

## QAF GD 3 – Mental Health Guidance

### Mental Health and Disclosure

Colleagues have requested guidance on the disclosure of information relating to mental health matters, something that has long-been described as one of the most difficult aspects of disclosure consideration.

We will begin by first covering some old and familiar ground as a reference point:

In the opinion of the Chief Officer, information being disclosed should pass the tests of ***reasonably believes to be relevant*** and ***ought to be included*** in the certificate (disclosed).

- In order to be deemed ***relevant***, there must be a reasonable and identifiable risk that the employer needs to be aware of (usually a risk to vulnerable people)
- To conclude that information ***ought to be included***, one must have already determined that it is ***relevant*** and that any risk from non-disclosure outweighs the likely impact upon the private life of the applicant (that any infringement upon their Human Rights is justifiable)

These two tenets – ‘***relevant***’ and ‘***ought to***’ - must be given equal weight and information must pass both tests before it can be disclosed. Information relating to mental health is not exempt from this and the following should be read with this in mind.

One of the first considerations to be made should be that of the veracity of the information – is it a matter of record that an individual has a (professionally) diagnosed mental illness or do your records state that ‘Mr Alias’s neighbour alleged that Mr Alias had mental problems’? If it is unclear just how genuine or accurate the information is, you may need to take reasonable steps to find out – proceeding only with the greatest caution. But bear in mind - if the information is not actually relevant to considerations of risk, there is no need to take any steps to establish whether the information is reliable / accurate as you will have no reason to disclose (and vice-versa).

#### The nature of the illness/condition

Where you are satisfied that a qualified medical practitioner (or the self-testimony of the individual) has established that your individual has a mental illness / condition, you must determine whether this is relevant to considerations of risk to the vulnerable. In addition to the ‘usual’ QAF considerations, one must consider the following:

- there are many different categories of mental illness/condition (avoid generalisation)
- you are not an expert in mental health (and are not expected to be)
- experiencing mental illness is not a crime – only other factors can make it relevant
- anyone experiencing mental ***illness***, can ***recover/manage their condition***

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So, how does the illness / condition manifest itself?

- Can the individual act responsibly?
- Has their behaviour placed them or others at risk of harm?
- Does their medication (or non-administration of prescribed medication) significantly affect their behaviour?
- Is their judgement impaired?
- Does any of this suggest that it may be **relevant to the application**?

The age of the information - how long ago the person was ill - is also an important factor. Establishing a person's **current** state of health is advisable (thereby informing your considerations of the potential risk to the vulnerable), whether via contact with the doctor/institution recorded in your files or via applicant representations.

### **Impact on the applicant**

The long term effects of public disclosure of experiencing mental health problems can be extremely damaging to the individual concerned and to their friends and family. Social stigma and discrimination can, for many people, lead to exclusion from employment opportunities or community activities, worsening or causing the recurrence of symptoms leading to distress, breakdown of family relationships and further harassment and abuse.

The '**ought to**' consideration for mental health must be applied with particular consideration given to the impact of the disclosure on the mental health of a person who you now know may experience problems with their mental and physical wellbeing and resilience – how will your disclosure affect them? Could representations mitigate the potential impact on their health or alter your decision to disclose?

Care should be taken to avoid seeking representations from any third party without the knowledge and permission from the individual concerned.

Ultimately, after considering all of the information (and any representations from the applicant or medical professionals) you will still need to determine whether the risk to the vulnerable outweighs the applicant's right to a private life. You must establish whether or not you believe that the impact of disclosure on the private life of the applicant outweighs the potential risk to the vulnerable group from making no disclosure. In every case one must consider whether there is likely to be an interference with the applicant's private life, and if so whether that interference can be justified.

Where such relevant information exists, it is likely that there will be both disruption to the private life of the applicant **and** a risk of harm to the vulnerable. In such circumstances, the opinion of the courts is that, whilst Parliament has provided the pressing need through the application of statute, the authorising officer is required to consider whether the intrusion (from disclosure, upon the private life of the individual) is proportionate.

Where you conclude 'yes' - the risk to the vulnerable, from non-disclosure, is too great - you must ensure that your disclosure, whilst remaining accurate and informative, is also proportionate: "*An enhanced disclosure must be meticulous and accurate, and go no further than is justified*" (Laws LJ).

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*“Excluding a person from employment in her chosen field is liable to affect her ability to develop relationships with others, and the problems that this creates as regards the possibility of earning a living can have serious repercussions on the enjoyment of her private life...She is entitled also to have her good name and reputation protected .... The fact that a person has been excluded from employment is likely to get about and, if it does, the stigma will be considerable”. “The question in these cases will be whether the interference with her private life can be justified”. [Case of L]*

### **Wording**

Care should be taken to avoid the following type of disclosure:

*“Wessex Police are not in a position to know whether Mr Alias may pose a risk but his prospective employer will be in a position to assess any risk for themselves.”*

If the risk is not identified then it is not known - how could this pass both tests (**relevant** and **ought to?**). A disclosure should be self-contained, clear and concise – it must not leave the reader with unanswered questions or wondering why you deemed it necessary to disclose at all.

The dignity of the individual should also be a consideration and your disclosure should not reveal aspects of their illness - or of specific aspects of their behaviour whilst ill - that are neither relevant nor proportionate to need.

### **Conclusion**

QAF (and related reference matter) contains all that is necessary for one to begin assessing information concerning matters of mental health; assessment of less clear-cut cases or those with incomplete information present the greatest challenge. Consider:

- ‘relevant’ – have you clearly established a clear and current risk to the vulnerable?
- substantiation – is your information hearsay or confirmed by a qualified party?
- proportionate – would disclosure be proportionate in this instance?
- representation – do you need to check or confirm pertinent aspects of the information?
- ‘ought to’ – is disclosure necessary? Have you assessed the impact on the applicant?
- reasonable (Wednesbury Principles) – are your opinions/conclusions reasonable?
- final disclosure text – are you disclosing more than is justified? Is it balanced?