

The British
Psychological Society

Guidelines on Confidentiality and Record Keeping

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Guidelines on Confidentiality and Record Keeping

*DIVISION OF COUNSELLING
PSYCHOLOGY*

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Introduction

These guidelines are an advisory document approved by the Division of Counselling Psychology (DCoP) of The British Psychological Society (BPS). Counselling Psychologists abide by the Society's rules of conduct and practice as well as further guidelines issued by the Division of Counselling Psychology. Since the values we hold include integrity, impartiality and respect, issues of confidentiality, record keeping and ethical practice have always been important. Consequently, the main components of this document are also referred to within the *Division of Counselling Psychology: Guidelines for the Professional Practice of Counselling Psychology* (1998), which supplements the Society's Code of Conduct.

The aim of this document is to provide guidelines to facilitate good practice regarding issues of confidentiality record keeping for Counselling Psychologists. Central to these guidelines is an emphasis on the importance of maintaining practical, ethical and legal standards within the continually changing framework of legislation and legal adjudication.

The content of these guidelines has been informed by legislation and recommendations issued by government and organisational bodies including the Department of Health and the National Health Service.

Whilst recognising the variety of settings where Counselling Psychologists practice, these guidelines acknowledge our professional responsibility to review and maintain good practice. A focus on good practice will become increasingly relevant as the Society moves towards Statutory Registration, when members will be required to demonstrate competence in their professional activities. Adopting these guidelines also entails an acknowledgement of our professional responsibility for maintaining and reviewing good practice in confidentiality and record keeping.

It is recognised that Counselling Psychologists work in a variety of settings. For the purposes of these guidelines the term 'client' will be used throughout to describe those who use the services of a Counselling Psychologist.

Confidentiality

Principles of Confidentiality

Counselling Psychologists are expected to protect client confidentiality where possible. From the start of a therapeutic relationship they are expected to be open and honest about the limits of confidentiality in order that clients can make informed choices about the disclosure of personal material. Given the complexity of such information, a written summary for clients of principles of confidentiality is recommended in most settings. Issues of confidentiality may also have an impact on the therapeutic relationship and the kind of therapeutic contract entered into. The following guidelines regarding confidentiality are proposed.

At the onset of any therapeutic agreement, in any setting, it must be made clear to the client that in some situations, personal information may need to be disclosed to other professionals. Such situations include those where:

- The Counselling Psychologist works in an organisation as part of a 'shared care' team responsible for the care of the client;
- The client or other individual(s) is (are) at risk of harm;
- The Counselling Psychologist receives supervision regarding the client.

When clients are asked to give consent to the disclosure of information about themselves it is important to ensure that they understand what will be disclosed, the reasons for disclosure and the likely consequences of that disclosure. The Counselling Psychologist must

ensure that the client is informed when information about them is likely to be disclosed to others and be explicit about the people to whom personal information will be disclosed, e.g. named GP, Psychiatrist, case manager, etc. It is important that the client is made aware of the extent to which they have an opportunity to withhold permission for disclosure. In general, addressing the issue of confidentiality at the start of a therapeutic agreement allows any difficulties with disclosure to be addressed. This may be through, for example, showing correspondence to the client before it is sent or ensuring that any future disclosure is discussed in detail to reach agreement on it, if possible. There may be good reasons why a client may withhold consent for disclosure. The Counselling Psychologist should bear in mind the views and best interests of the client in deciding whether to break confidentiality, and, so far as possible, involve and inform the client regarding this.

In addition, Counselling Psychologists need to be clear about the boundaries of confidentiality with those professionals that they may be accountable to, for example Supervisors, Line Managers and Human Resource Personnel. It is important to ensure that health workers and other professionals to whom information is disclosed understand that it is given to them in confidence and they have a duty to protect it.

If the Counselling Psychologist believes that the client is at risk of harming himself or herself or another person, the Counselling

Psychologist may use their professional judgement to breach this confidentiality even if consent is not given. It is advisable to ensure this is explicit at the beginning of the therapeutic relationship. It is advisable to inform the client of plans to communicate concerns to a third party and why this course of action is being followed. Where time constraints allow it remains advisable to discuss such a serious decision within supervision (preferably an experienced colleague) before taking any action.

In all cases, if a decision is made to disclose confidential information, the discloser must be prepared to explain and justify that decision.

