

## **Confidentiality Guidance for Keeping Families Safe**

Guidance for the counsellor/coach/associate/Young Person Guide (YPG) in safeguarding vulnerable adults and children. This policy applies to everyone working on behalf of Raising A Wild Child and The Wildheart Foundation - the board of directors, paid staff and volunteers.

The NCS Code of Ethics gives the following guidance to all registrants about client confidentiality:

“Confidentiality, Maintenance of Records and Recording of Sessions”

### **All Practitioners undertake to:**

Maintain strict confidentiality within the client and counsellor/coach/associate/YPG relationship, always provided that such confidentiality is neither inconsistent with the counsellor/coach/associate/ YPG 's own safety or the safety of the client, the client's family members or other members of the public nor in contravention of any legal action (i.e. criminal, coroner or civil court cases where a court order is made demanding disclosure) or legal requirement (e.g. Children's Acts).”

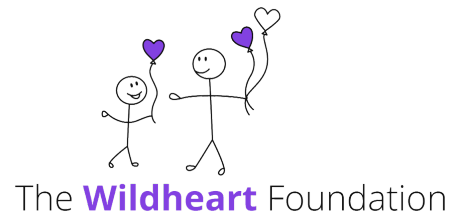
### **In this document we give further details about:**

- A. Confidentiality within the client and counsellor/coach/associate/ YPG relationship
- B. The Law
- C. The rights of the client
- D. The duties of the Counsellor/ YPG – exceptions to confidentiality

### **A) Confidentiality within the client counsellor/coach/associate/YPG relationship**

Confidentiality is considered to be one of the foundations of the therapeutic relationship. Clients may share/disclose personal information with a counsellor/coach/associate/YPG and they will feel more confident to do this if they are reassured that their personal information will be discussed and recorded in confidence.

There are ethical and legal frameworks about the protection of sensitive information and there are also legal and ethical frameworks for the protection of the public and individuals. There may be occasions when there is a perceived conflict between the professional and moral duty of confidentiality and the need to disclose information that is considered to be in the public interest or individual protection.



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### B) The Law

Legal rights to confidentiality are enforceable by legal orders e.g. injunctions or actions for breach of contract, damages, orders for compensation.

Common law (decisions made by the courts) which imposes a duty of confidentiality where information is disclosed in confidence or in circumstances where a reasonable person ought to know that the information ought to be confidential).

Statutory provisions (e.g. GDPR, Human Rights Act 1998 Article 8 – right to private life)

Contracts i.e. between: Counsellor/coach/associate /YPG and client; and/or counsellor/coach/associate/YPG and agency.

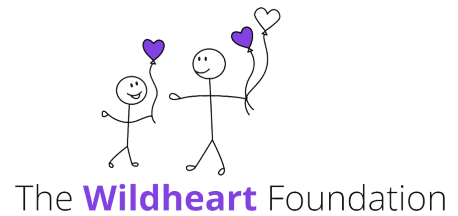
These rights are enforceable by a complaints procedure and investigation process, disciplinary proceedings, and in the case of actions by public bodies, possibly legal action for judicial review of administrative or other actions challenged.

For someone with a complaint about an issue relating to confidentiality, these procedures often involve less financial risk than court proceedings and sometimes the outcomes from a disciplinary hearing are more likely to prevent a repetition by the counsellor/coach/associate/YPG.

### C) The rights of the client

At the outset of therapy it is the responsibility of the counsellor/coach/associate/YPG to explain to the client (and ensure they understand) about confidentiality:

- To know the extent and limitations of the confidentiality
- To be told the circumstances in which the counsellor/coach/associate/YPG may wish to breach confidentiality
- To have a clear agreement with terms which they fully understand, accept and support
- To know who will make, keep and have access to their notes and records, how they will be kept, for how long they will be retained and for what purposes they may be retained/destroyed/disclosed.



