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TRAINING FOR PROFESSIONALS

Module nr.3

HOW TO SCREEN: ETHICS AND PRIVACY

Getting the consent to screen

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Lack of consent

We need to make sure that the person consent to the routine inquiry, however note that:

- ▶ Consent can be also provided non-verbally
- ▶ There can be a lack of consent even upon a signed consent form

How consent can be provided

- ▶ Implicitly (for example if the interviewed person responds to the enquiry without opposing to it)
- ▶ Explicitly (agreeing to participate to the inquiry). In this case, consent can be provided:
 - ▶ Verbally
 - ▶ In a written form, including in front of testimonies or a public officer
- ▶ The consent to a routine inquiry should not have a specific form to be considered valid.
- ▶ The consent form to be seek should be based on utility: written consent can be helpful to prove in an unequivocal way that the person actually agrees and it is easier to be archived and kept.

Boundaries of consent

- Respondent can limit his consent: for example agreeing to reply to questions, but not to the fact that answers are written down or kept, or to the way they should be kept or managed.
- Remember that information collected through a routine-inquiry procedure might lead the interviewer to mandatory reporting.
- The respondent should be informed about it as not doing so might limit his self-determination and / or lead to more abuses as punishment or revenge.

Who has the legitimation to give consent?

- ▶ Usually, the person who participates to the routine inquiry is the same providing consent to it.
- ▶ This might not be the case when the person has no legal capacity.
- ▶ On the other hand, we might as well have the case of a person lacking legal capacity but able to respond to a routine inquiry, without being able to understand the legal consequences of his/her words.
 - ▶ It means that we might in fact have all the responses to the inquiry, but that – from an ethical and legal point of view – these replies were collected abusing of the (lack of) capacity of the older person.

Who has the legitimation to give consent?

The guardian

- The guardian is a person appointed to replace or support the incapable person to allow him or her to commit legally valid act.
- What the guardian is authorized to do depends on the law or on the legal provision that nominated him/her.
- Therefore, the interviewer should check that the guardian has the power to consent

The guardian & the interviewed person

- another option is that the guardian is appointed to take some decision together with the care recipient.

The guardian & the interviewed person & the judge

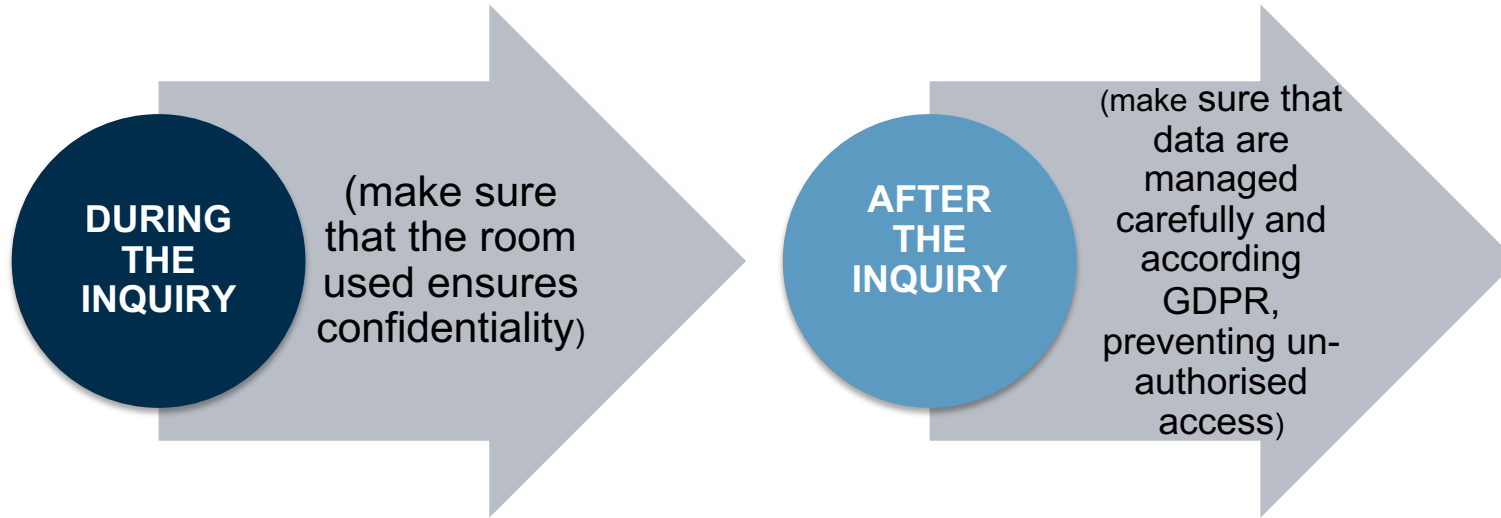
- there might also be the case that some acts need to be performed by the guardian but only upon previous specific authorization of a judge.

