

Good Practice in Action 065
Clinical Reflections for Practice

Confidentiality and
Record Keeping
within the Counselling
Professions



British Association for
Counselling & Psychotherapy

Confidentiality and Record Keeping within the Counselling Professions

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Context

This resource is one of a suite prepared by BACP to enable members to engage with the BACP *Ethical Framework for the Counselling Professions* in respect of confidentiality and record keeping.

Purpose

The purpose of this publication is to stimulate ethical thinking in respect of record keeping.

Using Clinical Reflections for Practice resources

BACP members have a contractual commitment to work in accordance with the current *Ethical Framework for the Counselling Professions*. The *Clinical Reflections for Practice* resources are not contractually binding on members, but are intended to support practitioners by providing information, and offering questions and observations practitioners may need to ask themselves as they make ethical decisions within their practice in the context of the core ethical principles, values and personal moral qualities of BACP. Specific issues in practice will vary depending on clients, particular models of working, the context of the work and the kind of therapeutic intervention provided. As specific issues arising from work with clients are often complex, BACP always recommends discussion of practice dilemmas with a supervisor and/or consultation with a suitably qualified and experienced legal or other relevant practitioner.

In this resource, the terms 'practitioner' and 'counselling related services' are used generically in a wider sense, to include the practice of counselling, psychotherapy, coaching and pastoral care. The terms 'therapist' or 'counsellor' are used to refer to those trained specifically as psychotherapists and counsellors.

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1 Introduction

The *Ethical Framework for the Counselling Professions* states:

Clients need to be able to participate freely as they work with practitioners of the counselling professions towards their desired goals. This requires clients to be able to trust their practitioner with their wellbeing and sensitive personal information (BACP, 2016a).

BACP members and registrants, make a commitment to *Work with professional standards* which includes 'keeping accurate and appropriate records' (*Ethical Framework*, Commitment, 2e).

But in our work, what counts as a 'record'? A record is any form of document, whether paper-based or electronic (Bond and Mitchels, 2015) and includes alternative language forms e.g. Braille. The most obvious record is a case-note written after a session. However, records also include entries of past and future appointments, communications to, from and about a client e.g. text message, answer-phone message, email, letter, contracts and agreements made, reviews, receipts, assessments, psychological measurements, video and audio recordings of client sessions. Clients' drawings, poetry, photographs, models etc. are all potentially part of your record and should be kept as such. Even a practitioner's personal reflections about a client that are scribbled down on a scrap of paper could be regarded as a record. Notes made in preparation for, during and after supervision, where a client is discussed, are also records.

To help you explore what can sometimes seem a complex and confusing subject, this resource introduces you to 'Nicky' (a fictitious character) and provides a glimpse into how she runs her counselling practice, *NDJ Counselling*. You will read about working practices that illustrate her varying degrees of ethical awareness and to what degree she fulfils her ethical commitment to work 'with careful consideration of the law' (*Ethical Framework*, Commitment, 5c). Then, four vignettes describe very different scenarios that arise from her work. Questions follow that you may wish to reflect upon or discuss with your supervisor or colleagues. Later, Observations for Practice are offered to stimulate further creative and ethical thinking in which links are made to the *Ethical Framework for the Counselling Professions*. It will help to have the *Framework* with you as you read this resource as the relevant sections are contained within brackets following each section. Whilst this resource focuses on ethical thinking around record keeping and confidentiality, you may notice other ethical issues that could usefully form the basis of supplementary thinking and discussion.

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2 Therapeutic Setting for Vignettes

NDJ Counselling is a small, private practice which was founded 10 months ago, by Nicky when she qualified as a counsellor. She is BACP registered.

Nicky lives with her seven-year old daughter Daisy, recently diagnosed with a learning difficulty, who requires extra support both at school and home.

Usually, Nicky sees clients between 9am-3pm, Monday to Friday to fit in with the school-run. Sometimes, she has a client on Saturday if she can find someone to look after Daisy. When not working, or looking after her child, she catches up with domestic chores, shopping and walks the family dog, Barney. Nicky always seems to have a long 'to-do list'.

As a sole practitioner, Nicky feels quite isolated in her work and whilst she would like to meet other local counsellors, it's difficult to find the time. She attends individual supervision for 1.5 hours per month with the supervisor she has had since she began training.