Confidentiality and Children

The Childrens Act (1989) emphasises the need to protect the welfare of the child. Counselling Psychologists should, therefore, include children's feelings and wishes in any decision making process. If children are of sufficient understanding to make informed choices, Counselling Psychologists must obtain their informed consent prior to undertaking any psychological activity, irrespective of the child's age. Children with sufficient understanding may give consent even if their parents are against the treatment although this is a particularly hazardous situation for the Counselling Psychologist. Children and young people can consent to treatment and have the right to that treatment without their parents' consent. However, Counselling Psychologists are advised to encourage any such children to

inform their parents and to include them in some way in therapeutic decisions, unless to do so would put the child or young person at risk of harm. As a mark of good practice, Counselling Psychologists are advised to obtain written consent from both the child and the parents.

If children and young people refuse consent or withdraw it during the intervention, their decision may be over ruled by their parents or those *in loco parentis*. These individuals can give consent to treatment that is deemed to be in the child's best interest. However, it is likely to be anti-therapeutic to impose therapy on a child and the psychologist should explore ways in which the therapeutic plan may become more acceptable to the child.

Children may request access to their records if they have sufficient understanding to make an informed choice. Therefore, the Counselling Psychologist should follow the same guidelines for keeping records as they would with an adult.

Confidentiality and Clients deemed unable to give informed consent

In some cases it may be difficult to obtain informed consent, therefore, it may be necessary to make a judgement about a client's ability to give consent (children or adults with learning disabilities, severe mental distress or mental health needs). This should include a detailed assessment of the client's ability to understand the relevant information, to deliberate upon it, to make conclusions that

Confidentiality (continued)

are logically consistent with the question in hand, to communicate their decision, and to maintain that decision long enough for an intervention to proceed. There are no clear criteria defining these abilities.

An inability to consent cannot be established on the basis of a label that has been 'assigned' to an individual and which that person 'carries'. This is because the question of consent to treatment is concerned with a particular form of treatment at a particular time and is, therefore, very much an individualised and specific issue (Gunn, 1987). However, the Mental Health Act Code of Practice (1991), paragraph 15.15 suggests that in order to provide consent, an individual must have the capacity to:

- Understand what the proposed medical treatment is and that somebody has suggested that s/he needs it and why the treatment is being proposed;
- Understand in broad terms the nature of the proposed treatment;
- Understand its principal benefits and risks;
- Understand what will be the consequences of not receiving the proposed treatment;
- Possess the capacity to make a choice.

Confidentiality in Organisations (Shared Care)

In settings where there is multi-disciplinary approach it is of paramount importance that the informed consent of the client is obtained before disclosing information relating to them. In these settings it is essential that the extent to which information may be shared with

health and other professionals be discussed in full with the client. When clients give consent to disclosure of information about themselves it is important to ensure that they understand what will be disclosed, the reasons for disclosure and the likely consequences of that disclosure. The discloser must ensure that the client is informed when any information about them is likely to be disclosed to others involved in their psychological care, and that they have the opportunity to withhold their permission and when exceptions apply.

For example, within multi-disciplinary care settings such as substance abuse teams the use of alcohol by the client may be information that is always shared. The client must be informed of this before embarking on the programme.

At the onset of the therapeutic programme an agreed agenda for discussions with the client could include:

- An agreed treatment contract – this would be agreed by the client and identified professionals;
- An agreed plan of action in the event of the contract being 'broken';
- Agreed feedback of information to the referring GP/agency;
- The basis on which information may be shared with other professionals.

Discussions and letter/report writing with all parties should be noted in clear language that avoids ambiguity and misunderstanding.

If the client requests that information is not written down or shared with others the reasons for the request needs to be established and considered within the guidelines and protocols that exist within the practice, organisation or setting. It is considered good practice that professional responsibility to the care of the client should be considered paramount.

In all cases, clear communication between the Counselling Psychologist, the client and other health care professionals should be conducted in a manner that contributes to ensuring the delivery of high quality psychological care.

Special Arrangements in Shared Care Settings

It is this Division's policy that the client's right to confidentiality be respected and remains paramount at all times. In a shared care setting it may be necessary to arrange for separate records to be kept by the Counselling Psychologist. These separate records (kept in the psychology department or a storage area only for designated psychologists) remain part of the Official Client Record for legal purposes but are not accessible to others in the shared care team. This method of record keeping prevents those without psychological training or knowledge from having access to sensitive material that may be misinterpreted. Access to these records by all team members is therefore not in the client's best interests. Whilst not a requirement, it is suggested that this approach be considered by our members and their employers.

