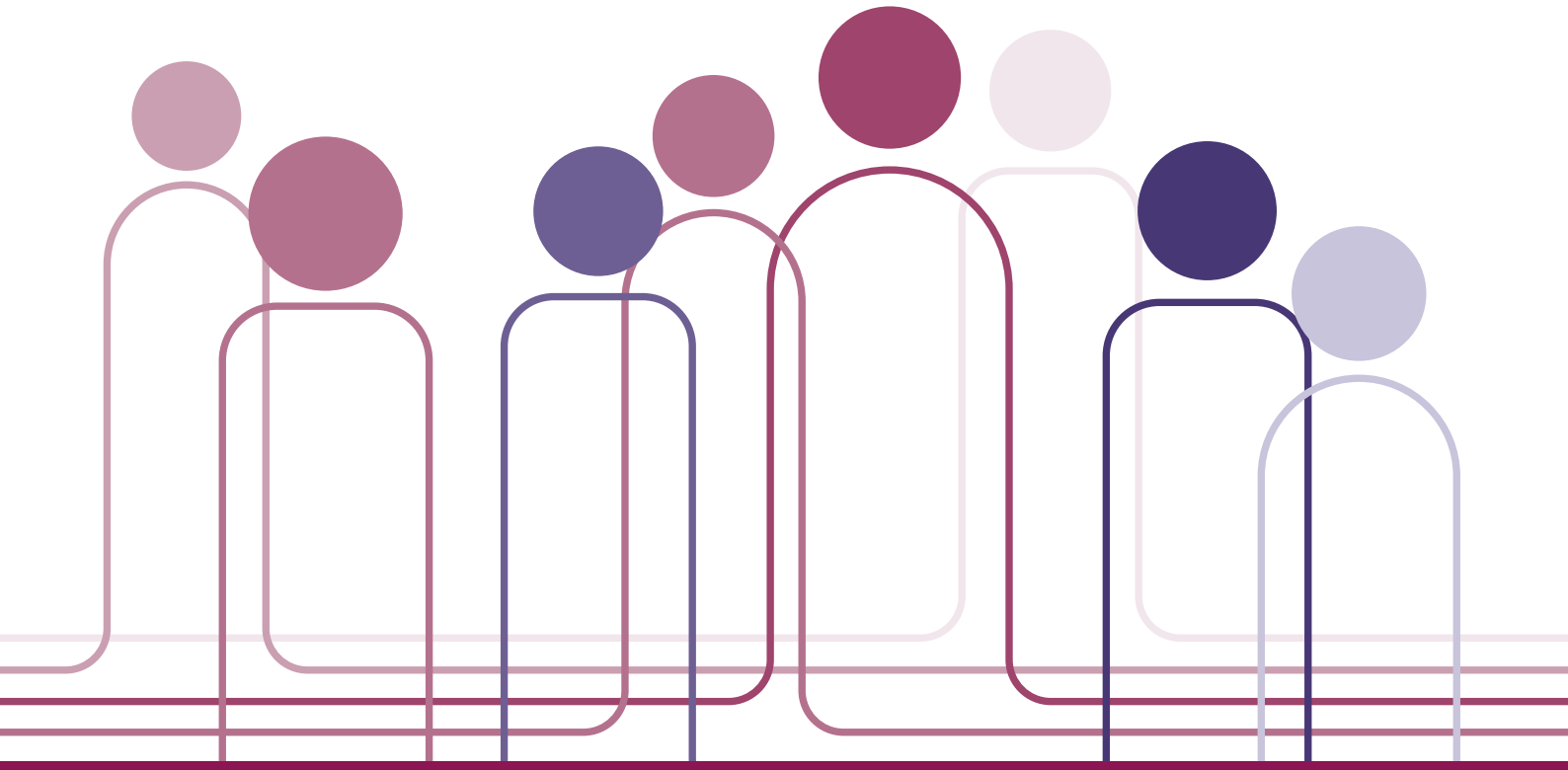
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Managing confidentiality within the counselling professions



Legal Resource

Legal Resource 014

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Context

This resource is one of a suite prepared by BACP to enable members to engage with the current BACP *Ethical Framework* in respect of working with confidentiality and disclosures.

Using the Legal Resources

The membership agreement with BACP establishes a contractual commitment by members to abide by the *Ethical Framework for the Counselling Professions*, which includes a responsibility for members to keep the skills and knowledge relevant to their work up to date. Please note that the *Ethical Framework* (BACP 2018) will be replaced by the new *Ethical Framework* (BACP 2026) on 3 November 2026. Members will then be required to abide by the new *Ethical Framework* (BACP 2026).

The Legal Resources cannot constitute legal advice or guidance in specific cases, nor are they sufficient on their own to resolve legal issues arising in practice. The Legal Resources do not give a full statement of the law. They are solely intended to support good practice by offering general information on legal principles and policy applicable at the time of writing. The Legal Resources are intended for information purposes only and are not a substitute for professional advice. BACP and the author accept no responsibility for and accepts no liability as a result of any person acting or refraining from acting on the basis of the Legal Resources.

Practice issues and dilemmas are often complex, and may vary depending on clients, particular models of working, the context of the work and the therapeutic interventions provided. We therefore strongly recommend consulting your supervisor, and also, wherever necessary, a suitably qualified practitioner or lawyer. Some professional insurers will provide legal advice as part of their service.

BACP and the author make no representation or warranty as to the completeness or accuracy of the information contained in the Legal Resources.

References in this resource were up to date at the time of writing but there may be changes in particular to the law, government departments, government policies and guidance, websites and web addresses. Organisations and agencies may also change their practice or policies, so please be alert for any changes that may affect your therapy practice.

In this resource, the words 'counselling,' 'therapist' and 'therapy' are used to refer specifically to counselling and psychotherapy.

The terms 'practitioner' and 'counselling professional' are used generically in a wider sense, to include the practice of the counselling professions, including counselling, psychotherapy, coaching, professional mentoring and pastoral care.

Introduction

Confidentiality is one of the most fundamental ethical and legal obligations owed by counsellors, psychotherapists, and counselling practitioners to their clients.

The protection of confidential information is supported by a range of ethical and legal frameworks including the common law duty of confidentiality, human rights principles, data protection legislation and professional standards. Together, these frameworks protect both the public interest in ensuring that information is used responsibly and lawfully and individual privacy. Tensions may arise between the need to disclose information in the public interest or for the protection of individuals and guarding the professional contractual and moral duty of confidentiality.

Counselling professionals and therapists provide services that require a considerable degree of personal frankness on the part of those who seek their services. Individuals are unlikely to disclose information necessary for effective therapeutic work unless they have confidence that their personal information will be treated with care and protected from unauthorised disclosure wherever possible. Those using the services of these professionals need to trust that their personal information will be respected, protected from unauthorised disclosure wherever appropriate, and used lawfully.

Information relating to an individual's mental health will ordinarily attract a high expectation of privacy. However, confidentiality is not an absolute duty and its implementation raises complex issues of law and practice. Sometimes, a therapist may be required or justified in sharing client information. In such situations, practitioners must balance competing rights, interests and responsibilities, ensuring that any disclosure is lawful, necessary and proportionate. These questions are often most difficult where a practitioner believes there is a professional responsibility to disclose information but the client does not agree, or where competing rights and duties must be carefully balanced.

It is in these situations that a clear understanding of the law, current ethical guidance and good professional practice is particularly important.

This resource should help you to:

- understand the principles upon which client confidentiality depends
- identify situations where confidentiality may need to be breached
- identify situations where legal or other professional advice should be sought and in which advice would be appropriate
- make appropriate decisions concerning breaching confidentiality that are within the law and comply with BACP's current *Ethical Framework*.

Please see also Legal Resource 069: *Sharing records with clients, legal professionals and the courts in the context of the counselling professions*; and Legal Resource 128: *Working with the Crown Prosecution Service Pre-trial Therapy Guidance (CPS 2022) in therapy with adult and child witnesses in the criminal courts in England and Wales.*

Quick Guide – Where to find information

Question	
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What is the practice and ethical basis for confidentiality?	Part 2
What are the rights of a client in relation to their records?	Part 3
Are there exceptions to keeping confidentiality?	Part 4
What are the rules on capacity and consent for adults?	Part 5-6
What are the rules on capacity and consent for under-18s?	Part 7-9
Making appropriate and ethical decisions and recording breaches of confidentiality	Part 10-11

1 The legal basis for confidentiality in counselling

Legal rights to confidentiality may be enforceable through the courts, including injunctions to prevent or restrict disclosure, damages for breach of contract and compensation in claims arising under the common law, including breach of confidence, misuse of private information and negligence.

The right to confidentiality can arise from:

a. **The common law (law developed through decisions made by the courts)** imposes a duty of confidentiality where information is disclosed in circumstances importing an obligation of confidence, or where a reasonable person would know that the information is confidential in nature. This duty may apply irrespective of whether a contract exists between the parties; for example, it will apply where a therapist acquires confidential information about a third party in the course of their professional work.

   It is not an absolute duty but is based on the recognition that there is a strong public interest in protecting and preserving confidences but may be outweighed in limited circumstances by competing public interests or legal obligations (A-G v Guardian Newspapers Ltd (No 2) [1990] AC 109 [1988] 3 All ER 477).

b. **Statute and regulation**
   including, where applicable, the United Kingdom General Data Protection Regulation (UK-GDPR), Data Protection Act 2018, Freedom of Information Act 2000, Human Rights Act 1998 including Article 8 (right to respect for private and family life).

   Practitioners should also be aware of the Data (Use and Access) Act 2025, which came into effect on 19 June 2025, and is being implemented in stages.

   Readers should consult the latest guidance issued by the Information Commissioner's Office (ICO) and relevant government publications, as the legislative and regulatory framework continues to develop at: https://ico.org.uk/about-the-ico/what-we-do/our-plans-for-new-and-updated-guidance/general-data-protection.

Also, there is new law, the Crime and Policing Act 2026, in particular s. 85 (though not yet in force at October 2026), which regulates the mandatory reporting of child abuse in specified circumstances, and which creates a wide range of new law on disclosures. The Act has received Royal Assent and it will be implemented in a staged process.

c. Contracts: confidentiality obligations may arise through contractual relationships, i.e. legal agreements made between two or more parties, for example:

- counselling professional or therapist and their client
- counselling professional or therapist and their supervisor
- counselling professional or therapist and an agency/organisation
- counselling professional or therapist/agency and statutory or regulatory bodies
- trainee therapist or counselling professional and their training organisation/placement agency/supervisor.

