

# Kaleidoscope Counselling Scotland CIC

## Confidentiality and Data Retention



Confidentiality is the protection of personally sensitive information from unauthorised disclosure and is an essential condition of therapeutic work. Disclosures made in counselling are usually made by clients on the assumption that what is said remains confidential between counsellor and client. Sound ethical reasons and justifications are needed for confidentiality to be breached and these circumstances must be made clear to clients at the start of the therapeutic relationship, so as to maintain transparency and honesty.

During initial assessments, counsellors will discuss confidentiality with clients and work to ensure they have understood as clearly as possible. For our purposes, confidentiality is between Kaleidoscope and the client. In the event that a counsellor feels confidentiality needs to be broken at any time during therapy, it is generally considered good practice to do this with the client's knowledge and to work towards consent where appropriate.

Exceptions to Confidentiality:

**1. Clients request for information to be shared.**

Clients may request that a disclosure be made to a specific person, organisation, or for a specific purpose. In these instances, it will be necessary to discuss with the client the conditions of the disclosure including its limits, what can and can not be shared.

Accurate records should be kept around these discussions as well as a record of the result; what was disclosed, to whom, and any outcomes of this disclosure.

**2. Balancing Public Interest and Protection of Others.**

Counsellors have a responsibility to manage the balance between public good served by maintaining confidentiality and public good served by breaching confidentiality. If there was risk of serious harm to the public or individuals in a client's life, disclosure without client consent may be necessary. Criteria to consider in these circumstances:

1. Degree of Risk.
2. Seriousness of Harm being Prevented.

3. Imminence / Timescale.
4. Effectiveness of Disclosure.

Making a record of the decision making process, including any legal or professional guidance sought, is good practice.

### **3. Statutory Requirements.**

Counsellors are legally obligated to disclose certain activities to law enforcement without informing clients of the decision to breach confidentiality. These instances are:

1. Terrorism.
2. Money-laundering.
3. Drug-trafficking.
4. Road Traffic Act (1991)

The wording of the *Road Traffic Act (1991)* specifies that if the police require information about the driver of a vehicle at the time of an offence, it must be disclosed. Failure to do so is a criminal offence.

### **4. Court Orders.**

A counsellor can be ordered to appear as a witness or to provide all records concerning named clients.

### **5. Child Protection.**

Information sharing in the interest of protecting children from harm may mean that counsellors make disclosures to statutory or other relevant services without client consent. Careful consideration of all known risks and factors, along with environmental circumstances should allow for more robust decision making. Decision making process should be detailed in the notes along with a record of any professional advice or guidance sought.

### **6. Suicide and Risk to Client's own life.**

There is no legal requirement for counsellors to act when clients presents as suicidal and we recognise that this can be one of the most challenging circumstances for professionals. Kaleidoscope's stance is to act on the side of life and to work collaboratively with clients to disclose relevant information when there is assessed to be imminent risk to life. This is detailed further in our Self-Harm, Suicide, and Risk Policy.

## 7. Collaborative Working.

Where there may be multi-disciplinary or multi-agency working, it may be beneficial to consider the possibility of information sharing to minimise the repetition of painful or traumatic experiences, and to enhance the quality of support that we can offer to a client. This may also allow for the client to be involved in decisions that they may otherwise feel left out from. In our setting, this is unlikely to be a common occurrence however should be considered carefully and with the clients involvement.

The only people who we are obligated to release clients notes to in the event of a request are:

1. The client themselves.
2. A judge with a relevant court order.
3. A coroner.

Solicitors may at times make a written request for notes or information on clients however we are not bound by the law to provide this. It will be Kaleidoscope's practice to consider these requests on a case by case basis, at all times upholding the values of autonomy, confidentiality, and harm reduction.

In any breach of confidentiality the information shared should be adequate, accurate, relevant, and limited only to what is necessary. Records should be kept of these disclosures, including time, date, relevant persons involved and any further action taken.

### Data Retention:

Some of our responsibilities under the *General Data Protection Regulation (2018)* are

- To know what personal data we hold and why we need it.
- To ensure accuracy of any personal data held.
- To have clear guidelines on how long we keep data and for what reasons.
- To comply with individual's requests for erasure and "right to be forgotten".
- To understand client's "right of access" to any personal information we hold.

In the instance of a request for erasure of client data received in writing Kaleidoscope have one month to respond. We have a legal responsibility to comply with these requests if the information we hold is no longer necessary for the purposes it was collected.

Particular weight is to be given to requests for erasure from children, or those who are no longer children but were at the time of initially consenting to the holding of personal data. In any event, Information Commissioner's Office guidelines should be consulted.

In the instance of a request for access to client data received in writing Kaleidoscope have one month to respond. Client's have a right to know what information we hold about them and for what purposes we do so. The information we provide must be "concise, transparent, intelligible and easily accessible...using clear and plain language. This will be particularly important where the information is addressed to a child." In any event, Information Commissioner's Office guidelines should be consulted.

Kaleidoscope will hold any client information for a period of five years after the last point of contact, except in the case where a client is under 18 in which instance information will be held for five years after a clients 18th birthday. This is in line with guidance from insurers, NSPCC, and many major providers of therapeutic services.

Additional reading and guidance:

- [ico.org.uk](https://ico.org.uk)
- General Data Protection Regulation (2018)
- Managing Confidentiality Within the Counselling Professions (BACP Publication Good Practice in Action 014, 2019)
- Standards and Ethics for Counselling in Action by Tim Bond (2015)