It is important for Counselling Psychologists to ensure they are aware of the policies of the employing organisation (such as an NHS Trust) regarding confidentiality and access to records. It is advisable that these policies are obtained in writing from the employing organisation and that any concerns regarding a conflict with the Society's current *Code of Conduct* or *The Guidelines for Professional Practice of Counselling Psychology* be addressed immediately by contacting the employing organisation and the Chair of the Division of Counselling Psychology.

Confidentiality and Third Party Requests for Services

When a Counselling Psychologist agrees to provide services to a person or people at the request of a third party such as the court or an organisation the Counselling Psychologist must clarify the nature of the relationship with each party at the outset of the service. This clarification includes the role of the Counselling Psychologist (such as therapist, organisational consultant, or expert witness), the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality. These limits must be communicated to the client at the very beginning of contact.

If there is a foreseeable risk of the Counselling Psychologist being called upon to perform conflicting roles because of the involvement of a third party the Counselling Psychologist must clarify the nature and direction of their responsibility, keeping all parties appropriately

Confidentiality (continued)

informed as matters develop, and resolving the situation in accordance with the Society's *Code of Conduct* and *The Guidelines for the Professional Practice of Counselling Psychology*. It may also be appropriate to seek independent legal advice in order ensure that possible consequences are known before any action taken. It should be noted that the Society is unable to give legal advice to its members.

Confidentiality in Research and Teaching

Counselling Psychologists do not disclose in their writings, lectures, or other public media confidential, personally identifiable information concerning individual or organisational clients, students, research participants, or other recipients of their services obtained during the course of their work.

At scientific and professional presentations Counselling Psychologists must disguise confidential information concerning clients or organisations or others so that they are not individually identifiable to others and will not cause harm to the client or organisation should they recognise themselves.

Confidentiality and Supervision

The Counselling Psychologist has multiple responsibilities regarding confidentiality when acting as a supervisor. These include:

- Responsibility to the supervisee to keep supervision sessions confidential;
- A responsibility to those clients discussed to keep their details confidential;

- A responsibility to the organisation or regulatory body of which the supervisee is a member to break confidentiality if the supervisee is acting unethically so as to prevent harm to the client.

The welfare of the client is of paramount importance.

If the Counselling Psychologist Supervisor believes the supervisee is inappropriately placing the client at risk of harm they must act to prevent this. The Counselling Psychologist Supervisor should use professional judgement in assessing whether it is necessary to breach confidentiality for the purpose of:

- Resolving any immediate crisis relating to a client;
- Ensuring whether the supervisee is competent to practice.

Such a possibility should be made explicit at the beginning of a supervisory relationship. It is advisable to inform the supervisee of plans to communicate concerns to a third party and why this course of action is being followed. Where time constraints allow it is recommended that discussion of any decision with an experienced Chartered Counselling Psychologist occur before taking action.

In all cases, if a decision is made to disclose confidential information, the discloser must be prepared to explain and justify that decision.

Records

Impetus for Guidelines on Record Keeping

There is increasing public and governmental concern with quality and the maintenance of competence in all fields of professional practice. As a professional body the Society's support for good practice reflects the need for accountability and the protection of the public. Consequently it is the responsibility of each Counselling Psychologist to ensure that they adopt a systematic and detailed method of record keeping. This can be achieved by ensuring continued competence and adhering to recognisable and acceptable standards of practice. These principles are enshrined in the Society's *Code of Conduct*, and within existing DCoP Guidelines.

In general it is good practice to consider that records are an *aide memoire* for the Counselling Psychologist. In addition, records provide evidence that due consideration has been given to the client and that the Counselling Psychologist is engaging in their professional responsibilities.

Many Counselling Psychologists are affected by government legislation (e.g. The Health Act, 1999). As clinical governance becomes increasingly important, Government objectives for the NHS emphasise local delivery of high quality health care through modernised professional self-regulation and development through lifelong learning. This is echoed by the demands of the private sector, educational and organisational settings. Since record keeping is central to good practice, the following suggestions have been proposed.

The Purpose of Record Keeping

- To improve continuity between the sessions.
- To provide a record for the use of the Counselling Psychologist, and in some cases, the client.
- To facilitate assessment, planning and evaluation of progress. Consideration needs to be given to the influence of different theoretical models in the process of record keeping, how this might affect therapy and the relationship with the client.
- To allow the collection of basic statistical information for the purposes of departmental audit. This may include before and after outcome measures.
- To provide a record that is clear, complete and up to date.

