



Evergreen Care Trust

Shyp House, 1 Barnack Road, Stamford, Lincolnshire, PE9 2NA

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Review Sheet		
Last Reviewed 20 Sep '22	Last Amended 20 Sep '22	Next Planned Review in 12 months, or sooner as required.
Business impact	<p>Changes are important, but urgent implementation is not required, incorporate into your existing workflow.</p> <p>MEDIUM IMPACT</p>	
Reason for this review	Scheduled review	
Were changes made?	Yes	
Summary:	This policy details the rights of Service Users in relation to confidentiality, UK GDPR, data protection and the issues that staff need to be aware of. The policy has been reviewed with minor amendments and clarity in section 4.3 and the Key Facts section. Although the UK GDPR and the Data Protection Act no longer applies to identifiable data that relates to a person once they have died, any duty of confidence established prior to death continues after a Service User has died. Further Reading has been added and Underpinning Knowledge has also been reviewed and updated to ensure they remain current.	
Relevant legislation:	<ul style="list-style-type: none"> • The Health and Social Care (Safety and Quality) Act 2015 • The Care Act 2014 • Freedom of Information Act 2000 • Human Rights Act 1998 • Data Protection Act 2018 • UK GDPR 	
Underpinning knowledge - What have we used to ensure that the policy is current:	<ul style="list-style-type: none"> • Author: NHS Digital, (2022), <i>A Guide to Confidentiality in Health and Social Care</i>. [Online] Available from: https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/a-guide-to-confidentiality-in-health-and-social-care [Accessed: 20/9/2022] • Author: ICO, (2020), <i>Data protection and coronavirus advice for organisations</i>. [Online] Available from: https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/coronavirus-recovery-data-protection-advice-for-organisations/ [Accessed: 20/9/2022] • Author: NHS Digital, (2022), <i>Data and technology that improves lives</i>. [Online] Available from: https://digital.nhs.uk/ [Accessed: 20/9/2022] • Author: Digital Social Care, (2022), <i>Data and Cyber Security</i>. [Online] Available from: https://www.digitalsocialcare.co.uk/protecting-my-information/ [Accessed: 20/9/2022] • Author: ICO, (2022), <i>Guide to Data Protection</i>. [Online] Available from: https://ico.org.uk/for-organisations/guide-to-data-protection/ [Accessed: 20/9/2022] • Author: NICE, (2018), <i>Decision-making and mental capacity</i>. [Online] Available from: https://www.nice.org.uk/guidance/ng108 [Accessed: 20/9/2022] • Author: NHS Digital, (2022), <i>Data Security and Protection Toolkit</i>. [Online] Available from: https://www.dsptoolkit.nhs.uk/ [Accessed: 20/9/2022] 	
Suggested action:	<ul style="list-style-type: none"> • Share 'Key Facts' with all staff • Encourage sharing the policy through the use of the QCS App • Ensure relevant staff are aware of the content of the whole policy 	
Equality Impact Assessment:	QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.	

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WARNING: Your System details are incomplete and so the content of this policy may not be customised to your organisation.**1. Purpose**

1.1 To detail the rights of Members relating to confidentiality and data protection and issues that staff need to be aware of when processing confidential information within Evergreen Care Trust.

1.2 This is one of a suite of policies that relates to Data Protection, Information Governance, Data Quality and Security and the Human Rights of Members and dovetails to form a framework that ensures full legal compliance and best practice.

