

Appendix 1. Guidance on Legal Matters.

(Taken from the IPSS Code of Ethics. (2009)- now superceded by the UKCP Code of Ethics and Professional Practice.)

Guidance on legal matters is set out in this Appendix. to support good professional practice in psychotherapy alone; in themselves these are not ethical matters for consideration.

N.B.. Legislation changes and so do the legal requirements of Psychotherapists. The Guidance offered in Appendix 1.is a point of reference and should not be seen as a substitute for up to date legal advice.

1 What to do if you are asked for your client notes.

- Contact your insurers for advice; be clear and concise.
- Contact your Ethics Committee (IPSS or other member organisation of UKCP, BCP or BACP) who can give you support.
- If working in the NHS, contact your manager, and then the litigations department of your NHS Trust

2 The Home Office

The Home Office may require you to surrender a client's case notes. If so required, you are obliged to surrender them. This procedure is usually concerned with seeking illegal immigrants.

3 Crimes

Withholding information about a crime that one knows has been committed or is about to be committed is not automatically an offence, save exceptionally. Anyone hearing of terrorist activities or other activities listed here should immediately take legal advice through their indemnity insurer.

- The Terrorism Act (2000) requires that we disclose any belief of suspicion of acts of terrorism.
- The Drug Trafficking Act (1986) requires that we disclose to the police information of any individual making money through drug trafficking.
- The Road Traffic Act (2000) requires we provide information to the police that might identify a driver in a traffic offence. In addition, if a psychotherapist becomes aware that a client may be driving whilst unsafe (e.g. through epilepsy, medical condition, drug or alcohol abuse) the law requires the counsellor to pass this information to the DVLA.

4 Giving information to solicitors

There is no legal obligation to answer a solicitor's enquiry or to make a statement for the purpose of legal proceedings, unless ordered to do so by a court.

5 Court attendance

There is no legal obligation to attend court at the request of persons involved in a case, or at the request of their lawyers, until a witness summons or subpoena is issued to require attendance to answer questions or produce documents.

6 In Court

Once in the witness box, there is a duty to answer questions when instructed to do so by the court. Refusal to answer questions could be punished as contempt of court unless there are legal grounds for not doing so. (It has been held that communications between the psychotherapist and client during an attempt at 'reconciliation' in matrimonial cases are privileged and thus do not require disclosure unless the client waives this privilege.) This does not seem to apply to other kinds of cases.

7 Warrants

The police have the power to seize confidential files if they have obtained a warrant from a circuit judge. Obstructing the police from taking them in these circumstances may be an offence.

8 Seeking advice from insurers

Therapists should seek legal advice through their indemnity insurers if they are in any doubt about their legal rights and obligations before acting in ways which conflict with their agreement with clients.

9 In the NHS

If working within the NHS, the litigation departments will wish to know if case notes have been requested by a court or solicitor. They have their own solicitors who can act on your behalf. Clients need to know that their notes have been requested. Again, therapists should inform their insurers.