PROCESS vs. CASE NOTES

As far as the law is concerned there is no difference between record keeping and process notes or any other notes made by the Counselling Psychologist in connection with the client. Anything that identifies the client becomes part of the official record whether stored as part of the file or elsewhere (see Data Protection Act). The Division of Counselling Psychology recognise the difficulties that this causes to many Counselling Psychologists. However we do not have an exemption under law to keep separate records for interpretation or speculation. It is therefore advised that process notes are made with the view that they may later be seen by the client (as would be part of our overall

Records (continued)

philosophy of openness) or by others if part of a legal case.

There have been suggestions made in various organisations that notes should be kept in distinct sections: clinical information, supervision sessions on the client, personal and counter transference responses to client and own professional development. Whilst this may be appropriate for the counselling psychologist it has not yet been tested by law and so all notes made should be considered as part of the client record.

Practical Guidelines for Record Keeping

Current legislation does not prescribe whether or in what form records should be made. However recent legislation indicates that anything that refers to a client such as an entry into a computer database, a scribbled note in a personal diary identifying the client by name or other means may be regarded as part of the Client Record for legal purposes.

The following guidelines reflect the general principles recommended by many professional organisations.

Each written record of contact with clients, their family, advocate or others is:

- Legible;
- Written in ink;
- Dated;
- Signed.

Information should be:

- Concise;
- Relevant;
- Objective (non-judgmental).

Entries should be:

- Up to date (within 48 hours of a session);
- Reflect the therapeutic process;
- Signed after any alteration.

It is advisable that all records be made on systematically identifiable record paper. This prevents disputes over authenticity.

Since the introduction of the Access to Health Records Act (1990) it is considered good practice to keep records as if the client would read them.

You may choose to ensure your papers are clearly marked with **'CONFIDENTIAL – NOT TO COPIED WITHOUT EXPRESS PERMISSION OF THE AUTHOR'**.

Records kept in electronic form should follow the same guiding principles as those given for written records.

Video and Audio Recordings

In the case of videos and audio recordings of client sessions (for supervision or other purposes) prior informed written consent must be obtained from the client. Issues of ownership, copying, security of recordings etc. should be discussed and clarified at the outset. The signed, written consent should be stored separately from the recording in order to preserve confidentiality.

Data Protection

For guidelines on the principles of the Data Protection Act and whether an individual psychologist should be registered under the Act information may be obtained from the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Information Line 01625 545 745. Website <http://www.dpr.gov.uk>. Useful documents from this site are *Notification Exemptions – A Self Assessment Guide that has step-by-step questions to work through* and *Notification Handbook – A Complete Guide to Notification*.

Any records made and kept are subject to data protection rules concerning:

- The nature of the data kept;
- Unauthorised access to data (security);
- Improper disclosure to third parties (confidentiality);
- Data subjects rights (The Client's right of access).

These rules are principally contained within The Data Protection Act 1998, which contains eight 'data protection principles'. This Act supersedes the 1984 Act, and extends its cover to now include manual (i.e. paper records) as well as electronic records. The Act also creates a new category of 'sensitive personal data' that requires special consideration around disclosure. 'Sensitive personal data' relates to information about racial and ethnic origin, political opinions, religious and other beliefs, trade union membership, offences committed or allegedly committed, details of proceedings for offences and information about physical or mental health and sexual life.

Except as may be required by a specific obligation (e.g. The Childrens Act 1989 and The Terrorism Act 2000) or as a result of the wider 'duty of care' to protect the client or another person from serious harm, data must not be shared with other unauthorised third parties.

Expressly 'Sensitive personal data' cannot, except for 'medical purposes' by 'health professionals' (or a person owing a duty of confidentiality equal to a health professional), be shared with third parties without the explicit consent of the client.

It is, therefore, good practice to obtain informed written consent from the client if there is a possibility or intention to share any of the data held on them.

It should be noted that a court of law or other properly constituted court of enquiry with a power to take evidence has the power to subpoena paper records or any other data such as audio and video recordings. Failure to comply with such a direction could amount to a contempt of court.

It is important to note that supervision records, whether case or process notes, may be considered part of a client record. For example a supervision session where John B is discussed and where this is recorded by the supervisor in any form may later be regarded in law as part of the official record for John B. Either John B himself, or someone with the legal right of access to records on John B may seek access to the relevant supervision record.

Records (continued)

It is recommended that Counselling Psychologists who are approached to release client records for legal purposes do not act until they have taken legal advice from their professional legal representative

Security of Records

All records should be kept securely locked, preferably in a fireproof cabinet or container within a secure area. There are no specific recommendations for the period of time to keep records. However, other organisations recommend that all records be kept for a period of six (plus one additional 'safety' year) after the last contact with a client. Different requirements may apply to records relating to children.

