

# An Introduction to the Common Law of Confidence

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# What is confidence about?

“A duty of confidence arises when confidential information comes to the knowledge of a person in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others”

See Clerk and Lindsell on Torts at 27-01

# What is confidential information

- Two parts:
  - Information
  - Held in Confidence
- Can be on paper, on a computer or in your head
- Must not be openly accessible in the public domain
- Other than that – very wide
  - Trade secrets
  - Patient sensitive information or
  - Data obtained from public sources where paid for brain power has been used to assemble it

# What creates the obligation of confidence?

- Duty can be:
  - Contractual
  - Statutory (e.g. under DPA)
  - Non-statutory public duty
  - Equitable obligation
- Almost any circumstance where information imparted where it is obvious that respecting the confidence is expected:
  - Police officers, doctors, social workers
  - Even down to maintaining the confidence of family and sexual relationships

# Why has the law of confidence grown up like this?

- Differing professional objectives
- Clash of legitimate interests
- Defining what's in the wider public interest
- Working for the greater public good whilst avoiding professional disciplinary proceedings and litigation...

# What can justify disclosure?

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- To prevent or detect serious crime or national security
- To prevent the risk of serious harm to others
- To assist others in their legitimate purposes such as with regulatory or disciplinary proceedings

# Case examples

- Woolgar v. Chief Constable of Sussex and UKCC
- A Chief Constable V (1) A County Council (2) Ab (A Child) (By His Children's Guardian SM) (3) DH & RW (2002)
- A Health Authority v. X & Ors (2001)
- Maddock v. Devon County Council

# Practical Guidance (1)

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- Who is asking for the advice and on what terms
- Can you seek consent
- Consider the competing public interests
- What do your professional rules say
- What information is really required and can it be redacted or anonymised

# Practical Guidance (2)

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- If a borderline case, invite the court to decide.
  
- Seek advice:
  - Colleagues
  - Those up the management chain
  - Professional Associations
  - Legal advice