Nicky sees individuals and occasionally couples. She is thinking about having specialist relationship training but wants to see if couples work suits her before investing time and money. Online counselling also appeals as this would help balance work and family commitments (although Nicky does not feel particularly confident when using computer technology).

She has made an office-space in a spare bedroom in her home and here she carries out administrative tasks, sometimes using her PC. Nicky stores current client case-notes in a small lockable expanding box file. Each client has their own folder of handwritten notes of sessions filed in date order along with any word-processed letters to GPs, clients etc. This system works well for Nicky as she can easily locate information for each client. Case-notes for clients who the practitioner has finished their work with are transferred to a lockable filing cabinet; Nicky has not yet decided how long she will keep these notes. Nicky hand-writes extensive case-notes, although she finds this the least interesting part of her job. She has been thinking for some time about making a 'clinical will'.

Counselling takes place in a dedicated downstairs room below her office. Several clients have commented how comfortable they find the room and Nicky is pleased because she has put a lot of thought into its layout and furnishing.

At the end of each session, clients pay cash or cheque in exchange for a receipt from a receipt book. This system provides Nicky with a carbon copy of each payment, helping her keep track of her income. As a self-employed person, she is registered with the HM Revenue and Customs (HMRC) but has decided not to notify the Information Commissioner's Office (ICO) because she hand-writes her case-notes.

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3 Vignettes

Vignette One: Dora (email)

Dora has been having counselling for several months to help manage emotional difficulties arising from an incorrectly carried out hip operation. She has been in almost constant pain and has felt very helpless. Sometimes, Nicky has experienced similar feelings of helplessness when with Dora.

Today, Dora tells Nicky she has consulted a solicitor in the hope she may receive compensation. The solicitor has suggested she include in her claim, the money paid for counselling. However, he has told Dora that the receipts she has are 'too informal' and she will need to provide information on *NDJ Counselling* headed paper. Furthermore, Dora 'must proceed quickly' to increase her chances of success. Dora has often spoken about how 'coming into money' would make 'life more bearable'. She would install a stair-lift, get some domestic help and perhaps go on holiday – 'somewhere where the sun shines all day'. Nicky is pleased that after what has felt a long haul, Dora may now get the chance of a better life.

Dora is Nicky's last client of the day (and what has seemed a long week). She has some time before she needs to pick Daisy up from school so writes up all her case-notes for the week. She logs on to her PC, pays her gas bill then goes back through her receipt book to find the dates of Dora's sessions. Having completed the document for the solicitor, she emails it to him (with a cc. to Dora). Pleased to have helped Dora in this simple, practical way, she dashes out to the car.

Later that evening, having fed Daisy, helped her with her homework and (finally) got her to bed, Nicky again logs on to her PC. In amongst the list of emails received, she notices one from a person whose name she does not immediately recognise. Opening the email, she is horrified to read "Hi Nicky, Lovely to hear from you but I don't think this was meant for me. Regards, Dori". In a split second, Nicky realises that in sending the email to Dora's solicitor, she copied it not to Dora but Dori. Dori is an ex-client whose name directly follows Dora's in Nicky's email address book. Nicky begins to panic.

Suggestions for reflection and discussion:

- Q.** What factors in Nicky's life may have contributed to her making this error? What changes could she consider making? How could her supervisor help?
- Q.** If you were Nicky, what would you do next in terms of: a) your current relationship with Dora; and b) your past relationship with Dori?
- Q.** What does Nicky need to bear in mind when **receiving** 3rd party information **requests**? (See Good Practice in Action 014 *Managing confidentiality* for more information)
- Q.** Are there any changes you might make to your working practices?

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Vignette Two: Ratana (audio-tape)

Six weeks ago, Ratana came to counselling to discuss concerns about relationships with female friends; "We get close as friends then I trash it". From her history, you know that tragically, Ratana's mother died giving birth to her. Her father disowned his new baby saying "It killed my beloved wife". Growing up, Ratana was looked after by a succession of elderly aunts and as each died, another took her place. Ratana had many 'mothers', all loved but lost. Slowly but surely, Ratana began to believe that in some strange way, her father was right – whoever she got close to, died.