Confidentiality is also part of a therapist's professional responsibilities and duty of care towards a client. In some circumstances, a breach of confidentiality may give rise to legal claims, including claims for breach of confidence, misuse of private information, breach of contract and negligence or other causes of action and enforceable in the law of in the law of tort (or delict in Scotland).

Client records

As counselling professionals, particularly since BACP qualified practitioner members now register voluntarily with the PSA, we have a duty regarding record keeping, reflected in the new *Ethical Framework* (2026), which will come into force on 3 November 2026:

3.2 Keep appropriate records
To achieve this, we must ensure that the records:

a. are factual, adequate and relevant for the type of service offered.

b. are stored securely and comply with the data protection requirements of the country where the record is stored.

c. include all communications, notes and other information held relating to clients or service users working with us within the records we keep of our work.

Appropriate records must be factual, adequate and relevant to the service provided. It is therefore helpful to limit records to what is both appropriate and necessary. The decision about what is appropriate to be included in a client record will take into account the nature, modality and terms of the client work undertaken, and the ethical and legal requirements for processing (includes making, keeping, using and sharing) records. Watch for updates from the Information Commissioner's Office www.ico.org.uk for the latest information on coming new developments in data protection law.

Practice points:

(a) What should we include in a client record?
Section 3.2 of the current *Ethical Framework* confirms that client records include communications, notes and other information held relating to clients or service users working with us. If clients communicate with their practitioner by text, email, phone message, or any other media, the practitioner may need to retain a note of the content of that communication for the client record, if the content is relevant to their client work.

(b) How long to keep a record?
Practitioners sometimes ask about how long they should keep records.

There are so many different options on this – the practitioner's decision may be subject to various legal constraints, government guidance, employer's policies etc, and there is insufficient space to explain in detail here, see part 4 of Legal Resource 071 *Ownership and storage of records* for more information. The salient point is that each client should know how long their records will be kept and have agreed to this before work starts, so the length of time should be clearly specified in the practitioner's Privacy Notice and reflected in the client agreement.

(c) What if no record is kept?
There is a general ethical and professional expectation that records will be kept as appropriate to the service provided.

Note: Practitioners who decide not to keep any records should be aware that the absence of any records will make resolving any disagreements with clients about what has occurred much harder to resolve, and may leave the practitioner unable to successfully defend themselves in any professional conduct proceedings or to provide supported and reliable evidence in any court proceedings related to their therapy practice. Advice from lawyers and insurers consistently supports keeping records.

Pseudonymisation
When considered appropriate and necessary, records may be protected by a degree of pseudonymisation.

An example of pseudonymisation would be where a client's identifying details (such as their name and contact details) are held separately to the client's records, with both sets of information linked with a unique reference number. This will mean the client is not immediately identifiable from either record alone, but they remain identifiable by combining the information held.

Pseudonymised information is therefore regarded as personal data, and subject to the data protection law.

Pseudonymised records will form part of the client record and may therefore be disclosable if client notes are requested where there is a lawful basis for doing so, for example in response to a court order, or under the UK-GDPR. See the Glossary and LR 105 for more detailed explanation.

By contrast, completely **anonymised information** (in which the person concerned is no longer identifiable) ceases to be 'personal data' and falls outside the scope of data protection legislation. As Recital 26 of the UK-GDPR states:

The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person, or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This regulation does not therefore concern the processing of anonymous information, including for statistical or research purposes. (UK-GDPR (26).

Practice Note:

For training, supervision, reflective practices or other professional purposes, some practitioners may wish to write process notes and keep them separately from a client's formal record. In this case, practitioners should be aware that where such notes contain information from which a client can be identified, directly or indirectly, they are likely to constitute personal data and may be subject to legal disclosure requirements. Practitioners should therefore assume that identifiable process notes may need to be disclosed and record only information that they would be prepared to justify professionally and legally. For information to be regarded as anonymised, it is not sufficient simply to remove names and obvious identifiers. The client should not be reasonably identifiable from the information recorded, either alone or when combined with other information likely to be available.

2 The practice basis for confidentiality in counselling

In addition to legal rights and obligations, confidentiality is supported by professional standards, ethical principles and organisational policies.

Concerns about confidentiality may be addressed through complaints' procedures, professional conduct processes, regulatory action, employment procedures or, in some circumstances, legal proceedings. Sources of professional and practice-based obligations include:

a. professional practice values, principles and guidance, for example BACP's current *Ethical Framework for the Counselling Professions (the Ethical Framework)*

b. professional conduct and complaint procedures, for example, those of BACP.

c. agency and organisational policies, practice guidance and codes of conduct.

d. contractual and employment requirements arising from work within agencies, organisations or statutory services.

Where concerns arise about confidentiality, professional complaints or disciplinary procedures may provide a more accessible and less costly route to resolution than court proceedings. Such procedures may also offer opportunities to address professional practice and reduce the risk of recurrence. Mediation or other forms of alternative dispute resolution may provide an effective and satisfactory outcome for those involved.

Practitioners should also be aware that confidentiality related concerns may engage data protection obligations, organisational governance requirements and regulatory expectations in addition to ethical responsibilities.

3 Basic rights of the client

These are:

a. to know the extent and limitations of the confidentiality being offered by the therapist or counselling professional.

b. to be informed about the collection, use, storage, retention and disclosure of their personal information, including the lawful basis on which their personal data are being processed in accordance with UK-GDPR and data protection laws.

c. to be told the circumstances in which the therapist or counsellor may be required or justified in disclosing confidential information and to have an opportunity to discuss these issues with the therapist or counselling professional at the outset of their therapeutic relationship

d. to have a clear therapeutic contract, with terms that they fully understand, had the opportunity to discuss, accept and support

e. to know who will create, maintain, process and have access to their notes and records, how those records will be stored, how long they will normally be retained, and the circumstances in which they may be retained, destroyed or disclosed

f. wherever possible, to be informed when the therapist or counselling professional may have to disclose their confidential information unless there are clear reasons why this would be inappropriate, impracticable or unsafe. Examples may include terrorist-related concerns, certain child protection/safeguarding situations, circumstances that could compromise a police investigation or where the client lacks the capacity to understand and participate in the decision

g. to know what information may be shared, with whom information may be shared and the reasons for sharing the information

h. to access information held about them, subject to any legal exemptions, and to understand the importance of information recorded about them

i. To have their personal information processed in a manner that is lawful, fair, transparent and proportionate.

Please refer to the core responsibilities and ethical principles of the current *Ethical Framework.*

4 Exceptions to the duty of confidentiality

Practitioners should distinguish between circumstances where disclosure is required by law, circumstances where disclosure is authorised by law and circumstances where disclosure may be justified in the public interest. These categories are not interchangeable and each requires careful consideration of the legal basis for disclosure, balancing the proportionality of the disclosure and the client's rights to privacy and confidentiality.

Crime

A counselling professional cannot be legally bound to confidentiality if they come to learn about a crime that they consider needs to be disclosed in the public interest, or to protect individual safety. Courts have concluded that it is defensible to breach confidence, in good faith, in order to assist the prevention or detection of a serious crime (for a definition of serious crime see the part on *Balance of public interest* at (b)). Good faith requires honesty and cogent, reasonable grounds for suspecting or knowing about a crime. However, there is no general duty to report crime except in specific circumstances. See the legal and statutory obligations below, subject to which there is also no general obligation to answer police questions about a client, unless the client consents, or in situations where the client may not have consented, but the police officer has the lawful authority of a court order or statutory authority to require the disclosure of the information.

Where there is no appropriate consent, and in the absence of any other lawful authority, a polite refusal by the practitioner on the grounds of confidentiality is sufficient if this is considered appropriate. The necessary authority may then be sought and provided by the client or by a court. In practice, this would mean that the public authority requiring the information may go and apply for the appropriate court order for disclosure to assist with, say, the investigation of a crime. Note that if a therapist or counsellor deliberately provides misleading information, this may constitute an offence in its own right.

Balance of public interest

In some situations, clients' needs or the public interest in a specific situation may potentially outweigh the general duty of confidentiality.

a. Prevention of serious harm to the client or to others, for example see the decision in the case of *W v Egdell* [1990] Ch.359 where the client, who was a mental health patient, claimed confidentiality had been breached. The court held that though the client's psychiatrist owed a duty of confidentiality to his patient, he had to take into account the public interest. The client was a multiple murderer and the psychiatrist's information was highly relevant to the client's dangerousness. Without that information being available to the authorities, decisions could not properly be made concerning the client, who may have posed a risk of serious harm to the public. Despite the introduction of the Human Rights Act 1998, a case based on similar circumstances would be likely to reach the same conclusions in favour of disclosure.

A disclosure may be justifiable in the public interest where the practitioner is aware of any serious danger to the client, to another, or to the public health and welfare, provided that the practitioner holds a cogent, reasonable belief that the information disclosed is accurate, and that the risk is imminent and that the disclosure would help to prevent or reduce the harm – please see the checklist Risk, referral, and consent: Issues for reflection, and the Disclosure Checklist at 12. For a discussion of the risk of suicide, please see the section 4.3.4 'Clients at risk of suicide or serious self-harm'.

b. The public interest in making a disclosure to prevent, detect or prosecute serious crime may, in some circumstances, outweigh the public interest in maintaining confidentiality. Where a practitioner discloses information in good faith, on reasonable grounds and where disclosure is necessary and proportionate, the law may recognise a public interest justification for the disclosure.

Serious offences such as murder, rape, child abuse, terrorism and offences involving serious harm to individuals or the public are more likely to justify disclosure. Less serious offences may not justify overriding confidentiality on public interest grounds alone.

Any disclosure should be limited to what is necessary for the purpose and the practitioner should be able to explain and document their reasons for that disclosure.

4.1 Statutory obligations to disclose

In some circumstances, the law requires the disclosure of information that would otherwise be confidential. Practitioners should distinguish between disclosures that are mandatory and those that may be justified in the public interest. Where there is uncertainty, legal advice should be sought where possible.