Privacy

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Privacy as data protection

It is necessary that information collected during RIs are kept confidential and accessible only to a limited number of persons. Privacy can be challenged



Privacy as interviewed right to private life

- According to article 8 of the ECHR, individuals have a right to private life which is also understood as a right to self-determination in relation to situation dealing with own physical integrity
- In this context, self-determination translates as a consent to participate to the inquiry

Right to withhold and right to withdraw

- ▶ The person who consented to the routine inquiry should always be allowed to **suspend the consent, or revoke it or limit it to certain information or treatments**
 - ▶ So, the fact of having received a consent to the procedure, should not imply for the interviewer the expectation that it won't be modified.
- ▶ The only boundary to this absolute disposability of the consent provision is the obligation to mandatory reporting to which some professionals are subjected to.
 - ▶ Indeed, to allow the individual to exercise his/her self-determination in relation to the outcomes of the replies he/she will give to the inquiry (for example, those referring to a crime subjected to mandatory reporting), **the interviewer should clarify his/her obligation to report certain information, should they be disclosed by the participant.**

Documenting the results

The routine inquiry can be conducted:

- ▶ orally, without documenting it;
- ▶ orally, but documented in writing, paraphrased by the interviewer
- ▶ written, by the interviewed
- ▶ audio or audio-video recorded

Unless there are specific legislations regulating routine inquiries, the way in which it should be done is not binding. The choice of how to perform should only be dictated by weighting the purpose of the inquiry and, above all, considering which is the better method to document it.

Note: always refer to GDPR and other national regulations about data storage and management

3 Conducting the inquiry

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Close-ended questions

- **Pro:**

- a) more practical to perform
- b) More efficient

- **Cons:**

- a) less attributable to the interviewed person therefore possibly less authentic
- b) easier to fall into the mistake (although probably done in good faith) of asking a complex question, which implies some assumptions of the interviewer rather than of the interviewed person
- c) conceiving planning and elaboration should be more accurate, weighted and verified



Importance of credibility



Types of credibility

Judges and lawmakers founded criteria to validate the narration of the victim when it is the only available evidence:

- Subjective credibility: the reliability of the person who is narrating the event.
- Objective credibility: the intrinsic credibility of the tale, .i.e. the narration of circumstances must be self-consistent as it could not be sustained by other means.

Answers to closed questions are hardly capable of "telling a story", even more to tell a *credible* story:
they would make the condemnation and repression of abusive behaviours more difficult and consequently less capable to prevent further abuse.

How to document an inquiry

Answers to open questions should be reported:

Verbatim



To make narration credible
To avoid unfaithful narration

Without modifying the document



modifying the document
can have abusive or
criminal effect as
considered as a
falsification

Accurately



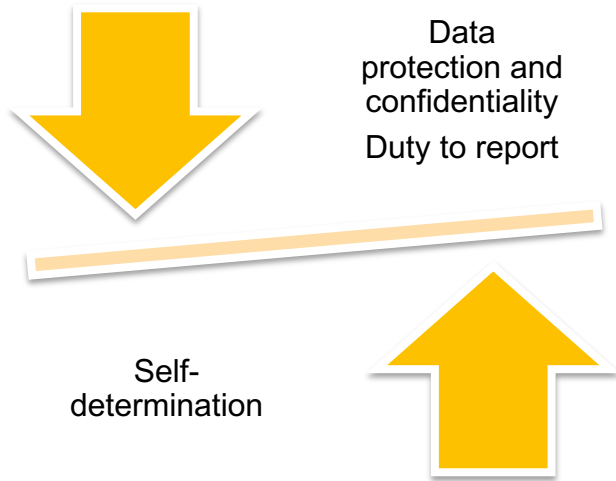
referring every given
information precisely

Archiving answers

The outcomes of the inquiry should be incorporated in a durable document, which should be archived so as:

- They can be promptly usable to be attached to a legal charge, to elaborate statistics or to feedback to the interviewed persons
- It can be possible to separate this information from others concerning the interviewed person, to classify and protect them from the access of third parties who could directly or indirectly impede its use.

Need to balance



A way to balance all these needs is to timely **provide all this information** to the older person so that he/she can self-determine him/herself

4 Building trust

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What is trust

- one's willingness to be vulnerable to others on the basis of one's positive expectations of the other's intention and competence
- one has confidence that the other party in a transaction cares for him/her and will behave in a way that is beneficial or at least not detrimental to him/her
- in trusting others, one expects that one's vulnerability will not be exploited for reasons such as power, profit or pleasure

Winning trust

These are some elements that the professional can take into account in order to build a positive relationship with the client:

- sits down next to the client, spends more time with them, speaks with a soft voice in a respectful manner, remembers their life events and files, expresses interest in their life conditions and does helpful things for them
- professionals need to make explicit their motivations for working with him/her and to disclose their personal experiences. However, note that professionals should be judicious in their use of self-disclosure.




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