

# THIS MONTH'S DILEMMA:

## The police have requested access to my case notes

**D**oug comes from an abusive family and presents in therapy with difficulties in his marriage. He repeatedly gets angry with his wife, and has hit her on several occasions. He believes she provokes the attacks by belittling him and talking back. However, he admits that he has a 'short fuse', and he feels remorseful after each incident. Doug's wife is now pregnant. She has told him she will leave

him if he doesn't change. He thinks things will settle down once they have the baby.

Doug's therapist, Ruth, who is in private practice, has been keeping thorough records, including details of the abusive behaviour, and has filed these in his case notes. She explained this when she contracted with him, and told him the records were strictly confidential

Eighteen months into the therapy, and six months

into the pregnancy, after a particularly violent argument, Doug's wife leaves him and reports the incident to the police. Subsequently, Ruth receives a request from the police to see her case notes.

Ruth thinks her primary duty of care is towards Doug. She also fears that, if she releases his case notes without his consent, this will rupture their therapeutic alliance.

### WHAT SHOULD RUTH DO?

Please note that opinions expressed in these responses are those of the writers alone and not necessarily those of the column editor or of BACP.

#### Missed opportunities

##### Jill Swindells MBACP

Person-centred counsellor in the criminal justice system (victims and offenders) and pre-trial therapy trainer

In my experience, from my training workshops, therapists and supervisors are often involved in forensic practice without realising it. We need to recognise that clients (victims, witnesses or offenders) who disclose criminal behaviour might become involved with the criminal justice system and subsequently appear in court. How we subsequently work needs to be carefully considered, reassessed and possibly re-contracted around, with a potential trial in mind.

Unfortunately, opportunities were missed over the 18 months.

Neither supervision nor CPD provided Ruth with a better understanding of the issues and inherent risks for Doug, his wife or herself. For example, SafeLives' *Quick Start Guidance* suggests physical violence often worsens during pregnancy.

There is no specific guidance from the Crown Prosecution Service (CPS) for working therapeutically with clients who disclose their own or others' crime(s). However, I believe it is advisable to follow the CPS guidance on pre-trial therapy for vulnerable or intimidated adult witnesses.

In particular, as it is not our role to investigate, we should avoid both extensive discussion of events and making detailed records. Ideally, we should document first disclosures verbatim, and thereafter make

brief factual session notes to avoid the risk of inaccuracies.

While we have a duty of care to our clients and no legal duty to report, we need to balance these against protecting others from harm. Ruth's client contract should have included the possibility that she might need to break confidentiality, both to protect others and if required by a court of law. Ultimately, refusing an access request from either the police or the CPS is likely to result in all notes and records being subpoenaed, so neither Ruth nor Doug would have

any choice in the matter. Hence, we can never guarantee strict confidentiality. In doing so, Ruth failed to achieve appropriate and fully informed consent. Therefore, a rupture in their therapeutic alliance may be inevitable.

#### Seek legal advice

##### Vernon Cutler MBACP (Accred)

Counsellor and psychotherapist in private practice

My first advice to Ruth is to contact her insurer with a view to seeking legal advice, and ask that they recommend a solicitor and meet their fees.

Beyond that, however, is the issue of Ruth's initial contract with clients. When I contract with clients, I make it clear that, while I will respect their confidentiality, which includes any notes that I keep, ultimately, I will not disobey a court order. My advice to Ruth would be to seek legal representation and to resist the police request to access her records until her legal position is clarified or she receives a court order demanding the release of her case notes.

Hopefully, if Doug is able to recognise that Ruth has defended his confidentiality to the best of her ability, then the therapeutic relationship need not be ruptured. But, ultimately, Ruth cannot disobey a clear legal requirement. Moreover, to do so would not only compromise her professional position, but, by implication, her relationship with her other clients.

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## Working beyond her competency

### Anne Embury MBACP (Snr Accred)

Counsellor and Suicide Liaison Service Lead, Outlook South West  
My concern is that Ruth is working outside of her skills and competence levels. In seeking to build a therapeutic alliance by demonstrating the core condition of unconditional positive regard for her client, Ruth may have unintentionally colluded with Doug's belief that his wife's behaviour is the cause of his violence towards her.