These include (but are not limited to):

The Terrorism Act 2000 imposes a number of duties relating to the disclosure of information connected with terrorism. Under s.38B it is a criminal offence for a person to fail to disclose, without reasonable excuse, any information which they either know or believe might help prevent another person carrying out an act of terrorism or might help in bringing a terrorist to justice in the UK.

Section 39 creates offences related to 'tipping off' by making disclosures to another person that are likely to prejudice a terrorist investigation or interfere with material relevant to such an investigation. Sections 19 and 21A also create offences relating to information about terrorist property and financing.

It is, in our view, unlikely that professional confidentiality, by itself, would constitute a 'reasonable excuse' for failing to comply with statutory obligations under this Act.

The Counter-Terrorism and Security Act 2015 also places 'Prevent' duties on 'specified authorities' set out at Schedule 6, which include reporting obligations. Members working for a specified authority should check to see if there are any specific internal, reporting policies of which they should be aware.

a. **Criminal property, money laundering and proceeds of crime**
   Psychotherapists and counsellors will not usually acquire the kind of information that gives rise to reporting obligations under legislation. However, issues may occasionally arise under, for example, the Proceeds of Crime Act 2002. If in doubt, seek legal advice.

b. **Road traffic offences**
   Under s.21 of the Road Traffic Act 1991 if the police require information about the driver of a vehicle at the time of an offence, it must be disclosed, and failure to do so is a criminal offence.

See *Mawdesley, Yorke v Chief Constable of Cheshire Constabulary, Director of Public Prosecutions* [2003] EWHC 1586 (Admin), [2004] 1 WLR 1035. The police have the right to issue a notice requiring information about the driver of a vehicle, and answers are compulsory. The case of *Hunter v Mann* [1974] 2 WLR 742 concerned a statutory duty to disclose information. Dr Hunter, a GP, was fined £5 for failing to disclose the identity of patients involved in the theft of a vehicle from an East Croydon car park. The thieves had run away from the scene following a traffic accident. Dr Hunter treated them for minor injuries and later refused to disclose to the police who was driving. It was held that the duty imposed by the Road Traffic Act 1972 s.168(2) to give information which may lead to the identification of the driver of a vehicle overrides a doctor's duty of confidence to his patient. D, a doctor, had information which might lead to the identification of the driver of a stolen car which had been driven dangerously. He was required to give that information by a police officer under the Road Traffic Act 1972 s.168(2 but refused on the ground that it had been acquired solely through the relationship of doctor and patient, and to divulge it would be a breach of his professional duty of confidence.

The justices convicted him of breach of the Road Traffic Act 1972 s.168(3). On appeal, the court held, dismissing the appeal, that D was rightly convicted.

If in doubt, seek legal advice.

c. Recovery orders under the Children Act 1989

The Family Court can make a recovery order under s.50 of the Children Act 1989 in relation to a child who is in care, under police protection or subject to an emergency protection order, and who has been abducted, has run away or is otherwise missing.

The court may require any person who has information as to the child's whereabouts to disclose that information, if asked to do so, by a constable or the court, see section 51(3)(c). Failure to comply with the order may constitute the offence of contempt of court.

If in doubt, seek legal advice.

d. Serious Crime Disclosure Orders

Under the Serious Crime Act 2007 (as amended), the courts may, in specified circumstances, make orders requiring the disclosure of information or documents relevant to the investigation or prevention of serious crime. If in doubt, seek legal advice.

e. Female Genital Mutilation

The UK Female Genital Mutilation Act 2003 (FGM Act) is intended to protect girls at risk of Female Genital Mutilation (FGM). See Multi agency Statutory Guidance on Female Genital Mutilation (July 2020).

The Multi agency Statutory Guidance on Female Genital Mutilation (updated July 2020) is issued under Section 5C of the FGM Act. It applies to all persons and bodies exercising public functions in England and Wales.

Practitioners under these duties 'must have regard to it' and should follow mandatory sections unless there is a clear, documented reason not to do so.

Even where a practitioner is not subject to a statutory duty (e.g., in private practice), they should still comply with BACP's current *Ethical Framework*, current government safeguarding guidance, and referral requirements, should a case of FGM be identified.

Where there is a legal duty to report FGM, it is best practice to inform the client (or their guardian) unless doing so could:

- Put the client or another person at risk;
- Prejudice an FGM or criminal investigation; or
- Breach the law.

If prior warning could pose danger, practitioners should act discreetly and seek specialist advice before alerting the client.

All disclosures must be necessary, proportionate, and documented carefully. Relevant government guidance includes *Working Together to Safeguard Children* (England, updated March 2026) and related national resources. For detailed procedures, definitions, and thresholds, see the Multi agency Statutory Guidance on Female Genital Mutilation (July 2020).

For disclosures in other child protection matters, please refer to the separate section below. The law will usually protect someone who discloses confidences in an appropriate, ethical and proportionate response to public duty or a statutory requirement. A practitioner therefore needs to take reasonable care in ensuring the accuracy of what is reported and hold an honest belief in the validity of what they are reporting.

A false accusation (for example a false allegation arising solely from a malicious rumour) that is not honestly believed and/or not made with careful consideration for ethics and law, and which then seriously damages someone's social standing or business, could lead to a claim in court for defamation.

f. requests and statutory requests for access to personal data made under the United Kingdom General Data Protection Regulation (UK-GDPR) and the Data Protection Act 2018. See LR 105: *the United Kingdom General Data Protection Regulation (UK-GDPR) – amendments, legal principles and practice notes for the counselling professions.*

4.2 Court orders

A court may order disclosure of documents or information relating to client work and may require the practitioner to attend court and give evidence, including producing relevant notes, documents and records.

Confidentiality is an important consideration, but it does not create an absolute exemption from disclosure. Where confidential records are sought, the court will ordinarily have considered the balance between the interests of justice and the client's right to confidentiality and privacy. Failure to comply with a lawful court order, or refusal without lawful excuse to answer the questions of the court may constitute contempt of the court.

The duty of confidentiality generally survives the death of a client. However, Coroners have statutory powers to require the disclosure of information relevant to a death investigation or inquest.

Under the Coroners (Inquests) Rules 2013, Coroners will ordinarily disclose relevant material to interested persons, as defined in legislation, subject to any necessary restrictions or redactions.

Paragraph 1 of Schedule 5 of the 2009 Act gives a Coroner power to summon witnesses and to compel the production of evidence for the purposes of an investigation (paragraph 1(2)) or an inquest (paragraph 1(1)) by way of written notice. Practitioners who receive a request from a coroner and who have concerns about relevance, scope or confidentiality may wish to discuss those concerns with the Coroner or Coroner's Officer before disclosure is made.

A court may make an order requiring a witness to attend court and to give evidence – now usually referred to as a witness summons (in the past referred to as a 'subpoena', or 'witness attendance order'). The courts may also issue an order for the production of documents, including counselling or other relevant records.

Failure to obey a court order is regarded in law as contempt of the court, and punishable by a fine, and in some instances by imprisonment.

Therapists may be asked by a court to produce a report relating to work with a client. Where appropriate and practicable, the client's informed consent should be obtained before preparing or disclosing a report. However, disclosure may be required by law or court order irrespective of whether consent is given. The evidence disclosed should only be that which is relevant to the matters before the court.

Once the case is before the court, depending on the type of case, the court has power to control the management of the evidence placed before it, and in exceptional circumstances may make decisions about the evidence, for example, what may be shared with the parties and their representatives, and what may be shared with lawyers alone. For more on this see 4.2.4.

Clients may ask to see the reports written about them and may have rights of access to reports and records concerning them, subject to applicable legal restrictions and exemptions. Whether access should be granted in a particular case will depend on the relevant legal framework, the nature of the proceedings, and any court directions. (See notes below, Bond and Sandhu (2005), and Mitchels and Bond (2021; 2010).

4.2.1 Tribunals

Tribunals are part of the court system in the UK, regulated by the Ministry of Justice. They cover a wide range of case hearings (for example in Asylum support, Employment, Schools Admissions, Finance and Commerce, Health and Care, Intellectual Property, Pensions, Transport and many more). Tribunals are, like the other courts, organised in tiers. The Upper Tribunal hears appeals from the First Tier Tribunal, and other authorities.

The way in which tribunals are run is decided by the *Tribunal Procedure Committee* and in sets of rules. In tribunal hearings, a witness statement is prepared in advance and will form the basis of the evidence at the hearing. The rules of evidence for Employment Tribunals are set out in Rules 31-32 of The Employment Tribunals Rules of Procedure 2013 (as amended); www.gov.uk/government/publications/employment-tribunal-procedure-rules.

Tribunals generally have powers to require the disclosure of documents and to compel witnesses to attend and give evidence.

For Northern Ireland, see The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 at www.legislation.gov.uk.

4.2.2 The Civil Courts: Family court and other divisions of the civil courts:

The Family Court deals with a wide range of matters relating to children and family relationships. Appeals from Family Court decisions may be heard by higher courts, depending on the nature of the case and the level of the original decision.

The Family Court and civil courts increasingly seek to balance the principles of open justice with the privacy rights of children, families, patients and professionals. The court may impose restrictions on access to, use of or publication of, sensitive therapeutic material where this is necessary and proportionate.

Specifically, the courts may order disclosure of therapeutic recordings, reports and other sensitive material where they are relevant to the issues before the court. The court may also impose restrictions on who may access or use such material.

4.2.3 Criminal courts

In criminal proceedings, investigators and prosecutors may seek access to the therapy and counselling records where they consider the material may be relevant to issues in the case. Requests should be considered carefully in light of confidentiality obligations, privacy rights, data protection requirements and applicable criminal procedure rules.

Disclosure should not be assumed to be automatic merely because the request has been made.

4.2.4 Issues regarding the production of counselling records in the courts

The production of counselling records in court will depend on several factors, one of which is the nature of the court proceedings. When considering requests for counselling records, courts increasingly recognise that such records may contain highly sensitive information engaging rights to privacy. The court may therefore consider issues of relevance, necessity, proportionality, redaction, anonymisation and restricted disclosure before determining the extent of any disclosure.

If a therapist is called to be a witness in a specific case, it would be prudent to seek appropriate legal advice or consult a supervisor or practitioner experienced in the relevant area of work. The court will generally consider whether the material is relevant, necessary and proportionate to the issues before it.