Paper records should be disposed of as carefully as they are stored. Records should be shredded or incinerated to ensure their destruction and illegibility.

It is the duty of the holder of any form of data to ensure that the data is kept securely so that unauthorised access and identification of the data subject do not occur.

Data held on a computer (or in other electronic forms such as a personal organiser, personal digital assistant PDA) should be made secure from access by others either directly from the computer terminal, or from a modem, cable network or other means of access by the use of secure passwords, data encryption, 'firewalls' or similar means of securing the site.

Those responsible for confidential information must ensure:

- That information is effectively protected against access by unauthorised third parties.
- The prevention of improper disclosure of information when stored, transmitted, received, or in its disposal.

Access to Records

A person holding personal data on a client has a duty to inform them that such data is being collected and held, the purpose for which it will be used and provide them with details of how they can access the data. Except in certain cases such as the risk of 'serious harm' to the applicant or another person the holder (data controller/processor) must within 40 days give details of the 'registerable data' held.

The Data Protection Act (DPA) requires that held 'personal data' must be:

- Unless the rights of the subject can be adequately protected, not transferred outside the European Economic Area
- Processed fairly & lawfully
- Obtained only for one or more specified lawful purpose
- Accurate and up to date
- Not kept longer than necessary
- Processed in accordance with the rights of the data subject
- Protected against loss or unauthorised use
- Relevant, accurate and not excessive for the purpose collected.

Other legislation concerning data access includes:

- Access to Health Records Act (1990) (part repealed by DPA(1998));
- Human Rights Act (1998);
- Freedom of information Act 2000 (concerning public bodies and disclosure).

Records following the death of a Counselling Psychologist

Counselling Psychologists are advised to make arrangements for their own sudden ill health or death so that the client's confidential records are secure and left in the care of a responsible professional colleague. The Counselling Psychologist is advised to ensure that a qualified colleague is available to protect the interests of the client at this time.

These Guidelines

In recognising the development of the Division of Counselling Psychology and changes in legislation, the guidelines contained in this document will be subject to a process of regular amendment and updating.

The Division of Counselling Psychology would like to thank the following for their contribution: members of the Sub-Committee for Practice & Research from 1999 to 2002. Those who spent hours in discussion resulting in this composite piece of work in which many strands of practice are reflected included David Draysey, Janice Elms, Sandy Gaskins, Kendra Gilbert, Richard Golsworthy, Anna Karczewska, Louise Young and Susan Van Scoyoc.

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Appendix I

DATA PROTECTION ACT 1998 Notes on expressions used and requirements of the Act

What is data?

There are new definitions in the Act for *data and personal data* (1):

'Data' means information which:

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose (*i.e. computers, mechanical/electronic organisers, etc.*);
- (b) is recorded with the intention that it should be processed by means of such equipment (*i.e. notes/records made to be later computerised*);
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system (*i.e. notes made to go into a filing system, i.e. card index, case history folder. etc.*);
- (d) does not fall within paragraph (a), (b) or (c), but forms part of an accessible record as defined by Section 68 (*i.e. a health record, an educational record, an accessible public record*).

'Personal data' means data which relate to a living individual who can be identified:

- (a) from those data, or;
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of the data controller (*i.e. 'computerised notes' cross referenced to a paper address book or vice versa, etc.*).

Put simply it covers every type of record we keep.

Do I have to register?

The Data Protection Act 1998 requires every data controller who is processing personal data to notify (*register*) unless they are exempt. Failure to notify is a criminal offence.

Who is exempt?

- Individuals who process personal data for personal, family or household affairs (including recreational purposes) (*i.e. diaries/birthday calendars, address books etc., kept in paper or in computer/organiser form*).
- Data controllers who only process personal data for the maintenance of a public register (*i.e. the electoral role, etc.*).
- Data controllers who do not process personal data on computer (*i.e. producers and keepers of 'paper records'*). However, other data controllers who are exempt from notification **must still comply** with the other provisions of the act (*i.e. security, privacy, access, relevancy, accuracy, disclosure, etc.*).
- Some 'not for profit' organisations (*i.e. scout groups, (with 'data subjects' consent) charities, etc.*).
- Data controllers who *only* process personal data for staff administration, advertising, marketing and public relations, keeping accounts and records.

Appendix I (continued)

Notes

Individuals who process personal data for personal, family and household affairs are exempt from notification and most other provisions of the act.

Further information can be found in *Notification Handbook: A complete guide to Notification* obtainable from The Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow SK9 5AF.
Tel: 01625 545745.
<http://www.dataprotection.gov.uk>