The session following Nicky's return from a scheduled break, proved unusual. Normally so punctual, Ratana arrived late, slammed the door, threw her coat down and glared at Nicky. Shocked, Nicky finally managed to encourage Ratana to speak about what was upsetting her. As she suspected, her absence had stirred difficult memories. Over the next two sessions, Ratana became increasingly angry, accusing Nicky of 'saying unhelpful things' and making her feel 'worse than ever'. Nicky was struggling to know what to do and sometimes found it hard to remember what she had said to Ratana in sessions.

Feeling confused, she took her work to supervision, scheduled for the next day.

Following a discussion about the client-counsellor dynamic, Nicky's supervisor suggested she ask Ratana if she could audio-tape the next few sessions. Nicky and her supervisor could then listen to the recordings together.

At the next session, Ratana seemed much calmer and even apologised for her behaviour. Nicky decided still to go ahead with her request to tape sessions and felt relieved when Ratana quickly agreed.

Today, four sessions later, Ratana says it would help her understand herself more if she could listen to the tapes at home. She adds that she feels ashamed about the 'unkind names' she had called her father and says "I'd hate to think of anyone else hearing what I said about him". Nicky feels her stomach sink. Yesterday, she and her supervisor listened to extracts from several tapes.

Suggestions for reflection and discussion:

- Q.** What ethical issues are important to consider when making audio (or video) recordings of sessions?
- Q.** What contract issues might have been helpful for Nicky to have considered regarding the taping of sessions?
- Q.** Given that Nicky has already shared the contents of the tapes with her supervisor, what might be the next ethical step for her to take?
- Q.** How does the ethical and legal Duty of Candour apply here?

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Vignette Three: Mark and Christian (case-notes)

Mark and Christian have been married for eleven months and came to counselling because their relationship wasn't working. At the third session, they arrived late. Christian flung his bag down on the floor as Mark fell into the chair and sobbed. Before Nicky had a chance to speak, Christian banged his clenched fists on the arms of the chair and bellowed "Tell Nicky then ... tell her what you did. There's no point in coming here unless you tell her everything". Mark raised his head slowly and told Nicky how, six months ago, he had begun a sexual relationship with a man he met in a bar. This relationship continued until last Tuesday when Christian found a video on Mark's phone of his husband and the other man having sex. Christian felt hurt and betrayed. Mark described himself as 'dirty' and felt 'wracked with guilt'. Neither man knew how, or even if, they wanted to save their marriage. At the next session, Christian had decided that to 'move on', he needed to know all the details of the affair – 'all the lurid facts' as he put it. Hoping to save their marriage, Mark agreed but was only prepared to do this in the counselling room. Over the next two sessions, Mark revealed the intimate details of his relationship with Alexandros, a Greek chef.

It is the start of session 10 and Nicky is surprised when Christian reaches into his pocket and brings out the counselling contract he and Mark signed at the beginning of the work. Pointing to the clause that states Nicky keeps notes of the sessions, Christian says "The internet says I can see these notes. It'll be interesting to see it all in black and white and what you make of it all Nicky. Can I see them next week please?" Nicky is shocked but before she has time to think, Mark jumps to his feet and shouts "No Christian! It'll only open up old wounds. Please don't show him Nicky!" Nicky feels caught between the demands of the two men. She remembers she has written in these notes some intimate details of Mark's sexual relationship with Alexandros. Also, there are a few personal reflections on similarities between Mark and Christian's marriage and her own difficult relationship with Daisy's father. She begins to wish she had kept two sets of notes but given that she hasn't, wonders whether to quickly re-write them before next week.

Suggestions for reflection and discussion:

- Q.** What contractual issues would it be advisable for Nicky to think about in terms of record-keeping?
- Q.** Must Nicky agree to Christian's request and if she does, what would be an ethical way to manage this?
- Q.** In the case-notes, Nicky has recorded details of Mark and Alexandros' sexual relationship and has included material from her personal life. What are your thoughts on recording either of these types of material in case-notes?
- Q.** Nicky wishes she had kept two sets of notes. Would this have been a wise decision? Should she re-write her notes?
- Q.** What legal or ethical responsibilities and requirements might be important for Nicky to bear in mind?