The issue of evidence is usually discussed and resolved in one or more pre-trial case management hearings, in which the court may also choose to make directions as to who may see and/or have copies of the therapy records (i.e. an order may include all parties, or possibly just the court and the respective lawyers, or it may grant access to the records to nominated persons, etc).

The parties and the witnesses (i.e. including a practitioner who has been asked to produce their records but who wishes to limit the extent of the records disclosed or limit those who may see the records), should have the opportunity to make representations to the court about access to the records, and about which parts of the records may or may not be relevant.

If a court order is made requiring the attendance of a witness, the witness may be able to claim witness expenses for their attendance. Most therapists will be regarded solely as a witness of fact, and so will not be required to give an opinion.

Expert witnesses may be instructed by the parties or appointed with the court's permission, depending on the nature of the proceedings and the applicable procedural rules. If an expert witness is identified and appointed by the court, a court order will usually specify the range of evidence required from them. An expert witness is usually allowed to sit in court to hear the evidence of others and is permitted to give their professional opinion.

For further details, see the statutes and guidance listed in this resource, Bond and Sandhu (2005), Mitchels and Bond (2021; 2010).

4.3 Discretionary disclosures made in the public interest

Disclosures made in the public interest differ from disclosures required by law. In these situations, the practitioner must exercise professional judgment in deciding whether the public interest in disclosure outweighs the public interest in maintaining confidentiality.

4.3.1 Disclosures to enhance the quality of service provided

Discussion of identifiable client information in the course of counselling supervision, training and research may engage duties of confidentiality and data protection obligations. Wherever reasonably practicable, information should be anonymised or pseudonymised. If a client is identifiable from the information provided or discussed, practitioners should consider whether consent is appropriate, whether another lawful basis applies and whether the proposed disclosure is consistent with professional standards. The public interest in maintaining safe, effective and accountable practice may justify the sharing of relevant client information where appropriate safeguards are in place and disclosures are limited to what is necessary. Practitioners should nevertheless take reasonable steps to protect client privacy and minimise the risk of identification.

4.3.2 Child protection

A 'child' is defined in law as a person under the age of 18. Legislation and statutory guidance place duties on relevant agencies to cooperate in safeguarding and promoting the welfare of children, including the sharing of information where this is necessary to protect children from harm.

The statutory guidance in *Working Together to Safeguard Children* (2026) sets out '...key roles for individuals, organisations and agencies to deliver effective arrangements for help, support, safeguarding, and protection. It should be read and followed by leaders, managers and frontline practitioners of all organisations and agencies as set out in chapter 4.' (para 8). Please watch out for future updates as child law and guidance is a rapidly developing area.

Working Together applies to all organisations and agencies in England who have functions relating to children. Anyone working with children and families should read the latest version of this comprehensive guidance. It applies to all children up to the age of 18 years whether living with families, in state care, or living independently.

Other useful resources are *Department for Education; Information sharing – advice for practitioners providing safeguarding services for children, young people, parents and carers* (updated 2024); *Child abuse concerns: guide for practitioners Department for Education* (updated 2015) and supporting materials. Links to access these government guidance documents online are in the resources list at the end of this resource.

Such guidance will assist practitioners navigating the legal authorities. Scotland and Northern Ireland have separate procedures and guidance. Resources and relevant guidance for Scotland and Northern Ireland are listed in the references and further reading list at the end of this resource.

A referral in a child protection matter may also raise issues of consent.

For instance, adults, children over 16, and in some circumstances children under 16 who are competent to make decisions within the principles of the Gillick case, may be able to refuse to consent to a referral or to co-operate with assessments (see Gillick v West Norfolk and *Wisbech Area Health Authority and Another* [1986] 1 AC 1212; [1985] 3 All ER 402 (HL) [1986] 1 FLR 224).

Therapists working with children and young people should be suitably qualified and experienced and have supervision with a person suitably qualified and experienced in child protection matters.

If there is a concern that a child (or children) may be at risk of serious harm and the therapist does not have the subject individual's consent (or the circumstance does not allow the therapist to seek their consent) to make a referral, and the therapist has no consent from either the child concerned or from a person with parental responsibility for the child, then the therapist must carefully consider all relevant circumstances. This includes balancing their duties of confidentiality and respect for privacy against their safeguarding obligations and the wider public interest.

Where, having undertaken that assessment, the therapist reasonably concludes that disclosure is necessary to protect a child or another person from serious harm, they may decide to make a referral without consent. Reasons should always be recorded.

Those working within government, organisational or agency settings should have appropriate child protection and safeguarding policies and procedures in place to follow, which should assist the decision-making process.

For practitioners who work independently, the decision whether or not it is necessary to make a child protection disclosure in the public interest is likely to be a matter for discussion in supervision, and where necessary, to seek expert professional advice. Advice and information should be available from the legal department of the local authority, local authority social care services, MASH, specialist lawyers (e.g. Children Panel solicitors, the Department of the Official Solicitor, CAFCASS duty officers), and professional organisations (e.g. GMC, BMA, BPS, UKCP and BACP).

Practitioners may also have legal advice included as part of their professional insurance cover. The 'disclosure checklist' below may also be helpful in thinking through these decisions.

4.3.3 Protection of vulnerable adults

Similarly, where a therapist is concerned that an adult is at imminent risk of serious harm they must carefully consider all relevant circumstances, including their duty of confidentiality, the adult's wishes, safeguarding obligations, the rights and welfare of others who might be affected, and the wider public interest. Where, having undertaken that assessment, the therapist reasonably concludes that disclosure is necessary and proportionate in order to prevent or reduce the serious harm, disclosure without consent may be justified. Reasons should always be recorded.

4.3.4 Clients at risk of suicide or serious self-harm

Responding appropriately to suicidal clients and clients who are self-harming, or at risk of self-harming, presents one of the most challenging situations encountered by counsellors (for further discussion, see *Counselling Suicidal Clients* (Reeves, 2010, 2015); (Mitchels and Bond 2021) and refer to other resources on the BACP website).

A therapist who suspects that a client may harm themselves or others, but who does not consent to a referral or disclosure, must carefully consider all relevant circumstances. For example, the method of a proposed suicide may harm others as well as the client.

Considerations include the client's right to confidentiality and autonomy, the therapist's professional responsibilities, safeguarding obligations, the rights of others who may be affected, the seriousness and immediacy of the risk and the potential consequences of both disclosure and non-disclosure. The therapist should also consider the terms of any counselling agreement, privacy notice or contract with the client. This highlights the importance of clearly informing clients at the outset of therapeutic work of the number of exceptional circumstances in which confidentiality may be breached, including disclosure in order to protect the client or others from serious harm.

While clearly informing clients at the outset of therapeutic work of the exceptional circumstances in which confidentiality may be breached will not determine the outcome of any particular case, it may help to ensure that clients are aware of the limits of confidentiality and the circumstances in which disclosure may be considered.

For consideration of criteria for assessment of suicidal risk see Reeves (2010; 2015); and Reeves and Bond (2021: 109-129).

4.3.5 Risk, referral, and consent: issues for reflection

During the decision-making process, it may be helpful for the therapist to discuss with the client, where appropriate, and ideally also consider in supervision, these issues:

- how serious is the degree of risk?
- how urgent is the need for referral?
- does my client have the mental capacity to give informed consent at this moment in time?
- if the client does not have mental capacity to give consent, then what are my professional responsibilities to the client and in the public interest?
- what has the client given me permission to do?

- does that permission include referral or disclosure?
- if I refer, what is likely to happen?
- if I do not refer, what is likely to happen?
- do the likely consequences of non-referral include serious harm to the client or others?
- are the likely consequences of the risk preventable?
- is there anything I (or anyone else) can do to prevent serious harm?
- what steps would need to be taken to avert the risk?
- am I satisfied that any proposed referral/disclosure would be necessary and proportionate in the circumstances?
- have I adequately balanced my duties of confidentiality and respect for the client's autonomy against my safeguarding obligations, the welfare of the client, the rights and welfare of others who may be affected and the public interest?
- if the client has mental capacity, but does not consent to my proposed action (e.g. referral to a GP, social care, police, or other agency), what is my legal and ethical position if I proceed without consent?
- how could the client be helped to understand and accept the proposed actions I may need to take for their protection and/or that of others?

Counsellors' professional responsibilities require them to work within the limits of their competence and expertise. Where those limits are reached, consideration should be given, with the client's consent where possible, to onward referral or consultation with an appropriately qualified professional.

If the client does not consent and there is a concern that the client or others may be at risk of serious harm, the therapist should carefully consider matters, including the factors set out above. The therapist should, where appropriate and possible, seek supervision, and/or consult with their professional organisation and/or obtain legal or other professional advice before deciding whether disclosure without consent is necessary and justified.

The issue of mental capacity, age and the ability to give valid consent (or refusal) are addressed in part 5.

5 Mental capacity and consent issues in information sharing

Explicit and implicit consent

If a client consents to referral on, or to a change in the approach to confidentiality agreed at the outset of the therapeutic relationship, there is generally a lower likelihood of any ground for legal challenge where any subsequent disclosure is made in accordance with the client's informed knowledge and consent. Wherever possible and when appropriate, practitioners should seek the client's explicit and informed consent. Implicit or implied consent may sometimes be relied upon by the practitioner, but it can be uncertain and more difficult to evidence. A client who is anxious and perhaps confused at the commencement of therapy may not later recall discussions with their practitioner about confidentiality or the terms of their therapeutic contract. Practitioners and clients are therefore best protected where the therapeutic contract, privacy notice and informed consent process clearly explain the scope of confidentiality, the circumstances in which information may be shared and any exceptional situations in which disclosure without consent may be considered. Such information should be provided in a form appropriate for the client's needs and held on record.

However, the inclusion of such provisions does not mean that disclosure should occur automatically. In any particular case, the practitioner must continue to exercise professional judgment and consider whether any proposed disclosure is necessary, proportionate and justified in the circumstances, having regard to the practitioner's duties of confidentiality, the client's rights and wishes, any safeguarding responsibilities, the welfare of others who may be affected, and the public interest.

Information sharing in a health team or agency

Consent may be given for others, (e.g. a practitioner working in a healthcare team), to share patient or client information.

This is usually subject to professional codes of conduct and agency/ organisational restrictions.

