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GDPR Case Studies

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Privacy Notice and Consent for Counselling

- Set out the purposes and legal basis for processing client personal data
- Clarify the circumstances in which data may be shared with other agencies
 - Immediate risk of substantial harm to self or others;
 - Under a legal requirement, e.g. terrorism, drug money laundering;
 - Via court order for disclosure
- State how long client records are kept, before being securely destroyed
- Explain client rights under data protection law,
 - to access a copy and explanation of their personal data
 - to request correction or erasure, in certain circumstances
 - to request limiting or ceasing data processing, where applicable

<https://ico.org.uk/for-organisations/guide-to-data-protection/privacy-notices-transparency-and-control/privacy-notices-under-the-eu-general-data-protection-regulation/>
<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/>



Defining retention periods

How long should we keep records?

- Some records, may have statutory time limits set.
- Professional indemnity insurance policies may need checking before setting time limits for keeping counselling records, as these often stipulate that records are kept for substantial time periods, as defensive material in the case of professional complaint, or litigation.
- Access to client records by the police, Crown Prosecution Service, solicitors and courts, for use in legal cases involving clients, seems to be increasing, according to anecdotal evidence, although this need not directly influence the time limit set for retaining records as such.

Many counselling services applied a time limit of around six years, but often with no clear rationale for deciding on this limit.

However, there is a clear principle under data protection law to keep records '**no longer than is necessary**'.



Case Study 1: Subject Access Request

A parent put in a **subject access request** to view the medical records of their child. The Medical facility solicitors informed the legal representative for the child's family that the access request raised matters of serious importance to their client and that they wished to be absolutely sure of their position prior to making a formal reply.

During the data commissioner's investigation, they exchanged correspondence on several occasions with the medical facility solicitors. The Medical facility solicitors acknowledged that their client owed statutory obligations under the Data Protection Acts but stated that their client also owed several other conflicting obligations which needed to be reconciled properly with all the persons concerned before they were able to comply with the access request. In later correspondence, my Office was told that the request had raised a fundamental problem for the medical facility concerning the information gathered by them both physically and electronically and that the opinion of Senior Counsel was required. This was accepted in good faith on the basis that such advice would be forthcoming promptly. In a further letter, the medical facility solicitors informed my Office that genuine difficulties had arisen because of the circumstances thrown up by the access request and that the medical facility was anxious not to have any adverse precedents set in relation to the confidentiality issue between doctor and patient

Having exchanged a large volume of correspondence and with no prospect of the legal advice emerging, my Office gave the medical facility solicitors a final opportunity to respond to the key questions which we had raised with them. They failed to respond, and I subsequently served an Enforcement Notice on the medical facility.

Q1. Do you agree with the commissioner's decision, if not why?



Case Study 1: Findings

There were several reasons for the decision to serve an Enforcement Notice.

- The commissioner believed that information collected by the medical facility on the date in question likely constituted sensitive personal data.
- The medical facility had not complied with an access request.
- The passage of time and the continued failure of the data controller or their legal representatives to engage substantively.

The Enforcement Notice required the medical facility, within a period of twenty one days, to provide the solicitor of the child's family with the personal data relating to the attendance of the child at the facility.

The investigation ensured that the patient in question received access to their full medical records. The DPC used their full legislative powers to compel the provision of the records in question when the facility had repeatedly delayed in doing so.

The case was all the more acute as it related to sensitive medical information which a patient has a right to access except in certain very limited circumstances.

Finally, the patient in question was a minor and the access request was made on his behalf by his mother.



Case Study 2: Right to Rectification

An Employer requested a psychological assessment be carried out on an employee to determine their ability to return to the workplace after a period of absence on sick leave.

The person concerned had received a copy of the medical report in question from the medical practitioner who carried out the assessment and considered the contents to be inaccurate. The complainant then requested that the report be rectified to reflect what she considered to be an accurate description of their circumstances.

However, the data controller, a consultant psychiatrist, reverted to the data subject stating that it was not possible to make the kind of alterations to the independent medical assessment that had been sought.

Q1. Do you agree with the medical practitioner, why?

Q2. What alternative solutions could be taken if any?



Case Study 2: Findings

If you discover that information kept about you by a data controller is factually inaccurate or collected unfairly, you have a right to have that information rectified or, in some cases, you may have that information erased.

However, this is not an unqualified right and depends on the circumstances of each case. The judgement to be made in such cases is complicated all the more when the matters at issue are medical in nature

In this case, the medical practitioner - considers that data is, in fact, accurate and if the data subject disagrees, then one possible course in the interest of achieving an amicable resolution is for the data controller to annotate the data to the effect that the data subject believes that the data is inaccurate for reasons which should be indicated.

The complainant supplied various annotations to be included in the medical report. Also supplied with each of these annotations was a detailed explanation for such.

The commissioner believed the proposed annotations supplemented the medical report without changing the report materially.

My Office communicated its position to both parties and the medical practitioner concerned helpfully supplemented the medical report in question by inserting the requested annotations



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