1.3 To support Evergreen Care Trust in meeting the following Key Lines of Enquiry/Quality Statements (New):

Key Question	Key Lines of Enquiry	Quality Statements (New)
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?	QSS4: Involving people to manage risks QSS5: Safe environments
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?	QSW5: Governance, management and sustainability

1.4 To meet the legal requirements of the regulated activities that {Evergreen Care Trust} is registered to provide:

- | The Health and Social Care (Safety and Quality) Act 2015
- | The Care Act 2014
- | Freedom of Information Act 2000
- | Human Rights Act 1998
- | Data Protection Act 2018
- | UK GDPR

**2. Scope**

2.1 The following roles may be affected by this policy:

- | All staff

2.2 The following Members may be affected by this policy:

- | Members

2.3 The following stakeholders may be affected by this policy:

- | Family
- | Advocates
- | Commissioners
- | External health professionals
- | Local Authority
- | NHS

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3. Objectives

- 3.1 To outline the principles related to confidentiality and to support staff in applying these principles.
- 3.2 To establish the approach of Evergreen Care Trust to ensuring the confidentiality of personally identifiable information.
- 3.3 To inform Members, their families, stakeholders and Evergreen Care Trust staff about the confidentiality obligations of Evergreen Care Trust and how we intend to meet them.
- 3.4 To inform staff working for, or on behalf of, Evergreen Care Trust of their responsibilities with regards to confidentiality and personally identifiable information, and how Evergreen Care Trust will enable these to be met.



4. Policy

4.1 Evergreen Care Trust recognises that we have a duty of confidentiality to our Members and staff. We believe that respecting an individual's right to a private life, which includes confidentiality, is important in ensuring a trusting, caring environment where both Members and staff are confident that information about them will be protected safely and not shared inappropriately or unnecessarily.

It is the policy of Evergreen Care Trust that we will only share information that is in the best interest of the Members and with their consent. Sharing of information will be carried out in line with UK GDPR and the Data Protection and Mental Capacity Act policies and procedures at Evergreen Care Trust.

We aim to comply with the relevant legislation and include the [Caldicott principles](#).

4.2 Core Principles of Confidentiality

- | All staff will ensure that all Member information remains confidential. Members have the right to expect that personal information held about them is not accessed, used or disclosed improperly
- | The same duty of confidentiality applies to personal information about staff, with the exception of names and job titles. Information about Directors, which is published and therefore is a matter of public record, is also excepted
- | All staff have the individual responsibility for ensuring that they conform to the Caldicott principles, UK GDPR, Data Protection Act (DPA) 2018 and Article 8 Human Rights Act (HRA) 1998
- | Staff must not inappropriately access, misuse or share any information or allow others to do so. Staff are personally liable for deliberate or reckless breaches of UK GDPR, Data Protection Act may be liable to disciplinary action and/or prosecution
- | Any personal information given or received in confidence for one purpose may not generally be used for a different purpose, or passed to anyone else without the consent of the provider of the information

4.3 The Position of Evergreen Care Trust on Confidentiality

- | We will share with Members, their families and their Care Workers, as far as the law allows, the information they want or need to know about their health, care and ongoing treatment sensitively and in a way they can understand
- | Confidential information will not be used for a different purpose or passed on to anyone else without the consent of the information provider
- | There may be occasions when it can be detrimental to the Member or to another individual if this principle is strictly adhered to
- | There is a recognition that breaches of confidence are often unintentional. They are often caused by staff conversations being overheard, by files being left unattended, or by poor computer security. However, the consequences can be equally serious for all concerned
- | Evergreen Care Trust will ensure that personally identifiable information will always be held securely and, when used, treated with respect. This rule will apply regardless of where the information is held
- | Although the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act no longer applies to identifiable data that relate to a person once they have died, we respect that any duty of confidence established prior to death continues after a Member has died
- | All information regarding the Members we support will be treated with respect and integrity
- | We will be transparent in our approach to ensure that anyone associated with Evergreen Care Trust

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(whether Member or staff or visitor) is fully aware of how, what, when, who and why we share any information about them and source their agreement before doing so

4.4 All relevant staff will be bound by their professional code of practice issued by their relevant licensing body, such as the General Medical Council, The Nursing and Midwifery Council and the Royal Pharmaceutical Society. Care Workers will follow the Skills for Care Code of Conduct for Healthcare Support Workers and Adult Social Care Workers in England.