For example, in working with children and families, guidance made under the Children Act 1989, Children Act 2004 and other relevant legislation may apply; in a GP surgery or hospital setting the GMC, BMA and NMC guidance may apply – for useful references see those listed at the end of this resource. The Caldicott Principles relating to sharing information between agencies were developed by the Caldicott Committee in their *Report on the Review of Patient-Identifiable* Information (DH, 1997).

In 2006, the Department of Health produced the *Caldicott Guardian Manual* (DH, 2010) (updated in 2010 and subsequently amended in 2013 and 2020), see www.gov.uk/government/publications/the-caldicott-principles (issued on 8 December 2020).

These are:

Principle 1 – Justify the purpose(s) for using confidential information

Principle 2 – Use confidential information only when it is necessary

Principle 3 – Use the minimum necessary personal confidential information

Principle 4 – Access to confidential information should be on a strictly need-to-know basis

Principle 5 – Everyone with access to personal confidential data should be aware of their responsibilities

Principle 6 – Comply with the law

Principle 7 – The duty to share information for individual care can be as important as the duty to protect patient confidentiality.

Principle 8 – Inform patients and service users about how their confidential information is used.

Other relevant resources are listed at the end of this resource.

Where information is shared within a healthcare team, agency or multi-disciplinary setting, practitioners should ensure that any disclosure is limited to what is reasonably necessary to achieve the legitimate purpose for which the information is shared.

Decisions about information-sharing should take account of applicable legal requirements, professional obligations, the expectations communicated to the client and the need to balance confidentiality with responsibilities relating to care, safeguarding and the prevention of serious harm.

Adults: mental capacity and consent

A client's ability to give legally valid consent to any medical, psychiatric or therapeutic assessment or treatment, or to enter into either a valid therapeutic contract or a legally binding contract for services, will depend on their mental capacity to make an informed decision.

Mental capacity is a legal concept concerned with a person's ability to make a particular decision at the time it needs to be made. It is generally presumed in law that adults and young people aged 16 and over have the mental capacity and legal authority to make decisions about their medical and healthcare matters and to give or withhold consent.

This presumption may be rebuttable where there is evidence that the individual lacks capacity in relation to the specific decision in question. Capacity may be affected by a range of factors, including mental illness, cognitive impairment, neurological conditions, learning disabilities, or the effects of drugs or alcohol. Practitioners should have regard to the Mental Capacity Act 2005, the Mental Health Act 1983 (as amended by the Mental Health Act 2007) and any Regulations issued under those Acts.

Relevant publications, government guidance and websites are listed at the end of this resource.

6 Assessment of mental capacity

Assessment of mental capacity is decision-specific and time-specific. A person should not be treated as lacking capacity merely because they make a decision that others may consider unwise. Assessment of capacity depends on a person's ability to:

- take in and understand information relevant to the decision, including the reasonably foreseeable consequences of deciding one way or another, or of making no decision at all
- retain the information long enough to make an informed decision
- use and weigh up the information provided as part of their decision-making process, and
- communicate their decision, by any appropriate means.

Where there is reason to doubt a client's capacity in relation to a particular decision, therapists should consider whether specialist assessment, supervision, consultation or legal advice may be required.

Adults can appoint another person/persons to act on their behalf under a Lasting Power of Attorney for Health and Care decisions. Subject to the scope of the authority granted, that person(s) may make decisions about their health and welfare where the client lacks capacity to do so.

Therapists may be asked to assist clients in developing plans or expressing their wishes for present or future healthcare arrangements. While they have mental capacity, some clients may wish to make an 'advance decision' about the forms of medical treatment they may (or may not) wish to receive should they later lose capacity to decide for themselves.

Advance decisions refusing treatment may be legally binding where the requirements of the Mental Capacity Act 2005 are satisfied: see ss.24-36.

For more information on legal issues relevant to mental capacity please refer to LR 029 Mental health law and see also the Department of Health (2020) *Mental Capacity Act 2005 Code of Practice*, and Department of Health (2015, updated 2017) *Mental Health Act 1983: Code of Practice*.

7 Children and young people under the age of 18: UK-GDPR and consent issues

Practitioners working with children and young people will need to have valid consent to enter into the therapeutic contract. The legal issues surrounding work with children and young people are complex because of the requirement to provide services for children in need and to protect children from abuse. It is important for practitioners to be clear on the issue of consent.

What constitutes valid consent in law for medical examination or treatment for children and young people under the age of 18?

Such consent is legally valid if it is with the consent of:

- a person with parental responsibility for the child
- the child, if aged over 16 (under the Family Law Reform Act 1969 s.8(1))
- a child aged less than 16 years, if they have sufficient age and understanding of the issues involved and the consequences of consent (i.e. the child is 'competent' as defined in *Gillick v West Norfolk and Wisbech Area Health Authority and Another* [1986] 1 AC 1212, [1985] 3 WLR 830, [1986] 1 FLR 224)
- a direction of the High Court.

Practitioners may be asked to carry out an assessment with a child or young person and then to provide a report and perhaps also to attend court to give evidence.

In the case of child protection or family conflict, for example care proceedings or contested contact matters, one or more of the parties may disagree with the assessment and require a second opinion. Repeated medical and psychiatric examinations for forensic purposes can cause a child unnecessary stress.

The court can regulate such examinations and make appropriate directions, which may nominate the practitioner(s) to carry out the examination or assessment, the venue, those to be present, and those to whom the results may be given. Breaches of these rules are viewed seriously, and any evidence obtained without compliance with the rules may be disallowed in court.

Note: Under the United Kingdom Data Protection Regulation (UK-GDPR) and the Data Protection Act 2018, the provisions regarding children and consent are clarified, for details please see LR 105, the Information Commissioner's Office website at https://ico.org.uk and part 11. Also, under the UK-GDPR and the Data Protection Act 2018, there are special provisions for consent relating to children receiving certain online services, *with a specific exception for children receiving counselling and psychotherapy services*, for details please see LR 105 and part 11.

Not all parents have the power to make decisions for their children. The ability of a parent, or anyone else, to make a decision for their child depends on whether they have 'parental responsibility', which is the legal basis for making decisions about a child, including consent for medical or other therapeutic treatment.

8 Parental responsibility

Parental responsibility is defined in the glossary in this resource. Every mother (married or not) has parental responsibility for a child born to her; every father who is married to the child's mother at the time of or subsequent to the conception of their child automatically has parental responsibility for their child, which may be shared with others.

The married father and mother's parental responsibility will be lost only by death or adoption or their child attaining the age of 18 (see section 91(7) and (8) Children Act 1989 and also *Re M (A Minor) (Care Order: Threshold Conditions)* [1994]).

Unmarried fathers may currently acquire parental responsibility for their biological child in one of several ways, including:

- marrying the child's mother
- being named as the father with the mother's consent on the child's birth certificate
- entering into a written Parental Responsibility Agreement with the child's mother
- various court orders.
- Parental responsibility may be acquired by other people in a variety of ways, subject to legal conditions, including:
- adoption
- parental responsibility agreement by parent(s) of child with married partner or civil partner
- various court orders.

Note: These lists are by no means exhaustive, (for more information see Hershman and McFarlane; Mahmood and Doughty 2019).

See the Children Act 1989 as amended, section 4. It is only those who have acquired parental responsibility through one of the methods laid out in section 4, 4ZA and 4A who can have that parental responsibility revoked by court order, with the exception of an adoption order, which will revoke all previously existing parental responsibility in relation to the child. For an exploration of the law, see the Court of Appeal decision in the case of *Re D (A Child) [2014] EWCA.*

Local authorities may acquire parental responsibility for a child through a Care Order made under the Children Act 1989.

9 Making a decision about breaching confidentiality

In each case where a practitioner considers breach of confidentiality, it is necessary to be able to justify the action both to ourselves and to others if the decision is challenged. There are no hard and fast rules here; each decision has to be made on its own merits. Practitioners need to consider the reliability of their information, and all the ethical, legal and practical factors relevant to the situation. For example, it is helpful to consider what may happen to all the parties concerned if a disclosure is made, and also to assess the likelihood of serious harm if a disclosure is not made. The Disclosure Checklist at 11 may be a helpful resource for discussion and reflection.

It is wise to be cautious in making disclosures of confidential information until sure of the legal and ethical basis for the disclosure. Where appropriate, consult your supervisor and/or seek legal or other professional advice from a person with the relevant experience and expertise. As a matter of good practice, it is advisable to take all issues of potential breach of confidentiality to supervision, whenever possible, and to discuss them fully and openly with the supervisor.

It is also important to consider whether it is legal, ethical and safe, to discuss a disclosure with the client in advance. There are situations discussed earlier in this resource in which it may be illegal or unsafe to warn the client or others of an impending disclosure, for example where statute forbids us to do so, or situations where warning the client or others in advance of disclosure may impede a police or safeguarding investigation, or may put a child or others at risk.

10 The impact of the United Kingdom General Data Protection Regulation (UK-GDPR) on confidentiality and safeguarding

The Information Commissioner's Office (ICO) is currently in the process of updating its website and guidance in response to the Data (Use and Access) Act 2025. Practitioners should meanwhile visit the website www.ico.org.uk to check that their information is up to date.

Practitioners should be aware that data protection law does not prevent the sharing of information where there is a lawful basis for doing so. The UK-GDPR and the Data Protection Act 2018 are intended to ensure that personal information is handled lawfully, fairly and transparently. They do not create an absolute duty of secrecy, nor do they prevent disclosures that are necessary to protect individuals from serious harm or to fulfil safeguarding responsibilities.

Decisions about the collection, use, retention and disclosure of personal information should therefore be considered alongside therapists' ethical duties of confidentiality, their contractual commitments to clients, any statutory safeguarding obligations and the rights and welfare of all those who may be affected.

Where disclosure is being considered without a client's consent, practitioners should carefully assess:

- the purpose of the proposed disclosure
- whether there is a lawful basis for processing and sharing the information
- whether disclosure is necessary to achieve that purpose
- whether the proposed disclosure is proportionate to the identified risk
- whether the same objective could be achieved through less intrusive means
- the likely impact of disclosure and non-disclosure on the cx others who may be affected
- any safeguarding duties, legal obligations or public interest considerations that apply.

Practitioners should record the factors taken into account and the reasons for their decision, particularly where sensitive personal data are disclosed without consent.

