* (Statement of Ethics, 2015, section 7)

   However, the British Society of Criminology adds that there are a couple of exceptions to this where researchers ***do*** have a legal obligation to disclose a crime: acts of terrorism, financial offences related to terrorism, and money laundering. Their statement of ethics also notes a 'long-standing convention' for researchers to report information about the neglect or abuse of a child, but adds that this is not actually a legal obligation (though we would consider this to be covered by risk of harm in point 1 above). The BSC statement also note that *'Researchers and their data can be subject to subpoena where they may have evidence relating to a case.'* The BSC adds that, unlike lawyers and medical staff, researchers do not have any legal protection which requires them to uphold confidentiality and which would enable them to resist a subpoena.

4. With reference to the above constraints, researchers should carefully consider the limits of confidentiality in advance of data collection, being mindful of the risks to safety, health and welfare that might be disclosed within the research, and the likelihood of a subpoena. They should communicate these limits clearly to participants and, for young people, to parents or those acting in loco parentis. This would usually mean explaining the limits to confidentiality on both the information sheet and consent form. Researchers should explain the rationale for any limits to confidentiality to SREP.

5. As advised by the British Society of Criminology, researchers should also aim to communicate a planned breach of confidentiality if possible:

   > *If the researcher feels that it is necessary to break confidentiality, the participant will normally be informed of what action is being taken by the researcher unless to do so would increase the risk to those concerned.* (Statement of Ethics, 2015, Section 4.8)

6. However, researchers are also advised, where possible and appropriate to the research aims, to design research in a way which does not encourage participants to disclose specific crimes they have committed. We would advise researchers to consider ways in which they can collect data about the issues they are investigating without probing particular incidents and to build in mechanisms for interrupting data collection if participants begin to disclose crimes unnecessarily. Alternatively, researchers could consider ways of collecting data anonymously. We note though that with some research aims this will not be possible.

7. When balancing competing ethical principles (e.g. right to confidentiality versus protection from harm), researchers are advised to consult with others and with relevant professional guidance and may find it useful to discuss the research with SREP members in advance of an application. If data is being accessed via a host organisation it is advised that SREP applicants consult with the organisation on issues such as limits to confidentiality in advance of the application, to ensure that where possible the researcher's planned approach is in line with the organisation's policies. This is likely to be particularly important where organisations are providing health and/or social care and are therefore mindful of their duties to safeguard both children and adults (see Care Act 2014) and hence require researchers to inform them of disclosures of abuse. It is advisable also for research teams to consult with each other regarding decisions about confidentiality / disclosure and, where appropriate, to develop a risk plan for guiding individual researchers in making decisions about unexpected disclosures. This might include a protocol for contacting a senior investigator in certain situations.