

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?

1. 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 United Kingdom 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 certain circumstances as requiring disclosure as a matter of personal morality and/or professional ethics.

The important thing to emphasise here is that researchers **MUST** be clear to their participants from the start as to the circumstances in which they will breach the confidentiality of the data that the participant provides.

The definite obligations to disclose that exist in United Kingdom law relate to child protection offences such as the 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 primarily with serious and immediate harm to others.

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 considered 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 and is not (at the time of writing) seen as grounds for rendering a researcher liable for prosecution; this does not, however, mean that it never will be. Researchers and ethics committees are encouraged 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 (and 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.

2. RESPONSIBILITIES TO THE UNIVERSITY

As employees of the University of Sheffield, researchers have a professional duty to refrain from doing anything that would bring the University into disrepute. However, the issue of disrepute is neither obvious nor straightforward. What counts as 'disrepute' is not settled, and 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 host 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.

3. SUMMARY POLICY AND GUIDANCE

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

Researchers have responsibilities to participants, too, as outlined in this Policy. Participation in research should not place people in greater hazard than they would otherwise be. Researchers should, if they anticipate that they may become aware of illegality, tell actual and potential research participants about the requirements of the Policy, as spelled out above, and 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 in the senses discussed in this Policy Note. 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.

Finally, a principled and defensible ethics approval procedure is impossible in the absence of proper information. If a researcher anticipates encountering any of the issues discussed in this Policy Note, s/he must disclose this in the ethics approval application. If such issues are encountered after the initial ethics approval, the researcher should approach their departmental Ethics Administrator for advice.