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- To be informed of circumstances when the counsellor/coach/associate/YPG must or is about to breach their confidentiality (unless there are defensible reasons why this cannot be the case, in cases of certain child protection or mental incapacity)
- To know how, why and to whom information will be given by the counsellor/coach/associate/YPG
- To know the import of and/or see what is being said about the client if that client so wishes

### D) The duties of the counsellor/coach/associate/YPG – exceptions to confidentiality Crime

A counsellor cannot be legally bound to confidentiality about a crime. Courts have concluded that it is defensible to breach confidence, in good faith, in order to assist the prevention or detection of a crime. However, there is no general duty to report crime except in specific circumstances. There is also no general obligation to answer police questions about a client. A polite refusal on the grounds of confidentiality is sufficient if this is considered appropriate, but deliberately giving misleading information is likely to constitute an offence. (There is specific home office guidance for counsellors working with addicts or offenders

<https://www.gov.uk/government/publications/confidentiality-guidance-for-drug-and-alcohol-treatment-providers-and-clients>

#### Prevention of serious harm to the client or to others

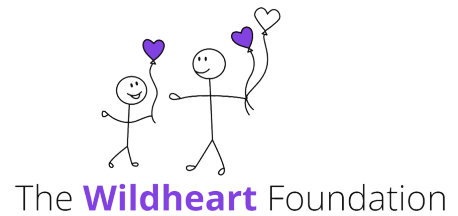
The Department of Health offers the following guidance on what counts as serious crime. 'Murder, manslaughter, rape, treason, kidnapping, child abuse or other cases where individuals have suffered serious harm may all warrant breaching confidentiality. Serious harm to the security of the state or to public order and crimes that involve substantial financial gain and loss will generally fall within this category.

#### Statutory obligations to disclose

The Terrorism Act 2000 makes it a criminal offence for a person to fail to disclose, without reasonable excuse, any information which he either knows or believes might help prevent another person carrying out an act of terrorism or might help in bringing a terrorist to justice in the UK.

#### Court orders

A court may order disclosure, or order the counsellor/coach/associate/YPG to attend court and to bring notes and records with them. Refusal to answer the questions of the court may constitute contempt of the court. The counsellor/coach/associate/YPG may be asked to



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produce a report for court relating to work with a client. Consent should be obtained directly from the client wherever possible and in writing. Clients may ask to see the reports written about them, and in accordance with the legislation on Human Rights, GDPR, Freedom of Information clients should have access to their reports in the same way as records, unless there is a cogent reason in their interest or that of the public not to do so.

### **Requirements to produce counselling records**

Family courts dealing with child protection cases have different rules of evidence from other civil and criminal courts. They may order the production of documents including personal medical reports which would otherwise have been protected from disclosure.

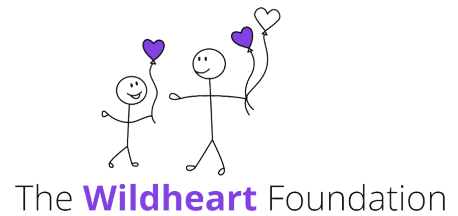
The police acting on behalf of the Crown Prosecution Service and usually with the written consent of the client, may seek access to therapy and counselling notes. This is most likely to happen if they contain reports of allegations of rape or sexual abuse.

Disclosures to enhance the quality of service provided. Technically, it may constitute a breach of confidence when counsellors discuss cases in counselling supervision, training and research.

### **Child protection**

A 'child' is defined as a person under the age of eighteen. The Children's Act 1989 (CA 1989) in conjunction with subsequent legislation including the Children's Act 2004, places a statutory duty on health, education and other services to cooperate with local authorities in child protection. There is a statutory duty to work together, including information sharing, in conducting initial investigations of children who may be in need or subject to abuse. Further information at Every Child Matters.