4.5 All staff must sign a confidentiality agreement as part of their contract of employment (a template can be found within the forms section of this policy). The confidentiality agreement also extends to agency and contract workers.

4.6 Responsibilities - Registered Care Manager

- | Ensuring that systems and processes are in place for the security of records and they are reviewed to ensure that they remain fit for purpose
- | Ensuring that all staff understand this policy at the start of employment and that its importance is reiterated during supervision or team meetings
- | Ensuring that staff have received the appropriate training and are competent in their role
- | Reviewing, monitoring and auditing practice within Evergreen Care Trust to ensure that staff remain knowledgeable
- | Acting on any breaches in confidentiality in a timely manner and notifying the appropriate bodies
- | Ensuring that confidentiality rules are never used as a barrier to sharing appropriate information and fulfilling Duty of Candour obligations

4.7 Responsibilities - All staff will ensure the following:

- | All information that is received is **effectively protected** against improper disclosure when it is **received, stored, transmitted and disposed of**
- | Confidential information is only accessed if it is appropriate to the job being undertaken
- | Every effort is made to ensure that Members understand how information about them will be used before they supply any confidential information
- | When Members give consent to disclosure information about them, they understand what will be disclosed, the reasons for disclosure and the likely consequence/s
- | Members understand when information about them is likely to be disclosed to others and that they have the opportunity to withhold their permission
- | If disclosing information outside the team, that may have personal consequences for Member, that consent is obtained from the Member
- | If the Member withholds consent, or if consent cannot be obtained for whatever reason, disclosures may be made only where:
 - | **They can be justified in the public interest (usually where disclosure is essential to protect the Member or someone else from the risk of significant harm)**
 - | **They are required by law or by order of a court**
- | If required to disclose confidential information, staff will only release as much information as is necessary for the purpose
- | The person(s) to whom information is disclosed understands that it is given to them in confidence which they must respect
- | When disclosing confidential information, staff must be prepared to explain and justify the decision. Where there are doubts, they will discuss them with Caroline Joyce
- | Queries concerning this policy will be brought to the attention of Caroline Joyce
- | During the induction period for new staff, they will be made aware of this policy and their individual responsibilities

4.8 Coronavirus

During unprecedented times, such as the coronavirus pandemic, Evergreen Care Trust recognises that information may need to be shared quickly, or ways of working adapted. Where this is required, it will be done in line with UK GDPR, data protection requirements.

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5. Procedure

5.1 Evergreen Care Trust will detail with transparency how confidentiality is managed with Members, employees and others at the earliest opportunity and seek their agreement, e.g. through existing systems such as recruitment and the pre-assessment process.

Staff can refer to the Fair Processing Notice Templates and the Fair Processing Notice Policy and Procedure for further information that details how information is processed within Evergreen Care Trust.

5.2 Sharing Information with Other Health and Social Care Professionals

Information sharing between partners directly involved in a Member's Care, and for the purpose of providing that Care, is essential to good practice.

Consent from the Member for information sharing must be recorded following a discussion with the Member or, in the absence of capacity to consent, their designated other.

The principles of sharing information are:

- | Only information that needs to be shared
- | Only with those who have a clear need to know
- | There is a lawful basis for sharing information

5.3 General Principles of Confidentiality - Staff will:

- | Understand and follow the Caldicott Principles as detailed within the Forms section of this policy
- | Be aware that the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) are not barriers to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately
- | Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared and will seek their agreement unless it is unsafe or inappropriate to do so
- | Seek advice from Caroline Joyce, if they are in any doubt, without disclosing the identity of the person, where possible
- | Share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. Staff may still share information without consent if, in their judgment, that lack of consent can be overridden in the public interest
- | Consider safety and wellbeing: Staff must base information sharing decisions on considerations of the safety and wellbeing of the person and others who may be affected by their actions
- | **Necessary, proportionate, relevant, accurate, timely and secure:** Ensure that the information shared is necessary for the purpose for which it is being shared, is shared only with those people who need to have it, is accurate and up to date, is shared in a timely fashion, and is shared securely
- | Staff must keep a record of any decision and the reasons for it (to include what has been shared, with whom and for what purpose), and for the decision not to share