I am also fearful for Ruth's personal safety. As Doug's belief has been that Ruth's notes were strictly confidential, he could be justifiably angry with her. He has a known history of violence and admits to having a 'short fuse'. Ruth works in private practice. She needs urgently to seek advice from her supervisor to support her and provide guidance, and she should also review her personal security.

### Safeguarding priority

### Ellie Luscombe MBACP

Integrative counsellor in private practice in London  
This dilemma immediately brings to mind the first session I have with clients, where I talk about confidentiality and the potential breaches to it: serious risk of harm to self or others. In this case, this applies to Doug's wife and unborn child. There is a clear professional obligation here to breach confidentiality, as the safety of Doug's wife and baby are at risk.

The consequences for Doug in this scenario are the loss of important relationships with his wife and unborn child. Maybe experiencing this could be a turning point for him. If Ruth resists the police request, it

could be argued that she will be colluding with Doug's behaviour by protecting him and potentially normalising it. Her reluctance could also be the result of her own fear that Doug may divert his aggression towards her, projecting blame on her for his actions, instead of taking responsibility. Doug may feel the confidentiality agreement should shield him, irrespective of his violent behaviour, which is not the case.

I understand the need to maintain a therapeutic relationship and that this engages clients and nurtures change.

However, the initial boundaries of confidentiality can be referred to here: safeguarding is the priority.

### Strictly confidential?

### Jonathan Harris UKCP (Reg)

Psychotherapist, Combe Martin, Devon  
We can praise Doug for coming to therapy and sticking with it for 18 months. Sadly, however, it hasn't stopped him hitting his wife, although the phrase 'violent argument' might not mean physical violence. Has Ruth been afraid of 'talking back', like Doug's wife, so not addressed his violence?

Ruth told Doug her notes are 'strictly confidential', which is seriously misleading and leads me to wonder about her competence. She considers her primary duty of care is towards her client, but seems unaware that, legally, public interest overrides individual client confidentiality. The rights of the unborn child and his partner rightly trump Doug's right to confidentiality. By not explaining to Doug, from the beginning, that his wife's safety is more important than his confidentiality, Ruth has actually provided a space, not of safety, but of the very secrecy in which abuse flourishes. She can put this right now by going into this in great detail with Doug.

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Regarding the police request for her case notes, Ruth should phone her professional indemnity insurer's legal helpline. They will

advise her whether she must accede to the request, as normally only court orders must by law be honoured. Ruth needs to know the law relating to cases of abuse. This is even more vital where the client is both the abuser and abused (historically, in Doug's case).

The request is the legal manifestation that private violence needs public exposure. This is an opportunity for Doug to deal with the rage he carries from his abusive birth family. Now is the time for Ruth to use the therapeutic alliance to help him to break his cycle of violence. She could engage seriously with him to help him to find ways to control his violence and explore a future with his pregnant wife. ■

## March's dilemma:

Elsa has been a counsellor in private practice in Sheffield for 15 years. She is conscientious in her support of vulnerable clients in their slow journey to a fully functioning life.

Elsa restores her equanimity by walking in the Lake District, where nature refreshes her soul and fires her imagination. During her long walks, she often receives the insights that lead to her best client work.

Elsa applied for, and has just been offered, a counselling job in Cumbria. She would like to take the plunge and move north, but her new employer would like her to take up her post as soon possible - within a month at most.

A few months ago, a client who has been seeing Elsa about a bullying line manager

uncovered memories of severe childhood sexual abuse. As a result, they are now working intensely, in twice-weekly therapy. In addition, the foster parents of a child she has been working with have suddenly and unexpectedly announced they are giving up fostering next month, on health grounds. Elsa is aware she will then be the only stable presence in this child's life.

### WHAT CAN ELSA DO THAT WOULD BE BEST FOR HER AND FOR HER CURRENT CLIENTS?

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