A counsellor/coach/associate/YPG working with children and young people should have supervision with a person suitably qualified and experienced in child protection matters. If there is a concern that a child may be at risk of serious harm and the counsellor/coach/associate/YPG does not have consent from the child or from a person with parental responsibility for the child to make a referral, then the counsellor/coach/associate/YPG will have to decide whether to make a referral anyway, without consent. Those working within government, organisational or agency settings should already have policies and procedures in place to follow. For those that work independently, this is a matter for supervision, and where necessary for expert professional advice on child protection law and practice, which should be available from the legal department of the local authority, the department of social services, or specialist lawyers.



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### Clients at risk of suicide or serious self-harm

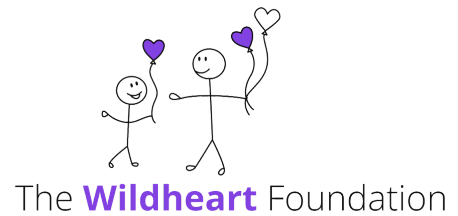
Responding appropriately to suicidal clients creates one of the most challenging situations encountered by counsellors. As there is no general duty to rescue in British law, counsellors need to be explicit about reserving the power to breach confidentiality for a suicidal adult client. To do so without explicit agreement may constitute an actionable breach of confidence.

A counsellor/coach/associate/YPG who knows that a client is likely to harm themselves or others but who will not give consent for referral must carefully consider the ethics of going against the client's known wishes and also the possible consequences for their client of either referral or non-referral.

### Discuss with the client if appropriate, and ideally also discuss in supervision these issues:

- What has the client given me permission to do?
- Does that permission include referral?
- 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 preventable?
- Is there anything I (or anyone else) can do to prevent serious harm?
- What steps would need to be taken?
- How could the client be helped to accept the proposed action?
- Does my client have the mental capacity to give explicit informed consent at this moment in time?
- If the client does not have mental capacity, then what are my professional responsibilities to the client and in the public interest?
- If the client has mental capacity, but does not consent to my proposed action (e.g. referral to a GP), what is my legal situation if I go ahead and do it anyway?
- Counsellors' professional responsibility requires that they must act within the area of their personal expertise, and should consider their own limitations. The implication of this is that when they reach the limits of their expertise, consideration should be given to referral on with the client's consent. If the client does not consent to a referral and if the client or others may be at risk of harm, the counsellor/coach/associate/YPG should address the issues listed above in supervision and with their professional organisation and/or other professional advice.

If a client consents to referral on or to a change in the confidentiality agreed with them at the outset of the work with their counsellor/coach/associate/YPG, then there is little



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likelihood of any ground for legal or other action against the Counsellor/YPG if the actions then taken are with the full knowledge and consent of the client. If possible, obtain the client's explicit consent. Implicit or implied consent may be relied upon by the counsellor/coach/associate/YPG, but it can be nebulous and is rather more difficult to prove.

In the event of a complaint or legal action, both counsellor/coach/associate/YPG and client are best protected by a therapeutic contract with terms including explicit consent, which are evidenced in writing.

### **Mental capacity and consent**

Mental capacity is a legal concept of a person's ability to make rational, informed decisions. It is presumed in law that adults and children over the age of sixteen have the mental capacity and legal power to give or withhold consent in medical and health care matters.

### **Children and young people under the age of eighteen**

Counsellor/coach/associate/YPG working with children and young people will need to have valid consent to enter into the therapeutic contract. 'Parental responsibility' is the legal basis for making decisions about a child, including consent for medical or therapeutic treatment.

**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.**

If you require specific legal advice then you should contact your insurance company as they will have access to qualified legal advisors

If you require further support and guidance in all matters relating to child protection please contact the NSPCC

<https://learning.nspcc.org.uk/media/1601/safeguarding-policy-statement-example.pdf>

### **Contact details**

**Nominated Designated Safeguarding Lead (DSL): Rosalind Walker**

**Email:** [rosalind@wildheartfoundation.co.uk](mailto:rosalind@wildheartfoundation.co.uk)

**This policy was last update November 2023**