5.4 Maintaining Confidentiality

- | All information regarding the people we support will be treated with respect and integrity
- | In general, no information may be disclosed either verbally or in writing to other persons without the Member's consent. This includes family, friends and private carers, and other professionals
- | If in doubt, you can consult the Line Manager or Caroline Joyce, Registered Care Manager
- | Conversations relating to confidential matters affecting Members must not take place anywhere they may be overheard by others, i.e. in public places - such as supermarkets, public transport, open plan areas of the office, during training or group supervision where other staff not involved in the Member's care are present
- | Written records and correspondence must be kept securely at all times when not being used by a member of staff. Timesheets, rotas, etc. must not be left in an unattended vehicle
- | Rotas must not contain key safe or door entry codes with Member's name and address
- | Staff must ensure their copy of the rota is confidentially destroyed. It must not be placed in household recycling
- | Staff must not disclose any information that is confidential or that, if it were made public, may lead to a

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breakdown in the trust and confidence that the Member and their families have in Evergreen Care Trust

- 1 Staff must not pass on any information or make comment to the press or other media. Media enquiries should be referred to the person responsible for handling any media enquiries

5.5 Safeguarding, The Care Act and Confidentiality

Where safeguarding issues arise and in order to fully understand what has gone wrong, Safeguarding Adult Boards may ask for information to be shared. Decisions about who needs to know and what needs to be known should be taken on a case-by-case basis, within locally agreed policies and the constraints of the legal framework. However:

- 1 Staff must verify the identity of the person requesting the information whilst establishing if it can be anonymised (refer to 5.8)
- 1 Information will only be shared on a 'need to know' basis when it is in the best interests of the adult
- 1 Confidentiality must not be confused with secrecy
- 1 Informed consent should be obtained, but if this is not possible and other adults are at risk of abuse or neglect, it may be necessary to override the requirement
- 1 It is inappropriate for Evergreen Care Trust to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other adults may be at risk

5.6 Rights of All Members

All Members may view personal information we hold about them. Local and health authorities are not required to give access to information that is 'hurtful' or 'that would breach the confidentiality of another Member'. The policy at Evergreen Care Trust is to record information in a way that, as far as possible, avoids a need for this exclusion. If a Member believes their right to confidentiality is either being breached or undermined, they must have access to the complaints procedure at Evergreen Care Trust. Staff must refer to the Subject Access Requests Policy and Procedure for further details.

5.7 Rights of All Staff

All staff may view personal information held by Evergreen Care Trust that relates to them, by applying in writing to their Line Manager or Registered Care Manager, Caroline Joyce.

5.8 Data Security and Quality

- 1 Any record that contains information about an individual must remain confidential unless it is in the public domain. All records must be factual and not include the personal opinions of the person writing the records. Staff can refer to for further details
- 1 Reproduction of information relating to a Member (e.g. photocopying documents) will only be done with the consent of the Member
- 1 Confidential information to be posted must be marked 'Private & Confidential, for attention of the addressee only', and sent recorded/special delivery

Staff can refer to the guidance contained in the Forms section of this policy for best practice and requirements for data security. However, as a minimum:

- 1 Information held within Evergreen Care Trust will not be shown to unauthorised individuals or be left where authorised personnel may access them. All records will be kept in a lockable cabinet in a lockable office, with restricted access
- 1 All written records will be kept securely and only disposed of by shredding, after appropriate timescales. Staff must take care when recording personal identifiable information into personal notebooks or paper during shift handover and ensure the safekeeping and destruction of the information
- 1 Written information also relates to key safe numbers and Staff Rotas. Staff must be only provided with key safe numbers if they are directly providing care for the Member and staff must follow the key safe number policy. Key safe numbers must not be recorded on Member records for use outside the office or on rotas supplied to staff. Staff must ensure that if they record Member information to support the delivery of care (e.g. a request to cover an unplanned absence) that the information is recorded safely and securely, and that the information is safely destroyed after use
- 1 Any rotas must be returned to the office for confidential disposal
- 1 Any employee who breaches this policy may be subject to disciplinary procedures

