

# **What do we mean by records and record keeping within the counselling professions?**

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## **Good Practice in Action 066** Commonly Asked Questions

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Updated September 2018

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## Context

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

## Purpose

The purpose of this resource is to provide information for therapists and counselling service providers in respect of commonly asked questions about what is meant by records and record keeping.

## Using Commonly Asked Questions Resources

BACP members have a contractual commitment to work in accordance with the current *Ethical Framework for the Counselling Professions*. The Commonly Asked Questions resources are not contractually binding on members but are intended to support practitioners by providing general information on principles and policy applicable at the time of publication, in the context of the core ethical principles, values and personal moral qualities of BACP.

Specific issues in practice will vary depending on clients, particular models of working, the context of the work and the kind of therapeutic intervention provided. As specific issues arising from work with clients are often complex, BACP always recommends discussion of practice dilemmas with a supervisor and/or consulting a suitably qualified and experienced legal or other relevant practitioner.

In this resource, the word 'therapist' is used to mean specifically counsellors and psychotherapists and 'therapy' to mean specifically counselling and psychotherapy.

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

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## 1. Introduction

This resource has been developed in the form of a 'commonly asked questions resource' about record keeping. The specific requirements for records will depend on the context and requirement for each setting a practitioner works in, for example if you are working within an organisation, this may require a different style of record keeping from that of someone working in private practice. It is hoped however that the questions will help practitioners to think carefully about their own individual circumstances and develop records accordingly. It also aims to provide further information, and to signpost to additional resources that might be helpful.

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## 2. Why keep records?

Although historically there has been no consensus amongst UK counselling professionals as to what constitutes a record, or how these should be kept, the current thinking is that keeping records is an 'ethical requirement' (Bond, 2015) and is considered the professional norm for most.

The *Ethical Framework* commits members to work, and be accountable to professional standards stating:

*'We will keep accurate records that:*

- are adequate, relevant and limited to what is necessary for the type of service being provided
- comply with the applicable data protection requirements – see [www.ico.org.uk](http://www.ico.org.uk) (Good Practice, point 15).

It is therefore important that you understand what is meant by record keeping in order that you can act ethically and professionally in doing so.

It is also important to remember, however, that the *Ethical Framework* is not prescriptive as to the format of records, these will need to be appropriate for your particular context and workplace. However, as a BACP member, you will need to be accountable, and able to show clear ethical decision making in respect of any records that you keep (or do not keep). You will also need to bear in mind that keeping records also has legal implications in terms of data protection, and people's rights to see what is written about them.

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## 3. What is a record?

In its broadest sense a record refers to any information that will be processed or stored about persons who 'can be identified or who are identifiable, directly from the information in question; or, who can be indirectly identified from that information in combination with other information' (see <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/>).

How we process and hold this information, how we inform and gain consent from our clients are governed by the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. (See [www.ico.org.uk](http://www.ico.org.uk) and Good Practice in Action 105 Legal Resource: *The General Data Protection Regulation* for more information.)

You may also need to consider if you need to register with the ICO, which you can find out by taking their quick self-assessment test <https://ico.org.uk/for-organisations/register/self-assessment/>.

Therefore, a counselling record can mean more than your formal written 'notes', extending to any information you hold relating to the client, contracts, permissions to keep records, process notes, text messages, emails or even a calendar, diary or artwork.

All records need storing securely, you will need to ensure that any paper records are locked away, and any electronic records:

- should be password protected, ideally at both the level of the individual document, as well as on the device used being password protected.
- consideration should be given to how you will encrypt documents, especially if the documents are to be stored remotely such as in 'cloud based' storage systems.
- virus protection should also be utilised in order to protect files being corrupted or hacked since this supports appropriately professional handling of the records.
- if you use your smart phone or tablet, you need to ensure that any data held there, as well as on your laptop or desk top computer, are secure and cannot be accessed or inadvertently shared with others. The ICO offers helpful guidance to assist you with this, which you can find at: <https://ico.org.uk/your-data-matters/online/>.

Clients need to give informed consent (usually in writing) for records to be kept, which means that you will need to explain to them, before you start working with them:

- what records you keep
- how these are kept
- who else may have access to them
- how long you will keep them for.