Key terms related to the UK's data protection regime, include:

- Consent – Anyone relying on consent to process the personal data of another individual (the data subject) must ensure that the data subject's consent was a 'freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she by statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.' Asking a data subject to tick a box agreeing to a general or vague statement is unlikely to be sufficient evidence of consent.

- Data subjects have the right to be informed about how you are using or processing their personal data and should be provided with a 'fair processing notice' (typically given through a privacy notice) meaning all data controllers must provide more detailed information to data subjects about how their data will be processed.

- Data breach notification – the Information Commissioner's Office (ICO) must be notified about any breaches which may pose a real and serious risk to the rights and freedoms of individuals, in line with their prescribed timescales.

- Fines – the ICO has the authority to impose fines on organisations and individuals, depending on the nature, gravity and duration of the infringement.

- Data subjects' rights – these include the right to be forgotten, to correct data which are wrong or to restrict certain processing, and the right for data subjects to ask for a copy of all of their personal data so that they can be sent to another data controller (known as 'data portability'). Data subject access requests must be responded to, typically within a month and without a requirement to pay a fee, unless the request is 'manifestly unfounded or excessive'.

- Data protection officers – some data controllers and processors are required to appoint data protection officers (DPOs) to oversee their data processing activities.

  There may be further changes, so practitioners are advised to check the Information Commissioner's website www.ico.org.uk at regular intervals for updates on the operation of the UK-GDPR and other legislation as it comes into force.

Special category data

Much of the information processed by counsellors and psychotherapists will constitute 'special category personal data' under the UK-GDPR. This category includes information concerning an individual's physical or mental health, racial or ethnic origin, religious or philosophical beliefs, sexual orientation and other particularly sensitive information.

The processing of special category personal data requires both a lawful basis under Article 6 UK-GDPR and a separate condition for processing under Article 9 UK-GDPR. Explicit consent may provide such a basis in some circumstances, but practitioners should be aware that other legal grounds may also apply, including the provision of health or social care, safeguarding, substantial public interest conditions, compliance with legal obligations, or the protection of vital interests where appropriate.

A therapist will need to comply with the UK-GDPR in relation to entering into a contract for services with any person and will need to consider:

- what information must be provided to that person before any services are provided
- how personal data and, in particular, any special category data that the therapist holds are processed and stored
- what additional security measures should be implemented to ensure the security of personal data processed by the therapist.

A clear privacy notice and counselling agreement play an important role in promoting transparency and trust. Clients should be informed, in language appropriate to their age, capacity and circumstances:

- what information will be collected
- why it is being collected
- how it will be used and stored
- who may have access to it
- how long it is likely to be retained
- the client's rights under data protection legislation and
- the circumstances in which confidentiality may be limited, including safeguarding concerns, legal obligations, court orders, prevention of serious harm, or disclosures otherwise justified in the public interest.

Explaining these matters at the outset of the therapeutic relationship does not remove the need for a case-specific assessment if disclosure later becomes necessary. However, it may assist clients to understand the limits of confidentiality and reduce the risk of future misunderstanding.

Record keeping

The UK-GDPR's accountability principle requires practitioners not only to comply with data protection obligations but also to be able to demonstrate that compliance. Therapists should therefore maintain appropriate records concerning:

- the lawful basis relied upon for processing personal data
- privacy information provided to clients
- data retention arrangements
- decisions concerning information-sharing
- safeguarding referrals
- disclosures made without consent and
- the reasons supporting significant decisions affecting confidentiality.

Recording the rationale for important decisions may assist practitioners in demonstrating compliance with both legal and professional obligations and may provide valuable evidence should concerns subsequently arise about the handling of confidential information.

There is always a need to consider the differences between disclosures made for safeguarding purposes, (see 10.a) the ICO *'10-step guide to sharing information to safeguard children'*) and disclosures which may be made or withheld in response to subject access requests about children's data (see 10.b) the *ICO Guidance on Exemptions*).

Practitioners should be aware of certain specific legal safeguards concerning sharing information relating to child abuse, child protection issues and other information that, if disclosed, may cause a risk to the child or others. Also see the data protection law and guidance in 'References and further reading' at the end of this resource.

The ICO publishes guidance for organisations and the public on children and privacy of information. See https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources.

10 a) ICO guidance A 10-step guide to sharing information to safeguard children

A 10 step guide to sharing information to safeguard children is available at: https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-sharing/a-10-step-guide-to-sharing-information-to-safeguard-children.

Note: due to the Data (Use and Access) Act 2025, amendments are in the process of being made to the ICO guidance. This ICO guide is not intended to tell practitioners how to safeguard children, but to give practical advice on data protection as part of the safeguarding process. It states that:

'Sharing information to safeguard children (persons under the age of 18) includes:

- preventing harm
- promoting the welfare of a child and
- identifying risk in order to prevent harm (especially helpful where the risk may not be obvious to a single person or organisation).'

The 10 steps outlined are helpful in thinking through safeguarding issues, discussion of practice safeguarding issues in supervision, and ethical and legal decision- making.

10 b) Exemptions to the right of access to records under the UK-GDPR and Data Protection Act 2018 as amended by the Data (Use and Access) Act 2025

The ICO Guidance to UK-GDPR Exemptions is essential reading for all practitioners. It sets out a full list of the situations where client information may have special protection from disclosure under the UK-GDPR and the Data Protection Act 2018.

Note: The current "exemptions" are listed by the ICO at https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/exemptions/a-guide-to-the-data-protection-exemptions but are subject to change because of new legislation. The Data (Use and Access) Act 2025, which came into force on 19 June 2025, and will be implemented in a staged process. For details of its progress, see the government factsheets at www.gov.uk/government/publications/data-use-and-access-act-2025-factsheets/data-use-and-access-act-factsheet-uk-gdpr-and-dpa. The ICO will be publishing guidance on the impact of the new law, and for progress, see https://ico.org.uk/about-the-ico/what-we-do/our-plans-for-new-and-updated-guidance/general-data-protection.

Under these exemptions, which apply to data held about children and vulnerable adults, in the circumstances outlined in the ICO guidance, data controllers may refuse disclosure of information when a subject access request (SAR) is made about the data subject where the potential result of that disclosure could cause serious harm to the physical or mental health of the data subject or another individual (e.g. in child protection, medical, social work or educational situations).

They may also refuse an SAR made by those with parental responsibility for a child who is the data subject, or by those with legal responsibility for a vulnerable adult, where that data concern information about child abuse, as defined in the Data Protection Act 2018.

Note: Some decisions may be made by the counselling practitioner (e.g. protection of 'child abuse data'); while others (such as the 'serious harm test' cases in health care, social work and education) may require additional support. It is important to read the *ICO Guidance on Exemptions* and be aware of the circumstances in which you may refuse a data access request in the context of your therapy work, and the additional circumstances in which your decision may need the support of a health professional, or other appropriate authority.

Child abuse data. The *ICO Guidance on Exemptions* cites Part 5 of Schedule 3 of the Data Protection Act 2018 – this provision is intended to protect the confidentiality of child abuse data where disclosure is not in the best interests of the data subject, by allowing the refusal of a data subject access request made by either a person with parental responsibility for the child; or made by those with legal responsibility for a vulnerable adult. 'Child abuse data' are defined in paragraph 21(3) and (4) of Schedule 3, Part 5 of the DPA 2018 – 'Child abuse data' are personal data consisting of information as to whether the data subject is or has been the subject of, or may be at risk of, child abuse.

(4) For this purpose, 'child abuse' includes physical injury (other than accidental injury) to, and physical and emotional neglect, ill-treatment and sexual abuse of, an individual aged under 18.

Health, social care, and other data. Please refer to the *ICO Guidance on Exemptions* for details, and if in doubt, seek legal or other appropriate advice.

The ICO guidance recommends that each decision concerning a potential exemption under the UK GDPR and the Data Protection Act 2018 should be considered on a case-by-case basis.

Certain specific exemptions listed in the ICO guidance are particularly relevant to counselling practitioners.

These exemptions can apply if a subject access request for data is received, to provide exemption from the UK-GDPR's provisions on the right of access (i.e. to enable the practitioner to refuse access to data if they would be likely to cause serious harm to the *physical or mental health* of any individual. This is known as the 'serious harm test' for health, social work or education data. This exemption can only apply in England, Wales and Northern Ireland. It cannot apply in Scotland.

It will be seen from the *ICO Guidance on Exemptions* that some of the 'serious harm test' exemptions set out in the Data Protection Act 2018 require that refusal of subject access requests should be made or supported by a registered 'health professional' or 'social work professional' (defined in the DPA 2018 section 204), and if this applies, check whether you are included in this definition. The HCPC maintains a list of registered practitioners, see the HCPC website at www.hcpc-uk.org, and see also the NHS Register of suitably qualified persons at www.england.nhs.uk/ahp/role: the NHS Register includes: 1. Art therapists, 2. Drama therapists, and 3. Music therapists.

11 Disclosure checklist

It may help therapists in the decision-making process about sharing information to consider these points. This should not be taken as exhaustive and each case should be dealt with on its own facts.

1: Legal issues:

- What are my duties of confidentiality in this situation? (If unsure, check with the government websites – the ICO has a self-assessment system at www.ico.org.uk) , The self-assessment tool is available at https://ico.org.uk/for-organisations/advice-for-small-organisations/getting-started-with-gdpr/assessment-for-small-business-owners-and-sole-traders.

- Does the information constitute personal data, special category data or confidential information?

- Is the subject data held or processed in a way that means the Data Protection Act 2018, the United Kingdom General Data Protection Regulation (UK-GDPR), the Data (Use and Access) Act 2025, and/or the Freedom of Information Act 2000 (FOIA) applies?

- Have I identified the lawful basis for processing and, where applicable, a lawful basis for sharing the information?

- If 'special category data' are involved, have I identified the additional condition required for processing disclosure?

- Does the proposed disclosure comply with the data protection principles, including lawfulness, fairness, transparency, purpose limitation, data minimisation and security?

- Is the proposed disclosure necessary for the purpose identified?

- Is the proposed disclosure proportionate to the issue, risk or concern under consideration?

- Am I proposing to disclose only the minimum information reasonably necessary for that purpose?

- Have I considered whether the same objective could be achieved through less intrusive means?