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5.9 Social Media

Staff are not permitted to discuss the people who use our services, other employees past or present, or Evergreen Care Trust on any social networking site, as this may breach confidentiality and bring Evergreen Care Trust into disrepute. Staff must also be aware that this applies to taking and posting photographs, videos of Members.

5.10 Mental Capacity and Confidentiality

The Mental Capacity Act 2005 and associated "Best Interests" applies to adults without capacity, and further details about the disclosure of confidential information about a Member lacking capacity can be found in the Mental Capacity Act Code of Practice.

5.11 Anonymisation and Pseudonymisation Considerations

Anonymisation

Anonymised information (i.e. where personal information is removed and both the giver and the receiver are unable to identify the Member) is not confidential and may be used outside of data protection legislation. However, staff should be aware that information which contains small numbers of person identifiable information may lead to identification. For this reason, all disclosure of anonymised information must be reviewed on a case-by-case basis. Evergreen Care Trust will seek to anonymise collective data about individuals within the service.

Pseudonymisation

Pseudonymisation is the practice of removing and replacing actual data with a coded reference (a 'key'). Evergreen Care Trust will consider this practice where the use of the data needs to relate to individual records, but also needs to retain security and privacy for that individual. There is a higher privacy risk and security risk of the key system as the data will not truly be anonymised.

Personal data that has been pseudonymised can fall within the scope of data protection legislation, depending on how difficult it is to assign it to a particular individual.

Further information can be found within the ICO [Anonymisation Code of Practice](#).

5.12 Evergreen Care Trust Confidentiality

Suppliers

Staff must extend the principles of confidentiality when considering Evergreen Care Trust sensitive information and the protection of any commercial data.

Staff and/or external suppliers will ensure that information such as suppliers' prices, performance and costs are not disclosed to other suppliers or unauthorised persons. Evergreen Care Trust could consider requesting that suppliers sign a confidentiality agreement in order to protect the data of Evergreen Care Trust.

If there are any queries about how to support commercially sensitive information, these must be discussed with Caroline Joyce.

Meetings

Evergreen Care Trust has a right to have confidential meetings where information is discussed and then held securely and confidentially. Information held will be in line with the Freedom of Information Act (FOIA) 2000, the UK GDPR, and the Data Protection Act 2018.

Complaints and Investigations

Complaints and investigations are treated confidentially and remain so, unless there is a legal requirement to release information.

Media

Staff must not pass on any information, or make comment, to the press or other media. Media enquiries must be referred to the person responsible for handling any media enquiries.

5.13 Confidentiality Breach

Unauthorised access, use or disclosure may be in breach of UK GDPR, the DPA 2018, the Human Rights Act, and/or breach the policies of Evergreen Care Trust and may lead to disciplinary action.

Where there has been a breach in confidentiality, this will be recorded on an incident form at Evergreen Care Trust and reported to Caroline Joyce.

Significant breaches will be reported to so that reporting to the relevant regulatory, professional bodies and the ICO is considered.

Breaches will be monitored by Caroline Joyce, reflected on with lessons learned and will form part of the quality assurance programme for Evergreen Care Trust.

Staff will refer people to the Complaints, Suggestions and Compliments Policy and Procedure at Evergreen Care Trust.

5.14 The National Cyber Security Centre

Alongside this policy the National Cyber Security Centre has provided a useful resource centre that will

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assist Evergreen Care Trust in improving and keeping up to date with Cyber Security. The Small Business Guidance is formulated under five steps:

- | **Step 1: Backing up your data**
- | **Step 2: Protecting your organisation from malware**
- | **Step 3: Keeping smartphones and tablets safe**
- | **Step 4: Using passwords to protect your data**
- | **Step 5: Avoiding phishing attacks**

Alongside this are additional resources that are available to use. Evergreen Care Trust will make full use of this resource tool such as the Cyber Action plan.