You can deliver this information in a number of ways including a privacy notice, information within your standard contract, and discussion with the client when you contract with them.

Under the GDPR, an individual has the right to find out if you are using or storing their personal data. Receiving a subject access request (as it is called) from a client, supervisee or trainee, means that you will need to provide the person with details of all the records you have that include their personal data (this would usually include formal records, plus emails and non-formal records such as process notes). There is guidance on the Information Commissioner's Office site as to how you need to respond to such a request at: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/>.

To ensure accuracy and to avoid lapses of memory, it is important to complete records as soon as possible after the client has been seen. This recommendation is in line with other professional bodies guidance, such as that offered in *The Nursing and Midwifery Council (NMC) Code of Conduct* – see point 10.1.

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## **4. Should supplementary materials such as photographs, letters and records of creative work in therapy form part of the record?**

Although supplementary materials are not specifically mentioned in the *Ethical Framework* they could still be classed as a therapeutic record. If any of the material could be used to identify or be linked to the identity of a living person, then data protection considerations would also apply. If such materials are kept as part of the record, it should be with the purpose of putting clients first by: 'making clients our primary concern while we are working with them' (*Ethical Framework*, Commitment 1).



Supplementary material of this kind could, however, be subject to misinterpretation by a third party, and, therefore, the practitioner would need to consider carefully in consultation with the client, and within their supervision, whether it would be ethical to retain it. For example, an adult client could produce artwork representing themselves with a sword and shield protecting their family – in the context of exploring feelings of powerlessness within a therapeutic session. The artwork may be a very helpful therapeutic tool and metaphor in enabling discussion on what support the person may need to put in place so that he or she feels empowered but have nothing to do with procuring weapons. However, if, for example, the therapist was asked to produce this record, within a court of law, this image may be interpreted differently by the court officials. If clients wish you to keep such records, then it would be important to outline this risk.

Although BACP does not have specific points within the *Ethical Framework* to cover artwork, it is interesting that the British Association for Arts Therapists, an HCPC legally regulated profession, does include some useful points within their *Code of Ethics*, which BACP members who work in creative ways could learn from: (Point 14.1)

*'Material produced during the art therapy session should be named, dated, and ideally safely stored throughout the therapeutic relationship. In general, the client's art expressions should be kept within the therapeutic relationship and the disposal of such artwork should be negotiated with the client. Art therapists may advise to keep artworks within the therapeutic space for the duration of the therapy. However, clients' requests to take artwork home should also be considered on an individual basis as should requests for it to be seen publically. Ultimately the ownership of the artwork remains with the client, as does the manner of its use and disposal. If storage space is at a premium, photographic, digitally or video recorded images may be used as an alternative record of the client's art expression'. (British Association of Art Therapies, Code of Ethics, Point 14.1.)*

It may be that artwork, photographs brought in by clients, letters or records they have written may be returned to them and noted in their records that this has been done. This can enable clients to exercise autonomy, in choosing what to do with the materials.

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## 5. Do I need to have the client's consent to keep records?

**Yes.** As discussed earlier, your client will need to give informed consent to you keeping records. This discussion and agreement needs to take place before you work with the client, and before you take any records. If the client is unwilling to give this consent, then you may need to decide whether you can ethically work with them. Tim Bond expands on this within the *Ethical Framework* video resource (see question 2: *Is there ever a justifiable case for not keeping records?*). This can be found at: <https://www.bacp.co.uk/events-and-resources/ethics-and-standards/ethical-framework-for-the-counselling-professions/working-to-professional-standards/>.

The important thing is only to keep the records that are needed, to keep them appropriately, confidentially and with the client's explicit informed consent; this would involve explaining the purpose of the record, limits to confidentiality and under what circumstances the records would be shared. A copy of your contract outlining all of this would also form one of the records.

There is also a legal obligation to store records securely, whether this is a digital or paper record, so in the case of larger creative work for example, consideration will need to be given to how this would be stored in a way that would maintain confidentiality and prevent unauthorised access.

**Note:** Usual practice is that like other professions, you are expected to keep records. Imagine the situation of being asked to rely on your memory to justify your work with a client within a court of law; including why you have not kept any records.