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Vignette Four: Ben (diary)

Just after 7pm, Nicky answers a knock at her front door and is surprised to find a police officer there. Carrying out enquiries following a series of minor thefts, the officer asks to come in. Ushering the officer into her living room, Nicky tells Daisy to go upstairs and get ready for bed. After collecting some details about Nicky, the officer asks where she was on October 13, last year, around 1pm. Quite alarmed by this enquiry, Nicky grabs her diary from the coffee table nearby. The officer tells her a man named 'Ben' is currently being questioned at the police station on suspicion of theft. He has told police he was attending counselling with Nicky at the time the crime took place. Nicky remembers she did once have a client called Ben and as his face became more clear in her memory, so does his story. The Ben that Nicky knew came to counselling because he was long-term unemployed and his mood had dropped. She remembers he spoke about trauma encountered when he was sexually abused by his primary school teacher. The work had been challenging and at one stage, Ben was having thoughts of killing himself. However, Nicky and Ben worked closely together to help him manage his emotional pain. As an adult, it had been difficult for Ben to trust others, particularly those in a position of authority but by the end of the counselling work, Ben had a job he enjoyed and a boss he got on with. Nicky finds it hard to imagine that the Ben she knew could ever be suspected of criminal activity. Her mind races as the officer says, "He's so young, this lad and he's pretty cut up about it all. If you can vouch for him, we'll let him go home". Nicky feels pressurised and doesn't know what to do for the best.

Suggestions for reflection and discussion:

- Q.** What are some of the potential risks to the security of client information in this domestic scene?
- Q.** What are Nicky's ethical commitments to Ben?
- Q.** What would you advise Nicky to do next in relation to the police officer's request?
- Q.** What ethical and legal responsibilities and requirements does Nicky need to bear in mind here?

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Ethical Framework

When thinking how to provide the best service to clients, members are committed to working in accordance with the *Ethical Framework*. As you read the observations in the following section, look up the references to the framework, and consider how well Nicky meets these responsibilities and reflect further on your own practice.

Equipped with some details about Nicky, how she manages *NDJ Counselling*, and her client work – what stands out to you?

- **What do we know about Nicky's life and the impact it has on her practice?**

Nicky gained a counselling qualification before beginning work and is a registered member of BACP. She cares for her clients, tries to do her best for them and has created a counselling room that is comfortable. She juggles work with being the sole carer of her young daughter who has a learning difficulty and there seem to be many competing priorities in her life. She attempts to multitask and for most of the time, does this effectively although sometimes, not so well.

- **Does she look after herself well enough?**

We have no indication that Nicky has much social contact apart from that with her daughter (and fleetingly with others in her rural community). How might this personal isolation impact on her work as a practitioner and do her clients account for most of her social contact?

Nicky seems quite isolated from other counselling/psychotherapy professionals too (except for her supervisor who she sees once a month). Perhaps connecting with peers could help? (See *Ethical Framework*, Good Practice, Points 17, 18, 75b-d.) Working in private practice and particularly from home has its benefits but can be challenging (BACP, 2016b).

- **How does Nicky manage her time?**

We can wonder whether she factors in enough time to carry out the many administrative tasks that accompany clinical work such as writing up accurate and appropriate records (*Ethical Framework*, Good Practice, Point 15) and taking time to carefully consider communications with clients etc. As well as her feelings towards Dora, did time-pressures contribute to Nicky's haste in sending that fateful email? We note that, Nicky is considering making a 'clinical will' (Byfield, 2016; BACP, 2016b) but this is probably still on her 'to-do list'.

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• **Has Nicky developed enough competence to work in private practice?**

Nicky has established herself as an independent practitioner early in her career. Has she developed sufficient independence and gained enough knowledge and experience to do so? (See *Ethical Framework*, Good practice, Point 13.) Did she discuss the move from being trainee to independent practitioner with her supervisor? We note she has no extra qualification or specialist training in a complex specialism in which she works – couple therapy. Is she working within her competence? (*Ethical Framework*, Commitment, 2.) This may have helped in her work with Mark and Christian. (See also Good Practice, Points 13 and 14.)