- Is the information confidential? If so, do I have the client's informed consent to disclose it? Does the client have capacity to give informed consent? If no, is there another legal or ethical basis that may permit or require disclosure?

- What information did I provide to the client regarding confidentiality and its limits at the outset of therapy? What does the counselling agreement, privacy notice, any relevant policies/guidance say about disclosure in these circumstances? Is there any ICO guidance I can refer to?
- What specific legislation applies to the circumstances? Is there a statutory duty requiring or permitting disclosure?
- What rights, if any, are in conflict? How should they be balanced in the circumstances?
- Am I acting consistently with my professional code of ethics? If applicable, is disclosure compliant with the Caldicott principles and guidance?
- Have I consulted appropriate supervision or legal/professional advice, where necessary?
- Have I recorded the legal basis for your decision, recorded the factors considered, alternatives explored and reasons for my conclusion?

2: Decision-making about sharing information

- What are my duties of confidentiality in this situation?
- Have I identified the legal basis for sharing the information?
- What information was provided to the client at the outset regarding the limits of confidentiality, including any counselling agreement, privacy notice or contract?
- Does the proposed disclosure align with those previously explained limits of confidentiality?
- Is disclosure necessary to achieve the intended purpose, or could that purpose reasonably be achieved by less intrusive means?
- Is the proposed disclosure proportionate to the level of risk or concern identified?
- Have I considered the interests of all those who may be affected by the disclosure, or non-disclosure?
- Am I proposing to disclose only the information required for the purpose identified?
- Have I considered whether anonymised or partially anonymised information could be shared instead?

- Have I considered obtaining supervision, legal or other professional advice, or consultation with an appropriate safeguarding lead where appropriate?
- Is the information founded on observed fact or from a reasonable and/or truthful and reliable source?
- Does the information stand alone, or is it supported by any other corroborative data? If unsupported, should it nevertheless be relied upon?
- Is there a formal legal requirement to share this information, for example a statutory duty or a court order?
- Is there a statutory requirement or other legal directive which limits or forbids warning the client or others about an impending disclosure (for example in terrorist activities)?
- What is likely to happen to the client and others if a disclosure is made?
- Would advance warning of a disclosure place someone at risk?
- What is the likelihood of serious harm in this case?
- If I refer/disclose this information, what is likely to happen as a consequence?
- If I do not refer, would the likely consequences of non-referral include the risk of any serious harm to the client or others?
- If so, are the likely consequences of non-referral preventable? What would have to happen to prevent or mitigate the risk of serious harm to my client or others?
- Is there anything I (or anyone else) can do to assist in preventing this harm to my client or others?
- What steps would need to be taken to implement such assistance?
- How could the client be helped to accept assistance/or to support the proposed action?
- What is the purpose of sharing the information?
- If the information concerns a child, young person, or vulnerable adult, is sharing it in their best interests?
- Does my client have the mental capacity to give explicit informed consent (or refusal of consent) at this moment in time?

- If the client does not have mental capacity to make their own decisions, then what are my professional responsibilities to the client and in the public interest?
- If the client has mental capacity to make the decision and does not consent to my proposed action (e.g. referral to a GP, or to the police, or to social care services, etc.), have I carefully balanced the client's wishes and confidentiality rights against my safeguarding duties, legal obligations, risks to others and public interest considerations which might justify disclosure without the client's consent?
- Am I acting according to the guidelines of BACP's current *Ethical Framework*?
- If working in the health community, is disclosure compliant with the Caldicott principles and guidance?
- Is there specific government guidance that might apply to this client, or to their situation, and does that guidance apply to this situation for me/my client/my practice?
- Is there information in the BACP safeguarding page in the Ethics Hub that would be of assistance to me?

3: When to share information – is this the right time?

- Is there a risk of serious harm?
- Is this serious harm imminent?
- Is there anything I (or anyone else) can do to assist in preventing this harm to my client or others?
- What steps would need to be taken to implement such assistance?
- How could the client be helped to accept assistance/or to support the proposed action I may need to take?
- Is there time to try to avert the harm, or do I need to disclose immediately?
- Is immediate disclosure required, or is there sufficient time to seek supervision, specialist advice, legal advice or further information?
- Has the seriousness and immediacy of the risk been adequately assessed?
- Have I considered whether delay could increase the risk of harm?

4: Sharing information with the right person/organisation

It is important to give information to the appropriate person or agency with reference to the need. Typically, this will be someone who has the power or necessary contacts to enable them to act quickly to avert or minimise the risk of serious harm, or to step in and prevent the harm happening. The client may have given information in the course of the counselling or psychotherapy, which will assist the practitioner in identifying the right person to approach for help.

In the case of safeguarding and the protection of children and vulnerable adults, there may be organisational policies and procedures in place, which should be followed by the practitioner.

- Is the proposed recipient the person or organisation best placed to take appropriate action?
- Does the recipient have a legitimate need to know this information?
- Will the recipient be able to protect the information appropriately and use it only for the purpose for which it is disclosed?

5: Presenting information in an appropriate way

- Have I limited the disclosure to the minimum information reasonably necessary to achieve the purpose of the disclosure?
- Have I distinguished clearly between fact, observation, professional opinion and third-party information?
- Is the information accurate, relevant and up to date?
- If working in the health community, is disclosure compliant with the Caldicott principles and guidance?
- If the therapist is unfamiliar with the practice of the person or agency receiving the information, have I asked how the information will be protected or treated in advance of disclosing it?
- Have I marked written or emailed communication 'Confidential' or 'In confidence'? If I am speaking with someone, have I made a clear statement that what is being disclosed is confidential?
- Is it appropriate to inform the client? Some exceptions to informing the client include where this:

  - is illegal (tipping off), or

  - is likely to cause or increase any risk of harm to the client or others, or

  - may prejudice a police or inter-agency investigation of a serious crime.

6: Recording information sharing

If sharing the information is necessary and appropriate, limit the information disclosed to the minimum necessary in order to avert the risk, and make a note as soon as possible of the following:

- the purpose of the disclosure
- the date of providing the information
- to whom the information is given
- the content of the information shared
- the method of disclosure or referral
- whether consent was given (and by whom)
- if the disclosure is made without consent, record the reasons why this decision was made
- the legal and professional basis relied upon
- whether alternative courses of action were considered and if so, why they were rejected
- the factors considered when balancing the rights of all involved
- any supervision, safeguarding, legal or professional advice obtained before making the decision.

The Disclosure Checklist above is adapted and updated from the original in (Mitchels and Bond 2021).

For writing reports, see LR 083 *Writing reports and giving evidence in court.*

For sharing information with other professionals and the courts, see LR *069 Sharing records with clients, legal and other professionals and the courts in the context of the counselling professions.*

12 Conclusion

This resource aims to provide a basic outline of the main issues of law and practice relevant to confidentiality in relation to therapeutic practice. It cannot provide a comprehensive or definitive statement about a constantly changing area of law.

When working with a child client, consideration of safeguarding issues is part of the practitioner's duty of care to their client, and so, where there is a risk of serious harm in any form to a child, practitioners may need to consider making a disclosure to safeguard the child, and where necessary, should consult their supervisor, or an appropriate professional, and consider the issues in the Disclosure checklist.

Practitioners faced with dilemmas regarding confidentiality need to think through what is to be disclosed, who requires the information, why disclosure is necessary, to whom the information should be given, and the most appropriate method of disclosure. We hope the Disclosure checklist will assist practitioners to address the salient issues in making their decision.

It is increasingly important for practitioners and organisations providing counselling services to develop clear policies and procedures regarding confidentiality, disclosure and data protection, which should include how they would make decisions to prevent or avert risk of serious harm.

To know how to act, practitioners should discuss in training and in supervision the legal requirements of consent and confidentiality. Practitioners then need to consider how they will contract with clients and others regarding the boundaries of confidentiality, and how they will handle those situations in which it may become necessary to release information under the law, for example terrorism, FGM, or in response to court orders.

They also need to understand where there is a need to disclose information in the public interest, possibly without client consent, for example, where there is a real and imminent risk of child abuse, suicide, or any other risk of serious harm to the client or to others.

See also Legal Resources 030 *Safeguarding vulnerable adults in England and Wales;* 031 S*afeguarding children and young people in England and Wales;* 002 *Safeguarding vulnerable adults in Scotland;* 053 *Understanding the children's hearing system in Scotland;* 026 *Counselling children and young people in school contexts in Scotland;* 052 *Understanding child protection in Scotland.*

Anyone with concerns about confidentiality is encouraged to discuss the matter in supervision and, wherever necessary, to seek appropriate professional assistance, including legal advice.

13 Glossary of terms

Anonymised data
The removal of any information that would allow a person to be identified or identifiable by any means from what is being communicated. Failure to anonymise adequately within the counselling professions can lead to a breach of trust with the person concerned and cause harm resulting in significant embarrassment, anxiety or distress. Where there is any uncertainty about whether anonymisation will protect someone's identity, it is ethically and legally good practice to seek that person's explicit consent to use their information.

Anonymisation is the process of removing or altering identifying information so that an individual can no longer be identified, either directly or indirectly, from the information itself or in combination with other information reasonably likely to be available. Information that has been effectively anonymised is not personal data for the purposes of the UK GDPR.

Note: Anonymisation should be distinguished from pseudonymisation (see definition below).

Child Abuse Data
'Child abuse data' is defined in paragraph 21(3) and (4) of Schedule 3, Part 5 of the Data Protection Act 2018 –

'(3) "Child abuse data" are personal data consisting of information as to whether the data subject is or has been the subject of, or may be at risk of, child abuse.

(4) For this purpose, "child abuse" includes physical injury (other than accidental injury) to, and physical and emotional neglect, ill-treatment and sexual abuse of, an individual aged under 18.'

Confidentiality
A wide-ranging ethical and common law, legal duty to protect information disclosed within a relationship of trust and confidence. A duty of confidentiality is not absolute and may, in limited circumstances, be outweighed by legal requirements, safeguarding responsibilities, the prevention of serious harm, court orders, or overriding public interest considerations. Any decision to disclose confidential information should be based on a careful assessment of necessity, proportionality and the circumstances of the particular case.

Circle of confidentiality
A group of people sharing confidential information with the client's consent, for example a healthcare team or a counselling organisation with group supervision.

Client records
Generic term that includes all notes, records, memoranda, correspondence, photographs, artefacts and video or audio recordings relating to an identifiable client, whether factual or process related, and in whatever form they are kept.

