

UCL Research Ethics Policy Note
RESEARCH INVOLVING ILLEGAL ACTIVITIES

This is a complex area. There is a long tradition of social science research into illegal activity that has enriched public debate about crime and a range of other public issues. Similarly, researchers in psychology or medicine, for example, might in the course of their research learn about criminal activity. **But what is the legal and ethical position of the researcher in such circumstances?**

Legal Responsibilities

Researchers have the same legal obligations that they would have in any other context, as citizens or legal residents. As a private member of society, there is, however, no *general* legal obligation in the UK to report to the relevant authorities all illegal activity that one observes or learns about.

However, there may be *moral* obligations to report in the following circumstances:

1. It may be a requirement of access, imposed by any relevant gatekeeper;
2. It may be a condition of research funding;
3. It may be a tradition within the specific discipline and/or research context (for example, in criminology there is a tradition of warning convicted offenders that confidentiality will be breached should the participant reveal a previously undetected offence; and perhaps most importantly;
4. The researcher might see circumstances as requiring disclosure as a matter of personal morality and/or professional ethics.

It is imperative that researchers are clear to their participants from the start of any limits to confidentiality.

The *specific* reporting obligations that exist in UK law relate to **child protection offences** (physical or sexual abuse of minors), the **physical abuse of vulnerable adults, money laundering and other crimes covered by prevention of terrorism legislation**. These obligations are concerned with serious and immediate harm to others.

For banks and others involved in large-scale financial transactions, there are money-laundering obligations: see <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu/legal-basis-for-reporting>

In relation to terrorism, see s. 19 Terrorism Act 2000, which requires an individual to tell the police 'as soon as is reasonably practicable' if s/he become aware of information which s/he knows or believes 'might be of material assistance' in preventing an act of terrorism or in securing the arrest, prosecution or conviction of someone involved in 'the commission, preparation or instigation of an act of terrorism'. Section 19 also creates an obligation for a person who, during the course of their employment 'believes' or 'suspects' another person has committed an offence under section 15-18 of TACT, which are terrorist financing offences. Such persons must report it as soon as is reasonably practicable, along with the relevant information to a 'constable'.

Failing to disclose information which a person knows or believes might be of material assistance in preventing an act of terrorism or in securing the apprehension, prosecution or conviction of a person involved in an act of terrorism is also an offence: see Section 38B of the 2000 Act - <https://www.legislation.gov.uk/ukpga/2000/11/section/38B>

S. 39 of the 2000 Act also makes it a criminal offence to disclose information that would prejudice a known anti-terrorist investigation, while s. 12 of the 2000 Act makes it an offence to assist a proscribed organisation.

There is no general reporting obligation re child abuse. However, statutory guidance makes it very clear that those who work with children and families should immediately report to the local authority children's social care unit if they think a child may have been or is likely to be abused or neglected. See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf. This guidance would not usually apply to researchers, unless dealing with children in a care capacity – but it may be worth noting.

New laws were passed in October 2015 with respect to female genital mutilation (FGM) in England and Wales. There is now a mandatory reporting duty which requires all regulated health and social care professionals, teachers, and police in England and Wales to report 'known' cases of FGM in under-18s which they identify in the course of their professional work to the police. Again, this would not normally apply to researchers – but may be worth noting.

A different situation applies in Northern Ireland. There, the law states that all citizens are bound to report illegal activity: there is a criminal offence to fail to disclose any arrestable offence to the police under Section 5(1) of the Criminal Law Act 1967.

These obligations aside, research is not covered by any legal privilege. Although there has been a long tradition of academic research into illegal activities, the courts have never conclusively determined whether or not one might lawfully refuse to disclose confidential information on 'public interest' grounds i.e. on the basis that the benefits of completion of the research to society at large outweighs any harm caused by the failure to report individual offences.

That said, researcher knowledge of illegality has not historically been seen as grounds for rendering a researcher liable for prosecution. However, this does not mean that it never will be. It is important therefore to keep abreast of developments in this area.

Lastly, it should be remembered that there is a huge difference in the evidential standards of social science research, for example, and the sterner demands of a court of law, particularly in criminal proceedings. Unless a researcher has actually seen an offence being committed or can offer other hard proof of criminality – such as knowledge of the location of proscribed drugs, illegal weapons or stolen goods, for example – then most information that is garnered as research data would probably fall into the category of hearsay, if tested in court. At best it would be likely to be considered as 'intelligence' rather than admissible evidence.

Disclosure to the police would only generally be useful for the prosecution of the (alleged) offender-participant if it led to the discovery of clearer evidence of criminal wrongdoing and the researcher (ethics committee) in question ought to:

1. Factor this into any decision as to when to breach confidentiality; and
2. Ensure that prospective participants are fully informed of the circumstances in which confidentiality will be breached, and what the researcher will do to avoid having to disclose confidential information, as mentioned above.

Responsibilities to the University

Researchers have a professional duty to refrain from doing anything that would bring the University into disrepute. What constitutes 'disrepute' will depend very much upon the individual circumstances of the research project in question. These issues are particularly emphasised by research into illegal activities, such as 'joy-riding' and drug dealing. On the one hand, the value of understanding these forms of criminality more fully, and the concomitant utility of such research for those drafting better laws or designing more effective policies, is likely to boost the perceived value of the research, and thus the reputability of the University. However, on the other hand, if such research seems to condone the activity in question, either for the duration of the project or in general, then that could be seen as research tending to bring the University into disrepute. The issue, in other words is very much a matter of context, and is often in the eye of the beholder.

The researcher and their department ought to be very clear, and very careful, about making claims using data drawn from illegal activities. Researchers should generally refrain from: (a) participating in illegal activities themselves, and (b) encouraging others to participate in illegal activities for the purposes of providing research data.

Summary Policy and Guidance

As a general principle, researchers have a responsibility to report to the relevant authorities any actions or planned actions, discovered during the course of the research, which they believe are likely to result in serious or immediate harm to others. Beyond that, much will depend upon a researcher's own moral compass and judgement.

Researchers have responsibilities to participants too. Participation in research should not place people in greater hazard than they would otherwise experience in their daily lives. Researchers should, if they anticipate that they may become aware of illegality, tell actual and potential research participants about the nature and limits of whatever confidentiality they feel they can offer. This should be part of negotiations about consent.

Researchers also have a responsibility to themselves and their research collaborators, to avoid, where possible (and it may not always be possible) acquiring information that is likely to prove dangerous, compromising or otherwise problematic. If possible, erring on the side of caution and avoidance is a sensible basic principle.

In observing the above responsibilities, caution is particularly indicated with respect to what is recorded audio-visually, digitally and in writing.