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## 6. What records should I keep? Is there a difference between records of fact and records of process?

Records should be '...accurate and appropriate...' (*Ethical Framework*, Commitment 2e); they will need to be appropriate for the context in which you work, and who you work with. For example, private practitioners may need to keep very different records from those who are working within an agency setting, which may stipulate style, and different client groups may have differing requirements that would be deemed appropriate.

For example, working with clients who have vision impairments, it may be appropriate to keep audio or large print records of key documents (such as contracts), so that clients are able to access what has been agreed or recorded. When working with couples or groups, you may need to contract and record carefully with each party, in respect of confidentiality, and store the records such that if one party at a later date wants to access the records, this can be done without compromising the confidentiality and wishes of the others.

Bond (2015) states that the primary purpose of good records is to support the work with the client. This is within the *Ethical Framework's* first commitment of 'putting clients first'. They may also be useful as an aide memoire and help with noticing patterns or developments in the work with a client.

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## 6.1 Factual records

These might be considered to be basic information about matters of fact that could be recorded as a minimum standard. These might include information such as the contract made with the client, copies of referrals or letters written and received, dates and times of sessions, any communication or letter written and received, correspondence with other professionals, assessment and intake documents (such as any referral letter), therapy process measures and outcome measures and risk assessments, any specific actions taken by the practitioner arising from the information in the forms, email correspondence or text messages with the client, details of fees paid.

It is worth bearing in mind that what constitutes a fact, is, of course, a matter for debate. A risk assessment, for example, is perhaps best considered as a snapshot of the client's situation at a given moment in time, rather than as solid factual evidence of their ongoing state of mind. However, in some organisational settings it will be a requirement to keep such assessments as part of the client's record along with intake, review and outcome forms because these are required to demonstrate the levels of success or otherwise of client work to gain or maintain funding for services.

Bond (2015) helpfully details specifics of professional matters that should be recorded:

- any written and signed consents to all treatment;
- any written and signed consents to all passing of confidential information;
- all appointments, including non-attendance by client;
- treatment contracts (if used);

- up-to-date records of counsellor's reasoning behind decisions about significant interventions and general strategies;
- consultations with anyone else about the client;
- copies of any correspondence from the client or relating to work with the client;
- any instructions given to the client and whether or not the client acted on these.

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## 6.2 Process records

Process notes, where they could be linked to an identifiable person, also form part of the client's therapeutic record, and often contain subjective experiences that arise as part of the therapeutic process. They hold the potential to be beneficent to client and counsellor, as well as to being maleficent if they were to be taken out of context by a non-practitioner, for example in a legal case if they were presented to a court of law. Process notes that do not identify any clients and are kept as a separate reflective journal, for example, and do not contain anything that could identify the client do not form part of that record (Bond 2015).

If you decide to keep process notes, as described above, you will need to discuss the purpose and reasons for keeping them with the client. It would be good practice to include within the notes, their purpose and that they are subjective. For example, if recording metaphor, transference, fantasy etc. it is important to state that these were such in the record. Otherwise they could be interpreted by a third party as statements of fact or intention.

For more detailed information on what should be included and excluded from records in counselling see Bond (2015) *Standards and Ethics for Counselling in Action*, Chapter 15 available as a downloadable resource by kind permission of Tim Bond and Sage publishers at:

<https://uk.sagepub.com/en-gb/eur/chapter-15-record-keeping>

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## 7. What shouldn't go into a record?

When writing records, it is wise to consider how what you have written would seem if read by your client, or by other non-practitioners.

Records should be made professionally, using clear language and avoid opinion or diagnosis you are not qualified to make since this would be working outside of your level of competence.

It should go without saying that records should avoid the use of any derogatory language towards clients or third parties.

Give careful consideration to including only what is useful for the record of fact, or for therapy, and exclude anything else unless you know that the record may be required for another reason and the client has given consent for it to be recorded. For example, an organisation's Human Resources team may refer an employee to you as part of a legal process. They may request confirmation from you of client attendance, or a brief report. If the client agrees to you keeping and sharing this information, it should be kept on file, and separately from other records, so that only the relevant information agreed is shared.