On a practical level, all practitioners who keep paper records are strongly recommended to keep them as a logical and orderly filing system for their client records for ease of use and to deliver the best possible service. This will be a 'filing system' that falls within the UK-GDPR definition, and therefore the data protection legislation will apply to them.

See UK-GDPR Art 4 (6):

'(6) "filing system" means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis.

Note: There is therefore a strong legal and ethical expectation that appropriate records will be kept. Practitioners have been criticised in court and in complaints proceedings for failing to keep appropriate and adequate records.

Consent
A voluntary, informed and specific agreement by a person with the capacity to make the relevant decision. Consent may be express or explicit, communicated orally, in writing, or by another clear affirmative act. It should be freely given and capable of being withdrawn. Consent may sometimes be implied from the circumstances, but implied consent is generally insufficient where the law or professional guidance requires explicit consent, including for many uses of personal data under the UK GDPR.

'Data Controller' is defined in the UK-GDPR Art 4 (7) as:

> *(7) 'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.*

'Data Processor' is defined in the UK-GDPR Art 4 (8) as:

> *(8) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.*

Examples:
A therapist working as a sole trader, at home, or renting a room from which to work, is likely to be both a data controller and a data processor.

An organisation or agency which makes the decisions about the purpose and means of processing the data may be a data controller, and a therapist who is employed by that organisation or agency, or working as a volunteer for it will be a data processor.

Duty of confidence
A legal obligation to keep information confidential where it was obtained in circumstances giving rise to reasonable expectation of privacy or confidence.

The duty may arise through professional relationships and it continues after the therapeutic relationship has ended unless a lawful basis for disclosure exists.

'Gillick competence'
A term referring to the capacity of a child under the age of 16 years to make their own decisions, as defined in the case of *Gillick v West Norfolk and Wisbech Area Health Authority and Another* [1986] 1 AC 1212, [1985] 3 WLR 830, [1986] 1 FLR 224. The child's ability to make each decision is dependent on their age and level of understanding; the nature of the decision to be made, and the information given to the child to enable them to understand the implications of their situation and the consequences of the decision to be made.

Healthcare team
The healthcare team comprises the people providing clinical services for each patient and the administrative staff who directly support those services.

Mental capacity
A legal concept concerned with a person's ability to make a decision at the time it needs to be made.

Parental responsibility
The legal basis for decision making in respect of children under the age of 18, created by the Children Act 1989 and defined in section 3(1) as 'all the rights, duties, powers, responsibilities and authority which by law the parent of a child has in relation to a child and his property'. More than one person can have parental responsibility for a child at the same time.

It cannot be transferred or surrendered, but aspects of parental responsibilities can be delegated (see section 2(9) of the Children Act 1989).

Patient-identifiable information
Facts or professional opinions about a client or patient learned in a professional capacity and from which the identity of the individuals concerned can be identified.

Personal data
Personal data means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the controller.

Processing
'Processing' is defined in the GDPR Art 4 (2) as:

> *(2) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. (UK-GDPR Art 4 (2))*

Pseudonymisation
"The processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;" (GDPR Article 4(5)

Public interest
A legal and ethical concept referring to the interests of society, or of individuals within society, that may justify action which would otherwise be inappropriate.

In the context of confidentiality, public interest considerations may arise where disclosure is necessary to prevent or reduce a risk of serious harm, protect vulnerable individuals, safeguard children or adults at risk, prevent serious crime, comply with legal obligations, or protect wider public safety. Public interest does not automatically override confidentiality and requires careful consideration of necessity and proportionality in the circumstances.

Record
A catch-all word that includes all notes, records, memoranda, appointments, communications (including emails and text messages, social media comments and handwritten correspondence), photographs, artefacts, video or audio recordings about an identifiable client. Records may exist in any format, typically but not limited to, paper or digitally. There is no distinction between factual and process notes in what the law regards as a record. (Glossary: BACP *Ethical Framework* 2026)

Special category data
Special category personal data are personal data that the UK GDPR recognises as particularly sensitive and therefore subject to additional legal protections. These include personal data revealing:

- racial or ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- genetic data
- biometric data where processed for the purpose of uniquely identifying an individual
- physical or mental health
- a person's sex life and
- a person's sexual orientation.

Much of the information routinely recorded by counsellors and psychotherapists about their clients, including information relating to a client's mental or physical health, will constitute special category personal data.

The processing and disclosure of such data require a lawful basis under the UK GDPR and are subject to additional safeguards because of the potential impact on the rights, freedoms and privacy of the individuals concerned.

Serious harm
Harm of sufficient gravity to justify consideration of disclosure without consent. Serious harm may include death, serious physical injury, sexual violence, significant abuse or neglect, exploitation, serious self-harm, suicide, substantial psychological harm, or other serious threats to the safety or welfare of an individual or group.

Whether harm is sufficiently serious will depend on the facts of each case, including its nature, severity, likelihood, imminence, and the vulnerability of those affected. Decisions should be made following a careful assessment of risk, proportionality and the competing rights and interests involved.

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This resource was originally co-authored by Barbara Mitchels and Tim Bond and subsequently updated by Barbara Mitchels.

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NSPCC for general information on safeguarding issues in schools, see https://learning.nspcc.org.uk.

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Scottish Executive (2004) *Sharing information about children at risk: a guide to good practice.* Edinburgh: Scottish Executive.

Scottish Executive (2011) *Guidance on Joint investigative interviewing of child witnesses in Scotland.* Edinburgh: Scottish Executive.

Scottish Executive (2005) *Code of practice to facilitate the provision of therapeutic support to child witnesses in court proceedings.* Edinburgh: Scottish Executive.

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United Kingdom *General Data Protection Regulation* www.legislation.gov.uk/eur/2016/679/contents (accessed 28 August 2026). For how the GDPR applies in the UK, see www.ico.org.uk.

United Nations *Convention on the Rights of the Child* (1989) (ratified by the UK in 1991) available at www.gov.uk/government/publications/united-nations-convention-on-the-rights-of-the-child-uncrc-how-legislation-underpins-implementation-in-england (accessed 28 August 2026).

Legislation in relation to breaching confidentiality

Care Standards Act 2000

Children Act 2004

Children Act 1989

Coroners and Justice Act 2009

Crime and Policing Act 2026

Counter-Terrorism and Security Act 2015

Data Protection Act 2018

Data (Use and Access Act) 2025

Female Genital Mutilation Act 2003

Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020

Freedom of Information Act 2000

Health and Social Care (Safety and Quality) Act 2015

Health and Social Care Act 2012

UK-General Data Protection Regulation

Human Rights Act 1998 Mental Capacity Act 2005

Mental Health Act 1983, 2007, 2025

Offender Rehabilitation Act 2014

Online Safety Act 2023

Police and Criminal Evidence Act 1984

Proceeds of Crime Act 2002

Prohibition of Female Genital Mutilation (Scotland) Act 2005

Protection from Harassment Act 1997

Rehabilitation of Offenders Act 1974

Road Traffic Act 1991

Serious Crime Act 2007

Social Services Act 1970

Terrorism Act 2000

Vulnerable Witnesses (Scotland) Act 2004.

Useful contacts and resources

Legal resources

- British and Irish Legal Information Institute (BAILII, www.bailii.org). Publishes all High Court, Court of Appeal and Supreme Court judgments
- Care Council for Wales (http://sites.cardiff.ac.uk/childrens-social-care-law). Publishes Child Law for Social Workers in Wales in English and Welsh, with regular updates
- Family Law (www.familylaw.co.uk). Access to Jordans Publishing's Family Law Reports
- Family Law Week (www.familylawweek.co.uk)
- UK statute law (www.legislation.gov.uk)
- UK statutory instruments (https://statutoryinstruments.parliament.uk)
- vLex (www.vlex.com). Online resource.

Regional legal contacts

England

For a list of the courts and links to regional courts' contact details, see www.gov.uk/find-court-tribunal

For CAFCASS see www.cafcass.gov.uk National Office 3rd Floor 21 Bloomsbury Street London WC1B 3HF Tel: 0300 456 4000 Fax: 0175 323 5249 *(local offices are listed on the website or available from National Office)*

NAGALRO (The Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers) see www.nagalro.com Nagalro PO Box 264 Esher Surrey KT10 0WA Tel: 01372 818504 Fax: 01372 818505 Email: nagalro@globalnet.co.uk

Northern Ireland

See www.courtsni.gov.uk for contact details of all courts, publications, judicial decisions, tribunals and services.
The Northern Ireland Guardian Ad Litem Agency
(Email: admin@nigala.hscni.net)

Wales

Children and Family Court Advisory and Support Service (CAFCASS) Cymru: (https://gov.wales/cafcass-cymru). National Office, Llys y Delyn, 107-111 Cowbridge Road East, Cardiff, CF11 9AG. Tel: 02920 647979; Fax: 02920 398540; Email: Cafcasscymru@Wales.gsi.gov.uk; Email for children and young people: MyVoiceCafcassCymru@Wales.gsi.gov.uk.

EIRE: Republic of Ireland

An Roinn Slainte Dublin
Republic of Ireland Department of Health, Hawkins House, Hawkins Street, Dublin 2, Ireland. Main switchboard for the Department is 01 6354000. Dial +353 1 6354000 from outside Ireland.

Ombudsman for Children's Office Dublin
Millennium House,52-56 Great Strand Street, Dublin 1, Ireland Complaints free-phone 1800 20 20 40. Otherwise call on 01 865 6800. Email: oco@oco.ie Fax: 01 874 7333. www.oco.ie.

Multi-Agency Safeguarding Hub (MASH)
This multi-agency safeguarding system operates in each geographical area, and information about how to make a referral via MASH in your area is provided by each one online. To access information, search MASH and your county name.

Mental Health
Good Practice Guidance in Mental Health & Incapacity Law Scotland.
www.mwcscot.org.uk/good-practice

Mental Health Practice Guidance Northern Ireland
Mental Health Practice – rcni.com
www.rcni.com/mental-health-practice

MIND
www.mind.org.uk
www.youngminds.org.uk

NICE
www.nice.org.uk
www.nice.org.uk/guidance

Royal College of Psychiatrists Publications
www.rcpsych.ac.uk

Samaritans
www.samaritans.org.