[Visit Resource Here](#)



6. Definitions

6.1 Business Sensitive Information

- | Information that if disclosed could harm or damage the reputation or image of an organisation

6.2 Statutory Duty to Disclose

- | It is essential that there is good justification to disclose confidential information when relying upon an Act of Parliament. Public Health legislation requires the reporting of notifiable diseases
- | There are Acts of Parliament which require the production of confidential information
 - | Prevention of Terrorism Acts
 - | Road Traffic Act
 - | Public Health Acts
 - | Police and Criminal Evidence Act 1984
 - | Misuse of Drugs Act 1971

6.3 Consistent Identifier

- | The NHS Number is the national, unique identifier that makes it possible to share patient and Member information across the NHS and social care safely, efficiently and accurately
- | The Health and Social Care (Safety and Quality) Act 2015 includes a requirement for health and adult social care organisations to use a **consistent identifier** (the NHS Number) for all data sharing associated with or facilitating care for an individual

6.4 Public Interest

- | The Public Interest Disclosure Act (Whistleblowing) has more information about this
- | Decisions about the public interest are complex and must take account of both the potential harm that disclosure may cause and the interest of society in the continued provision of confidential services
- | Exceptional circumstances that justify overruling the right of an individual to confidentiality in order to serve a broader societal interest

6.5 Sensitive Personal Information

- | Sensitive personal information is where the personal information contains details of that person's:
 - | Health or physical condition
 - | Sexual life
 - | Ethnic origin
 - | Religious beliefs
 - | Political views
 - | Criminal convictions

6.6 Confidentiality

- | Confidentiality means that professionals should not tell other people personal things about a Member unless the Member says they can, or if it is absolutely necessary

6.7 Safe Haven

- | It is a recognised phrase within the NHS but has relevant underlying principles for all community-based services

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- | A Safe Haven is a term used to explain an agreed set of arrangements that are in place in an organisation to ensure that confidential identifiable information (e.g. patients and staff information) can be communicated safely and securely

6.8 Common Law Duty of Confidentiality

- | This duty is not absolute, but should only be overridden if the holder of the information can justify disclosure as being in the public interest, for example, to protect the vital interests of the data subjects or another person, or for the prevention or detection of a serious crime
- | Such information may be disclosed only for purposes that the subject has been informed about and has consented to, provided also that there are no statutory restrictions on disclosure
- | Prohibits use and disclosure of information, provided in confidence unless there is a statutory requirement or court order to do so

6.9 The Caldicott Report 1997

- | It makes a series of recommendations which led to the requirement for all NHS organisations (and adult social care records from the year 2000) to appoint a Caldicott Guardian who is responsible for compliance with the Caldicott confidentiality principles
- | Provides guidance to the NHS and adult social care records on the use and protection of personal confidential data and emphasises the need for controls over the availability of such information and access to it

6.10 Data Protection Act 2018

- | The Data Protection Act 2018 is a United Kingdom Act of Parliament that updates data protection laws in the UK
- | It sits alongside the UK General Data Protection Regulation and implements the EU's Law Enforcement Directive

6.11 Personal Information

- | Personal information is information which can identify a person – in which the person is the focus of the information and which links that individual to details which would be regarded as private, e.g. name and private address, name and home telephone number, etc.



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | Necessary, proportionate, relevant, accurate, timely and secure: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up to date, is shared in a timely fashion, and is shared securely
- | When a Member dies, the duty of confidentiality will continue to apply, even though the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act no longer applies
- | Professionals can only tell other people your personal information if the Member says they can or if they have to
- | Professionals can share information without a Member's consent if there is a risk of serious harm to a Member or other individual, or there is a risk of a serious crime

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