

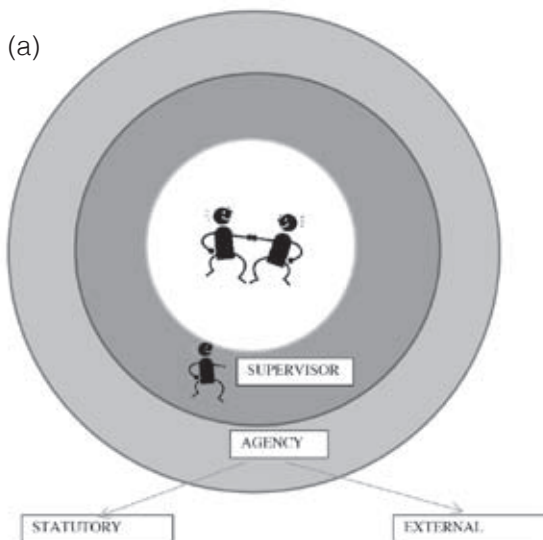
The Ethics of Confidentiality and its Limits



Tim McConville

In this article, Tim McConville examines the ethical context of, and limits to, confidentiality in the client-counsellor relationship.

Confidentiality



Corporate confidentiality is where a client is held by an agency. Different members of the agency tend to hold different pieces of confidential information. Each is responsible for the integrity of that confidentiality. Each circle in diagram (a) is a circle of confidence. They are not barriers to information sharing but boundaries that help us to envisage the legitimacy and appropriateness of that sharing. They sift appropriate levels of confidential information. Looking at the diagram, the first thing to take into consideration is the contract or agreement between the client and the counsellor. Both have to understand confidentiality and its limits and be happy that they can buy into it. Therefore the counsellor needs to understand the ethics to which he or she is committed. Then they need to elicit and document informed consent from the client that they are comfortable with those *limits*. Clients need to know who might have access to different pieces of information. They also need to know what records are kept and for how long. (COSCA's rule of thumb

recommendation is seven years; College of Sexual and Relationship Therapists (COSRT) recommends the same.) Clients need to know that material from the session will be routinely discussed in casework supervision (and group supervision where this is the case). For those clients seen in an agency, it is also necessary to explain the role of the practice manager and what kind of information might be taken there. The practice manager can often be the bridge with other counselling agencies when referring-on. They might also be the portal to statutory services, such as the health service or social work, depending upon the case.

These points are also important when making an audio or visual recording for assessment while on a course. Who will be included in the circle of confidentiality? How long will these recordings be in existence? Do you want to inform the client once the material is erased or destroyed? And, remember, no video recording is confidential unless the faces are pixelated (deformed) but if you cannot see the facial expressions why do you want a visual recording anyway?

Routinely we hear counsellors saying that they have had to "break confidentiality". (I personally shudder when I hear that.) On closer examination in each case it turns out the counsellor has found that, because of risks to the client or another person, they have contacted another professional person or body. They have explained the situation to the client and have received consent to do so. In actual fact there has been no breach of confidentiality; the circle of confidence has simply been widened to include others in that particular and bounded confidentiality. I feel that we need to be more precise in our language here because it will reflect a more precise understanding of confidentiality and the competent management of its limits.

The proposals here are not meant to be exhaustive but perhaps an invitation to deeper reflection for

us as professionals. I do not have the answers; I am just ruminating over the questions. To my mind the fundamental question is: If my relationship with my client is truly confidential and at the same time there are real risks to them or to others how do I resolve this ethical dilemma and remain a truly ethical practitioner?

Confidentiality and risks to children

All risk regarding domestic violence and abuse has the potential to also create risk to children either directly as victims themselves or through vicarious trauma. While statutory employees are legally obliged to disclose incidents of child abuse other professionals are not. However, where an agency receives funding from either central or local government, then the agency and its staff (volunteers, employees and self-employed team members) is contractually obliged to follow the statutory funder's child protection guidelines. Children over 12 years and deemed to have capacity have full entitlement to confidentiality. Parents cannot demand breaches of their child's confidentiality.

Appropriate disclosure

COSCA's position is that disclosures are exceptional. It is permissible only with grave cause. When it is deemed appropriate to disclose client information to an outside agency, it is best practice to:

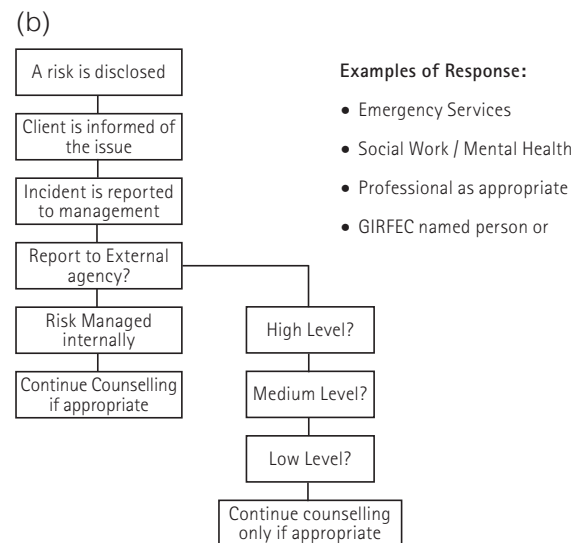
1. Explain the issue to the client and try to get consent to do so. Where consent is withheld disclosure without consent can only be justified when the public good would be significantly harmed. This must be balanced against the harm to the client and the harm to the profession where public trust in the profession might be undermined.
2. Review the facts of the case with the supervisor and / or practice manager whichever is most appropriate. No counsellor ought to feel isolated when working with such difficult issues.
3. Follow agency policies and procedures carefully. It is important to record the facts clearly and log all decisions. Demonstrate ethical reasoning in coming to decisions. The paradox is that there is no universal right or wrong answer; we work on our best professional judgement. Always ensuring that we have the information we need to make informed decisions.

Conditions for the possibility of confidentiality

The circle of confidence is widened as necessary for the client's wellbeing and the public good.

Wherever necessary, therapists will seek consent to widen the circle of confidence. To repeat what we have already said above, as professionals, counsellors never breach confidentiality. Once that has happened the practitioner becomes unethical and brings the agency and the entire profession into disrepute. However, there may be situations where other ethical concerns are pressing on the therapist and they are placed in a position where they are at risk of breaking the law. An example might be where a client discloses information regarding money laundering. Here, a counsellor is bound by the law to inform the authorities. So does he or she breach confidentiality in doing so? In cases such as this the conditions for the possibility of confidentiality have broken down and the counsellor is freed to follow the (ostensibly) conflicting ethical imperative to obey the law. It is still best practice to follow the three points regarding appropriate disclosure above.

The flow chart (b) is a brief example of a procedure for managing disclosure of risks. It is offered only as a guide to discussion.



References

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 Bond, T. *Standards and Ethics for Counselling in Action* 3rd Ed. Sage, London 2010.
- Corey, Corey and Callanan, *Issues and Ethics in the Helping Professions*, 5th Ed. Brookes/Cole, Pacific Grove CA. 1998.

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