She appreciates that her knowledge of Information Technology is basic but it may have caused problems. (See *Ethical Framework*, Commitment, 2b; Good Practice, Points, 20, 21 and 25.)

• **Has she taken reasonable steps to ensure adequate levels of security for her PC, email and telecommunication systems?**

The use of passwords, encryption and email address book management are relevant here. Does she destroy computer records when she no longer needs them? (Principle of Being trustworthy, Good Practice, Point 14f; Mills, 2010). Has she protection against cyber-security threats? (BACP, 2015; ICO, 2016).

Nicky receives calls via her home phone. Apart from a nightmare scenario where Daisy answers the phone to a client, we can feel concerned about messages left on this answer-phone. Who might access these records, either innocently or maliciously? (See *Ethical Framework*, Commitment, 3b and Good Practice, Point 25.)

• **Has Nicky thought through how best to write her notes and how long she should keep them?**

Nicky makes extensive case-notes, sometimes writing them all up at the end of the week. How much does she remember? (See *Ethical Framework*, Good Practice, Point 15.) Perhaps making notes in a different format may help it to be less of a chore and suggestions do exist (Bond, 2015). She has yet to decide how long to store her notes before destroying them. (See *Ethical Framework*, Good Practice, Point 14; Bond, 2015; Bond and Mitchels, 2015 for more information.)

• **She considers re-writing her notes and keeping two sets – is this ethical?**

Nicky could benefit from clarification about what information is inadvisable or inappropriate to include in case-notes i.e. 'sensitive personal data' (Data Protection Act, 1998; Bond 2015). Nicky realises that she's made personal disclosures about her private life too (see *Ethical Framework*, Commitment, 2e). When confronted with Christian's request for access, she wished that she had kept two sets of notes (although both sets would be regarded as a record).

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- **There are concerns about the security of Nicky's notes and diary.**

She stores current client notes in a portable file which is locked but easily removed if her house were broken into (see *Ethical Framework*, Commitment, 3b; Good Practice, Points, 21 and 25).

Having a five-year diary means that by the time it is finished, it will likely contain many client 'records'. We note that to avoid confusion, she records clients' names by using their first initial and full second name. The diary was left on a coffee table. Who else might look in Nicky's diary? Could a client be identified by someone who looked in her diary? In the case of Ben, Nicky's diary might become evidence in a legal case and other client names disclosed. Where does Nicky put her diary overnight? Using it for both work and domestic/personal reasons means it is likely to be taken out of the house. Could it be accidentally left somewhere?

- **What kind of contract does Nicky make with clients?**

We know very little about the contract Nicky makes with clients but there appear to be important omissions (see *Ethical Framework*, Commitments, 3c, 4a, 5b, and Good Practice, Points 31, 32a-f; see also, BACP 2016d and f). For example, Christian and Mark were not informed about their right of access to case-notes and Ratana agreed to her sessions being taped without knowing what might happen to these tapes. If Nicky's clients were not happy with the service received, would her contract contain information about what they could do about this, to whom they could talk e.g. the Ask Kathleen service, or complain? Has Nicky discussed her contract with her supervisor?

- **What about her financial record keeping**

Nicky provides receipts for fees paid but these include the full name of each client. If her tax affairs were investigated by HMRC, these names would be disclosed. How would this fit with the commitment to protecting the clients' confidentiality and privacy (see *Ethical Framework*, Commitment, 3b; Good Practice, Points 25a and b).

- **Was there informed consent for the recording of sessions?**

Making an audio (or video) recording of a client session can be very helpful and sometimes forms part of an assessment process. Ratana very quickly agreed to her sessions being taped (perhaps to repair what she feared was a damaged relationship). Did she give 'informed consent'? (See *Ethical Framework*, Good Practice, Points 27 and 31.) Were the issues surrounding recording discussed, such as why Nicky wanted to tape sessions, for whose benefit, who might listen to them, storage and disposal of tapes etc.? (See *Ethical Framework*, Good Practice, Commitments, 3c, 5b.) She does not seem to have considered that Ratana might request the tapes. A client's right of access to tapes and videos has implications for both client and practitioner. Today, technology can be used to change what is recorded, post and pass on via social media etc. (see the *Ethical Framework*, Commitments 5a, and Good Practice, Points 14, 25, 32c, 39, 40; see also, BACP, 2016g). Information about storage, sharing and data protection issues concerning audio and video recordings can be found on the Information Commissioner's Office website at:

<https://ico.org.uk/for-organisations/guide-to-data-protection/encryption/scenarios/audio-recordings/>

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- **What about requests for information from third parties?**

Requests for information from third parties can be very challenging for a practitioner (Bond and Sandhu, 2005). Requests can be legitimate whilst others, inappropriate or unlawful (Point 9). Nicky felt put on the spot when asked to confirm Ben's alibi. If she had known that police cannot usually access information from client records without the client's explicit consent, a warrant from a circuit judge or are acting under statutory authority, she may have felt less anxious (Bond and Mitchels 2015; BACP 2016c). Might Nicky have felt pressurised by people and organisations she sees as having authority over her e.g. the solicitor and police? Can she find her own sense of authority? Perhaps supervision could help?

- **What about legal requirements in respect of record keeping?**

Nicky has made an ethical commitment to keep up to date with legal requirements and to give careful and conscientious consideration to the law (see *Ethical Framework*, Commitment, 5c; Good Practice, Points 14f, 42). She is aware of the ICO but has mistakenly decided against notification because her case-notes are handwritten. She can easily locate information within her records and so they might easily be described as a 'relevant filing system', whether hand-written or not as in (Bond and Mitchels, 2015; Data Protection Act, 1998). In any case, she stores information about clients on her PC and word-processes letters and sends emails to, and about clients. In data protection terms, Nicky is the 'data controller' and her client, the 'data subject'.

- **Mistakes, dilemmas and Duty of Candour**

Like any practitioner, Nicky is engaged in a process of lifelong professional and personal development, making mistakes along the way. Practitioners have not only an ethical obligation but the statutory Duty of Candour to address mistakes (*Ethical Framework*, Commitments, 5c, 6b and Good Practice, Points, 14f, 39, 42 and 47; BACP, 2016g). How easily can Nicky tell clients what has gone wrong, support them and find ways to ensure she does not repeat the mistake? (*Ethical Framework*, Commitment, 5a; and Good Practice, Points 39, 40, 47a-e.) How much can she talk to her supervisor about her mistakes? For example, when she allowed her supervisor to listen to the tapes of her sessions with Ratana (*Ethical Framework*, Commitment, 6c and Good Practice, Point 47d, 54).

Problems and dilemmas are an unavoidable part of therapeutic work and we can't anticipate every possible situation that may happen. However, to support herself, Nicky could begin by imagining scenarios she could reasonably encounter and what might be the most ethical (or legal) course of action to take (BACP 2016e; Dale, 2016; BACP 2016i). Finding accurate information about what is required in respect of confidentiality and records, planning ahead and developing policies and procedures for *NDJ Counselling* would have been helpful (Bond and Mitchels, 2015). Discussions with other practitioners, and her supervisor would undoubtedly help Nicky in her work (see *Ethical Framework*, Good Practice, Points 76, 77, 78).

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In common with many practitioners, Nicky has a busy life with complex responsibilities. Whilst she aims to offer a good service to her clients, she would benefit from spending time attending to her self-care. Considering more closely how she receives, records, stores and destroys client information would help her work. As she uses a computer, instruction in cyber-security and information management would be useful. Nicky seems unclear about the law but must 'give conscientious consideration to the law and any legal requirements' (Good Practice, Point 42). Discussions with her supervisor and engaging with CPD in areas including contracting, confidentiality, third party requests would be invaluable. The development of relevant policies and procedures, probably assisted by her supervisor (and peers if she found them) could certainly help strengthen the work of *NDJ Counselling*. Finally, making herself more familiar with the *Ethical Framework for the Counselling Professions* is an essential part of Nicky's growing competence and ethical practice.

Conclusion

Keeping records that are appropriate, accurate, relevant, lawful and secure is part of the commitment we make to ethical practice. The nature of the work we do means that the information we record about our clients and their lives is often deeply intimate. In this privileged position, practitioners can be supported by ensuring an understanding of the broad nature, complexities, ethical and legal issues involved in 'keeping a record'.

Confidentiality and Record Keeping within the Counselling Professions

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About the author

References

About the author

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