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## **8. What does the Ethical Framework, Good Practice, Point 15 mean by 'adequate, relevant and limited to the service being provided?'**

Record keeping styles will be dependent on the context within which you work, and the type of clients you are working with. For example, if you work within a school setting with children and young people, the record keeping style would need to reflect the school policies and procedures and meet any legal requirements in respect of safeguarding. Some schools expect all documents through IT systems, and the documentation style would probably be specified by the school. However, if you were working with adults in private practice, then you would need to develop your own policies, procedures, and your records could be in a format that would work for you and your clients, and that you were able to keep secure, this could be either electronically or paper, but would still need to comply with data protection, and safeguarding legislation.

If you were working with groups, or couples, you would also need to consider how to keep records that did not compromise individual confidentiality. This would need negotiating during the contracting process. It would then be clear what to do if one member of the group, or couple demanded access to the records, for example, where one partner within couple counselling may seek to gain access to the notes of their work together as part of divorce or separation proceedings.

The *Ethical Framework* states that 'trainees on a practitioner-qualifying course working with clients will inform clients (or ensure that clients have been informed) that they are trainees' (Good Practice, point 82a). Trainees may need to share records (or parts of records) for use in assignments such as case studies or as part of practical tasks assessing competence. Explicit informed client consent would be required for this and it would usually be agreed within the contracting process with the client. Any documents showing this consent would also form part of the client record.

The commitment to the *Ethical Framework*, and to keeping records applies to members who are undertaking therapeutic practice, but also to members in respect of their work as supervisors, researchers and trainers.

Further information about research ethics can be found within *Ethical Guidelines for Researching Counselling and Psychotherapy* which is available to members to download from the BACP website at: <http://www.bacp.co.uk/research/publications/>

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## 9. What if I can't look after the records anymore?

Good Practice in Action 072 considers in more detail unplanned endings and Good Practice in Action 104 considers the importance of therapeutic wills. However, to summarise, when contracting with clients, it is important to discuss with them what will happen to their records if the practitioner is unable to work for any reason, or they leave the agency or service, and who may contact them.

Roslyn Byfield in BACP *Private Practice* Spring 2016 and also in *Therapy Today* (October, 2016) discusses in detail the need for counsellors in private practice to leave instructions in their will as to what happens to client records if they die. Good practice would suggest that only those who are bound by the *Ethical Framework* should be enabled to carry out the task of managing the records in your absence. Perhaps a trusted colleague, or supervisor would be prepared to undertake this role. This should be explicitly discussed and documented however rather than assumed. You may also find Good Practice in Action 004 Commonly Asked Questions: *Working in private practice in the counselling professions* helpful in this respect.

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## 10. What should I do if I'm in any doubt about record keeping or access to a client's records?

As with any difficulty or dilemma therapists face, it is good practice to discuss it in supervision. In the case of legal and professional concerns, it can be helpful to call your professional indemnity insurance provider who may have a legal advice department. You might also find Bond and Sandhu (2005) *Therapists in Court* helpful, and in the case of managing confidentiality see GPiA 014: *Managing confidentiality*.

Issues such as how long to keep records are included in Good Practice in Action 067 *Practical aspects of record keeping*.

Another key consideration is that records should be made and kept in line with the policy of the agency/employer, as they may be bound by additional legal and professional requirements.

When working with clients who are involved in complex situations where there is potential for your records to be used in any legal proceedings, it would be wise to read *Therapists in Court* (Bond & Sandhu, 2005) and other Good Practice in Action resources which you can download at: <https://www.bacp.co.uk/events-and-resources/ethics-and-standards/good-practice-in-action/> as well as discussing with your supervisor.

In private practice, it is wise to develop your own record keeping policy and to stick to it, therefore demonstrating the principle of competence as well as being accountable for what you do.

For further information see Bond 2015.

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## Summary

Records can be kept as paper records or within IT systems. They can comprise factual documents in respect of the client, such as contracts, letters, referrals, attendance records, fees, emails and text messages, they can also include process notes, artwork or creative materials that you keep for clients.

Keeping records has both ethical and legal implications that you need to be aware of. You can find out more about the legal implications of data protection for example, from the Information Commissioner's Office (ICO) <https://ico.org.uk>

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